

STATES OF JERSEY



COMMITTEE OF INQUIRY INTO FIELDS 848, 851 AND 853, BEL ROYAL, ST. LAWRENCE FINAL REPORT

**Presented to the States on 19th September 2008
by the Committee of Inquiry into Fields 848, 851 and 853, Bel Royal, St. Lawrence**

STATES GREFFE

TABLE OF CONTENTS

Executive Summary and Recommendations.....	3
Executive Summary.....	3
Recommendations.....	7
Section 1 – Introduction.....	9
The decision to establish a Committee of Inquiry.....	9
Membership.....	10
Terms of Reference.....	10
Methodology.....	11
The Site.....	12
Background Information.....	13
Section 2 – Rezoning/Rezoning of the Site.....	15
Background.....	15
Was the rezoning process efficient?.....	17
Did the States Members have sufficient information to enable them to make an informed decision in relation to the sites?.....	19
Should rezoning be a decision of States Members as a body?.....	21
Views of the parishioners.....	23
The Feasibility Study.....	25
Could the process be improved?.....	29
Additional Comments.....	31
Section 3 – The Development Brief and the period between 2002 and December 2004.....	33
The Development Brief.....	33
Early 2003 – May 2004.....	33
The remainder of 2004.....	37
Should there be development briefs and if so, what should they contain?.	37
Comments.....	38
Recommendations on the Development Brief process.....	43
The noise issue during the period from rezoning to the end of 2004.....	44
Comments/Recommendations.....	47
Section 4 – The Effectiveness of the Consideration of the Application by the Planning Department from January 2005 onwards.....	48
Background.....	48
Density.....	52
Consultation.....	53
Size of Site/Encroachments.....	54
Delays/Noise issue.....	56

General.....	59
Environmental Impact Assessment.....	60
Conditions attached to the permit/Planning Obligation Agreement.....	60
Section 5 – Impact on the Infrastructure of the west of the Island.....	63
Traffic.....	63
Drainage/Flooding.....	67
Conclusions.....	71
Education.....	72
Trees.....	74
Section 6 – Miscellaneous matters.....	77
Sheltered Housing.....	77
First-Time Buyer Eligibility.....	77
WITNESSES INTERVIEWED BY THE COMMITTEE OF INQUIRY	79
WRITTEN SUBMISSIONS/COMMENTS RECEIVED BY THE COMMITTEE OF INQUIRY	80
RELEVANT LAW.....	81
TABLE OF APPENDICES.....	82

STATES OF JERSEY COMMITTEE OF INQUIRY
FIELDS 848, 851 AND 853, BEL ROYAL, ST LAWRENCE

Executive Summary and Recommendations

Executive Summary

Section 2 – Rezoning rezoning of the Site

The process by which the Bel Royal site (the Site) and other Category A sites were rezoned was less than efficient. It appears that there was a stark mismatch between the processes selected for development of the Island Plan 2002 and the level of funding allocated to facilitate those processes.

The degree of consideration given to the selection of sites for rezoning and to the full implications of rezoning those sites was not sufficient. In particular, public consultation on the Category A sites identified in the Island Plan 2002 was less than effective. In relation to the Site, it is clear that prior to July 2002 the parishioners of St. Lawrence were generally aware of the possibility that the Site was being considered for rezoning; however they appeared to be unaware either of the scale of the potential development or of the impact that the rezoning decision would have. A majority of parishioners thought that the whole Site would be considered unsuitable for housing due to flooding issues, which had been evidenced over many years. They clearly did not anticipate that the States would decide to rezone the land; yet once the land had been rezoned, as might follow, planning permission was going to be given for development of the Site.

There was some scope for improvement in the content, and the circulation, of the Feasibility Study (FS) for the Site. Comments from consultees were arbitrarily drawn, with no specific criteria used in the selection of the scale. Environmental Health were not provided with a copy of the FS and were therefore not given an opportunity to reflect on their earlier ‘no comment’ response, which was clearly flawed. The former issue did not seriously affect the content and purpose of the FS; however, the latter omission was unfortunate in that it compounded the initial (and fundamental) error by Environmental Health, who failed to advise Planning and Environment of the potential noise issue arising from the nearby Jersey Steel premises.

The then Planning and Environment Committee did not implement the parish impact assessments recommended by Professor McAuslan. It is the view of the Committee that this recommendation should have been implemented. Although the Committee has found evidence that the underlying rationale for conducting such assessments may have been at least partially taken on board, and that several sites from the then draft Island Plan were withdrawn as a result, it also found evidence that this recommendation was not fully implemented due to resource and time constraints. The latter is regrettable.

The relevance of the indicative yield numbers for each Category A site in the Island Plan 2002 was not raised during the States debate. This subsequently resulted in a number of States Members feeling that they had been misled or ‘bamboozled’. Relevant States Members may wish to reflect on why their respective contributions to that debate failed to flush out such a key issue before the decision to rezone was made.

The Committee is pleased to note the view of the current Minister for Planning and Environment that the rezoning process can be improved. It endorses his proposals in this regard; however, it was most surprised to learn that in late May 2008 the Minister had elected to lodge ‘au Greffe’ a proposition to rezone approximately 58.5 additional vergées of land for lifelong dwellings (for people over 55 years of age) and for firsttime buyers, without having first implemented the envisaged improvement in procedures (Projet No. P.75/2008 refers). This proposition was lodged some 6 years after the debate on the Island Plan 2002. The fact that the Planning and Environment Department (the Planning Department) and its political leaders had not been able in that time to reflect on the process adopted prior to 2002, and to improve upon it significantly prior to the lodging of that proposition in 2008, again lends weight to the Committee’s view that the Planning Department is fundamentally under-resourced.

If the States wants an effective planning process which runs smoothly and efficiently, then it should be prepared

to pay for it at the outset. Such an important issue to the Island as the rezoning of scarce land for housing should not be prejudiced because insufficient resources are allocated from the start. With this in mind, the Committee invites 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 ongoing Island Plan Review are truly satisfactory.

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

The Committee considers that there was a lack of control of the planning process relating to the Site during the period March 2003 to May 2004. Although this was due in part to the changing structure of various departments, a lack of communication between Committees, less than comprehensive minutes of certain meetings or decisions and antipathy between departments contributed to delays and misunderstandings. One of the consequences of this state of affairs was that the Development Brief for the Site was not approved in accordance with Policy H6 of the Island Plan 2002.

Very little was achieved between March 2003 and the publication of the final Development Brief in May 2004, other than generating public resistance to development of the site.

It is unfortunate that, once Health Protection had raised the issue of noise at the Site in July – September 2002, no further consideration was given to the issue. At that stage the developer had not acquired an interest in the Site and the rezoning of the Site could have been referred back to the States for further consideration of its suitability for housing – possibly with little, if any, threat of legal action or compensation. In fact, the Committee is surprised that, in the light of such vociferous opposition to the development of the Site, no substantive attempt was made by the elected representatives of the Parish, through the proper process, to have the decision to rezone referred back to the States Assembly at all.

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

There is no doubt that the consultation process associated with the Site proved less than helpful for the Planning Department, for the parishioners and for the developer. The attempt by all concerned to keep parishioners informed, concerns addressed and so on, backfired seriously. It led to anger, fear and suspicion. A clearer, more precise consultation process will hopefully help to give the public confidence that their views are listened to.

The application for 140 houses was submitted in November 2004 and it was informally considered in August 2005 (9 months). The scheme for 129 houses was submitted in September 2005 and was refused in August 2006 (11 months). The application for 102 houses was submitted in November 2006 and approved in March 2007 (4 months). **This is not an acceptable process.** The single greatest factor which caused the most delay to the application process in this period was undoubtedly the issue of the noise which might emanate from Jersey Steel. It was only when the Minister took control in 2006 and provided some leadership on the application, after a long period of delay, that things finally began to be resolved.

The Minister for Planning and Environment made a very bold decision in August 2006 when he refused the application for 129 houses against the recommendation of the Planning Officers and also the Planning Applications Panel. As the land had been rezoned, it is clear that that by this stage the developer would have had more than a reasonable expectation that an application to develop it would be successful if it complied with the policies set out in the Island Plan 2002 and with the final Development Brief.

The Committee does not believe that the Principal Planner was biased towards the developer, either in his reports or in his dealings with the developer.

The issues which would have been covered by an Environmental Impact Assessment (EIA) in relation to the Site changed so much during the process that even if an EIA had been produced at the outset, it would have had to be constantly updated. The Committee does not feel the fact that the information was provided in a way other than in an EIA had a detrimental or prejudicial effect on the process, although the Committee does believe that insufficient consideration was given to the effect of decisions which were made with regard to environmental

matters.

It is unusual to permit the commencement of any development in advance of Planning Obligation Agreements being agreed and registered on sites zoned for Category A houses; however, in this particular instance the Committee accepts that there were certain compelling grounds for adopting a pragmatic approach.

Health Protection consider that there would be merit in conducting an Island-wide mapping exercise to get an understanding of where the noise pollution would be a material planning concern: however, the Committee understands that resource constraints are currently such that this work cannot be undertaken.

Issues arising from the size of the Site and the matter of encroachments beyond the land intended for housing have now been resolved satisfactorily.

The Committee welcomes the introduction by the Minister of the Public Hearings for major or more controversial applications. This process allows for more structured and transparent input by stakeholders.

As of August 2008, the Planning Department still appears not to have fulfilled Policy H7 of the Island Plan 2002 by publishing its new supplementary guidance on the design of new homes. This document is expected to outline the results of its review of acceptable housing density and standards.

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

Considerable development has taken place in the west of the Island over the past few years and the cumulative effect of this on traffic has not yet been properly considered. Yet none of these other developments have been turned down on traffic grounds and it would be unfair to do so with the Site. **The Committee considers that an Island-wide traffic study and plan is long overdue.**

The Planning Department perhaps underestimated and certainly underplayed the potential flooding issues affecting the area in the first instance. The rating of the flooding and drainage in the FS as “Fair” was, with hindsight, an understatement.

The Committee can find no fault in the consultation process with the Education Department.

The Committee does not feel that there was anything suspicious in the fact that the developer knocked the trees down so quickly after receiving the permit to develop the Site; however, it seems incredible that the issue about the retention of the trees and the access to the Site should come to a head at such a late stage in the development. This should have been highlighted far earlier on, possibly even before the approval of the Development Brief.

Section 6 – Miscellaneous matters

The Committee accepts the reasons given by the Minister for Planning and Environment as to why there was a substantial reduction in the number of Homes for Life from the number outlined in the DDB to the final approved plan.

Recommendations

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 ongoing Island Plan Review are truly satisfactory.
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.
3. Some indication as to site yields for Category A sites should be given in an Island Plan but not a final figure. The indication should have a built-in margin for error which is specified. States Members can then assess whether or not the housing needs of the Island will be satisfied.
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.
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 over-ride other material planning considerations.
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.
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.
8. There should be no more than one Draft Development Brief sent out to statutory consultees for their consideration.
9. A Draft Development Brief should not be published for the purposes of an extended public consultation.
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.
11. Clear and realistic time scales should be identified for each stage in the planning process to alleviate the risk of unnecessary delays.
12. Material decisions of Committees or Ministers must be properly recorded and minutes of meetings must be accurate and suitably comprehensive in all respects.
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.
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.

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

Section 1 – Introduction

The decision to establish a Committee of Inquiry

1.1 On 2nd April 2007 a proposition was lodged in the States by Mr. Geoffrey Fisher, the Connétable of St. Lawrence (“the Connétable”) to establish a Committee of Inquiry in accordance with Standing Order 146 to investigate fully the circumstances in which Fields 848, 851 and 853 at Bel Royal, St. Lawrence (“the Site”) was rezoned and subsequent planning permission considered for between 140 and 102 homes on the Site. A full copy of the proposition P.49/2007 (“the proposition”) can be found at Appendix 1. In the report accompanying the proposition the Connétable outlined 8 areas of concern–

- The process and rationale of rezoning the site as identified in Policy H2 of the Island Plan 2002 (and including Fields 861,862A and 863A);
- The present demand for the type of houses proposed in the most recent planning application;
- The effectiveness of the depth of analysis and review performed by States’ Departments in assessing the suitability of the fields rezoned;
- The effectiveness of the Planning and Environment Department in independent consideration and assessment of the developer’s proposals;
- 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;
- The status of the Development Brief and its relationship with separate statements in the Island Plan 2002;
- The impact of the proposed development on the infrastructure of the west of the Island in matters such as schools, roads, traffic, drains and existing flood plains;
- Any other matters which are shown to be relevant during the period of inquiry.

1.2 The Connétable also requested that any existing or new planning application with regard to the Site be suspended pending the results of the Inquiry. In an amendment to the proposition lodged on 12th April 2007, the Connétable conceded that Senator Freddie Cohen, the Minister for Planning and Environment (“the Minister”) had effectively determined the most recent application for the Site on 21st March 2007, therefore prior to the date upon which the proposition was lodged. As such, it was not possible to suspend the determination of the planning application as originally envisaged. The Connétable did, however, remain concerned about the process and rationale for the development of the Site, as well as general over-development in the west of the Island. He suggested that an independent enquiry would be valuable in identifying any issues which could be avoided in future as well as ensuring as satisfactory a development as possible on the Site.

1.3 The Minister, in his comments on the proposition made on 30th April 2007, stated that he supported the proposal for a Committee of Inquiry as he believed it would demonstrate that decisions regarding the development of the Site were properly arrived at after a robust and transparent planning application process.

1.4 On 2nd May 2007, the States agreed to approve the appointment of a Committee of Inquiry to investigate fully the circumstances relating to the development of the Site.

Membership

1.5 On 4th July 2007 the States appointed the following persons as members of the Committee of Inquiry (the Committee) –

Mrs. Carol Elizabeth Canavan (Chair)

Mr. David James Watkins

Mr. Peter Dawson Cameron.

- 1.6 On that date an additional area of investigation was added to the Terms of Reference for the Inquiry concerning the protection of trees on the site.
- 1.7 Mr. Peter Dawson Cameron resigned from the Committee on 11th September 2007 due to ill-health and he was replaced by Mr. Peter Kemble, ARIBA on 3rd October 2007.

Terms of Reference

- 1.8 The Terms of Reference of the Committee were 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;
 - (ix) To investigate the effectiveness of the planning process and the related conditional decision to grant planning permission and subsequent decisions taken by or on behalf of the Minister for Planning and Environment, in relation to securing adequate protection of trees on the site.^[1]
- 1.9 In undertaking its task, the Committee was mindful of the fact that it could not change or modify decisions which had already been taken by States Committees. Its role was to report and comment on events and decisions. It did not have the power to change them.
- 1.10 At the beginning of the Inquiry, the Committee formulated a procedure note which was posted on the States' website and informed the public and all parties involved as to how the Inquiry would be conducted. A copy of this can be found at Appendix 2.

Methodology

- 1.11 The Committee requested files from various parties involved in the development and these were

considered, prioritised and collated. As this development had a long history there were a large number of files to be read and this took a considerable amount of time.

- 1.12 The Committee held regular meetings under the 4 headings outlined in the procedure note and visited the Site twice, firstly in September 2007 when site preparation was being carried out and the first homes were being constructed, and secondly, in March 2008 when the Committee had the opportunity to visit the show-home which had been completed in February 2008. In all, 10 meetings were held prior to the public hearings, and extra correspondence and evidence was requested from the departments or parties involved as required. The Committee received full co-operation from all concerned.
- 1.13 Call for Evidence advertisements were placed in the Jersey Evening Post on 11th and 18th October 2007 requesting individuals with an interest in the Site to make written submissions. Submissions were received from one local resident as well as from the Connétable, Deputy John Le Fondré of St. Lawrence (“Deputy Le Fondré”), Deputy Deidre Mezbourian of St. Lawrence (“Deputy Mezbourian”) and Deputy Collin Egré of St. Peter (“Deputy Egré”) as a result of these advertisements. Photographs were also received and considered.
- 1.14 Written submissions were requested and received from the developer Bel Royal (Jersey) Limited (“the developer”) and other relevant parties, in advance of the public hearings which were held on 24th and 25th April 2008 in the Blampied Room, States Building. These public hearings were advertised in the Jersey Evening Post inviting parties with an interest in the Committee’s Terms of Reference to attend. The public hearings were attended by both the media and members of the public. Transcriptions of evidence given were taken and were uploaded on to the States Assembly website ([Committees & Panels](#)).

The Site

- 1.15 The gross area of the Site measures approximately 21 vergées (9.5 acres) and is relatively unrestricted in size and shape. The Site is located to the south of Sandybrook in the coastal plain area at the foot of St. Peter’s Valley. It comprised a patchwork of small fields which had principally been used for the production of outdoor tomatoes, early potatoes and cauliflowers. The northernmost part of the area included an overgrown and long-disused field and a small orchard garden; the westernmost field, number 853, was often waterlogged. The highest part of the site is 15m. above Ordnance Datum and the land falls steadily towards the south-west corner by some 7.5m.
- 1.16 The housing area effectively nestles below the south coast escarpment and above the wetland/marsh area immediately to the south, which incorporates the remainder of the Site. The southern part of the Site measures approximately 25 vergées (11.5 acres), is lowlying and is subject to periodic flooding during wet periods, particularly when heavy rainfall coincides with high tides.
- 1.17 Le Perquage footpath and brook runs the extent of the Site along its western boundary, leading from Sandybrook to the coast.
- 1.18 In its wider context, the Site forms part of a large open area, which also includes Goose Green Marsh and Le Marais de St. Pierre, and this is essentially rural in character. However, it is enclosed by sprawling development, which occupies the higher peripheral land. This extends in a continuous belt along the shoreline from Beaumont to Bel Royal and straddles La Rue du Craslin and the lower sections of La Route de Beaumont and La Vallée de St. Pierre. Although the origins of this development date back to the 19th and early 20th centuries, the majority is post-war and there has been a significant amount of recent infill.
- 1.19 There used to be a number of community facilities in the immediate area and within easy walking distance, including a small shopping precinct at Sandybrook comprising a café, launderette, hairdresser and general store (which no longer exist), Sandybrook Day Care Centre, the beach, Bel Royal School and 2 main bus routes. The Site is only $\frac{1}{3}$ mile from Beaumont and 2 miles from St. Helier.

- 1.20 There is a long and complex planning history associated with the development of the Site, and for ease of reference a chronology was compiled using documents from several departments involved. This has been included at Appendix 3.

Background Information

- 1.21 As the development of the Site involved protracted planning applications it was subject to various changes of authority from the Committee system to the present Ministerial Government system. These have been outlined below for ease of reference.

Planning

1980s/1990s

- 1.22 The relevant committee for planning matters was known as the Island Development Committee until 1st January 1995, when it was re-named the Planning and Environment Committee. Each Committee comprised a President and 6 other States Members. Certain responsibilities were delegated to the Planning Applications Sub-Committee, to which 4 members of the Committee were appointed. The Sub-Committee processed all applications where representations had been made, either for or against an application, all applications which would involve a departure from the Island Plan or other approved planning policy but where there were grounds to approve the application, the serving of enforcement notices and other applications referred to it by the Director of Planning.

2002

- 1.23 The Planning and Environment Committee merged with the Public Services Committee to become the Environment and Public Services Committee (“E&PSC”) Certain responsibilities were delegated to the Planning Sub-Committee, to which 4 members of the Committee were appointed. The Sub-Committee processed all applications where representations had been made, either for or against an application, all applications which would involve a departure from the Island Plan or other approved planning policy but where there were grounds to approve the application, the serving of enforcement notices and other applications referred to it by the Director of Planning.

2005

- 1.24 With the change to a Ministerial system of Government, a Minister for Planning and Environment was appointed. The Planning Applications Panel (PAP) replaced the Planning Sub-Committee and broadly similar responsibilities were delegated to it by the Minister.

Public Health

1998 – 2002

- 1.25 The Department of Environmental Health was part of the Public Health Service, political responsibility for which rested with the Health and Social Services Committee. For organisational purposes the Island was divided into districts with an Environmental Health Officer (“EHO”) being responsible for each district. These EHOs reported to a Chief Environmental Health Officer who in turn reported to the Chief Executive of Health. The Department had a wide remit.

2002 – 2004

- 1.26 A service review was undertaken to look at alternative structures and ways of working for the department.

2004 onwards

- 1.27 The Department took on additional responsibilities and Environmental Health was reconfigured to

become more specialised. The Department was split into 2 teams–

1. Community Health
2. Public Protection.

An EHO and technician were appointed to each team and became specialists in their area.

Public Services/Transport and Technical Services

1998 – 2002

- 1.28 The Public Services Committee held political responsibility for the Public Services Department. That Committee comprised a President and 6 other States Members. Responsibilities of the Department included, but were not exclusive to, the management of: solid and liquid waste disposal; on-Island transport; parking control and vehicle fleet maintenance.

2002

- 1.29 As a transitional arrangement pending the move to Ministerial Government, the Planning and Environment Committee merged with the Public Services Committee to become the E&PSC; accordingly the Chief Officer, Public Services Department reported to the E&PSC.

2005

- 1.30 Following the change to Ministerial Government, the Department was renamed the Transport and Technical Services Department (TTS). A Minister for Transport and Technical Services was appointed.

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Section 2 – Rezoning/Rezoning of the Site

Background

- 2.1 Work commenced on the Draft Island Plan in 1997. The initial work involved the collection of comprehensive information and the identification of numerous sites for potential housing development. This followed consultation and working groups being established to address key areas. A Housing Requirement Study which had been undertaken by David Couttie Associates between 2000 – 2002 estimated that 2,650 homes needed to be accommodated in the forthcoming Island Plan.
- 2.2 Mr. P. Thorne, Director of Planning, explained to the Committee that he had been involved in rezoning process as leader of an internal department steering group. Initially, a substantial amount of work had been conducted within the Planning Department as it was hoped that the Island Plan 2002 could be produced “in-house”. Because of the enormity of the task, insufficient capacity from a staffing point of view and other work commitments within the Planning Department a decision was taken to outsource the work to consultants.
- 2.3 On 19th March 2000, W.S. Atkins Consultants (“Atkins”) were appointed to take the Plan forward by developing options and formulating policies to provide a guiding framework for land use.
- 2.4 Mr. G. Webber (“Mr. Webber”) was employed as a Regional Director – Planning by Atkins from 1988 to 2002, and he was the Project Manager for the preparation of what became the Island Plan 2002. In a letter to the Committee^[2], he explained that the preparation of the Island Plan had a very structured approach overseen by a Steering Committee of Senior Officers and States Members. He stated –

“From all the preparatory work, housing was seen as a key issue with a significant amount of staff resources allocated. The location of new housing development was the most highly contentious and controversial subject area to be tackled by the Island Plan... Our approach was to identify a long list of sites – this list came from a review of past reports, the planning register, site visits, stakeholder meetings and correspondence received from landowners. The long list contained over 280 sites. These were all visited and subjected to a broad evaluation. The broad evaluation criteria related to the spatial strategy work”.

and he went on to say –

“These evaluations need to be balanced with the need to achieve sustainable development, reflected in the other objectives of the new Island Plan and the Spatial Strategy. Housing was probably the land-use giving rise to the largest amount of development during the Plan period. It was critically important that the six key elements of the Spatial Strategy were adhered to, namely:

- integrating development with the built-up area
- using land efficiently
- minimising environmental impacts
- ensuring a high level of accessibility
- avoiding constraints and
- achieving as far as possible an equitable distribution of development”.

- 2.5 Following a detailed appraisal, it was decided to put forward 15 sites which could provide approximately 750 homes. The Site was one of the short-listed sites. The Jersey Island Plan, Consultation Draft Summary (“Island Plan Consultation Draft”) was produced by the Consultants in June 2001.
- 2.6 In April 2001 an independent consultant, Professor Patrick McAuslan MBE (“Professor McAuslan”) was appointed to review the representations submitted on the Island Plan Consultation Draft. He produced his findings in September 2001 (Appendix 4). In his evidence, Mr. R. Corfield, Principal Planner and Case Officer (“the Principal Planner”) advised that the report had been approved in November 2001 and it was the subject of a press conference given by Professor McAuslan. He could recall that Professor

McAuslan's report had been given wide media coverage in December 2001 but he could not recall to whom it had been circulated.

- 2.7 Feasibility Consultation Studies of the Site were undertaken during the period July to October 2001 by the Planning Department. Statutory Bodies, Utilities Providers and the Parish were consulted during this process as to their opinion of the suitability of the Site for housing. A Feasibility Study ("FS") of the Site prepared by the Principal Planner was produced on 6th November 2001 (Appendix 5).
- 2.8 "Parish Road shows" took place during June and July 2001 at which parishioners and elected States Members had the opportunity to question Planning Department Officers on issues arising in the Island Plan Consultation Draft and comment on the proposed sites in their area. The Parish of St. Lawrence held its meeting on 14th June 2001. 47 people attended the meeting. The issues raised mainly concerned traffic, flooding, schools, sheltered housing and design.
- 2.9 The Planning and Environment Committee of the day ("P&E") then visited the sites proposed for rezoning in Policy H2 of the Island Plan Consultation Draft (although it is acknowledged that the then Deputy A.S. Crowcroft of St. Helier was not present during those site visits). P&E favoured the Site as one of the sites to be recommended for rezoning. The decision was formalised at a meeting of P&E on 24th January 2002 when a total of 12 sites were favoured for rezoning (Appendix 6).
- 2.10 States Members were invited to an Island Plan Review Briefing on 21st May 2002 in advance of the debate, which was scheduled for 25th June 2002. At that meeting, States Members viewed a short presentation of the final Draft Island Plan 2002 and had the opportunity to discuss and clarify any matters of concern.
- 2.11 The Island Plan 2002 was approved by the States on 11th July 2002. The Site had thus been formally rezoned for Category A housing as part of the Island Plan 2002.

Was the rezoning process efficient?

- 2.12 The process of developing the Island Plan 2002 from the commencement to the date it was approved by the States in 2002 was long and arduous. In respect of the rezoning process in particular, the Committee finds that it was less than efficient.
- 2.13 In reaching its conclusion, it acknowledges that there are 2 schools of thought on the rezoning process.
- 2.14 **The first**, which includes the opinion of some States Members, is that due consideration *had* been given to site selection and that members had had adequate time before the States debate on the Island Plan to study the extensive documentation provided and to come to a measured conclusion.
- 2.15 Senator T.J. Le Main, Minister for Housing ("Senator Le Main"), held the view that that the rezoning process was satisfactory. He said –

"It was informed by a comprehensive site evaluation process which was based on a sound spatial strategy which sought to ensure new development. It was integrated with the existing built-up area which would not encroach into the open countryside and could use land efficiently. It would have a high level of accessibility with opportunities to use alternative and more sustainable forms of transport to the private car for journeys to work and community services (walking, cycling and public transport). It would generally minimise as far as possible damaging environmental impacts especially on the most sensitive environmental areas and provide opportunities for introducing benefits to the environment and community life. It would not be unduly impacted by site constraints, e.g. vehicular access, infrastructure constraints and drainage constraints. On the recommendation of Professor McAuslan an additional factor was added to the site selection process to ensure a more equitable distribution of sites."
- 2.16 Senator Le Main went on to say that he was satisfied, on the advice received from the various departments, that any issues in relation to flooding, traffic, schools would be able to be catered for.

2.17 The Principal Planner concurred. He said –

“These (sites) were not finalised by the Committee until 24th January 2002, prior to the completion and lodging of the Island Plan report and proposition for States debate at end of April 2002 .This allowed some 10 weeks for States Members and other interested parties to visit the sites before the debate in July 2002.”

“The Consultation Draft Plan (which included all the sites) was approved by the Committee and became the subject of extensive public consultation.”

“The H2 housing sites (including the one in question) were selected after a rigorous and comprehensive selection and evaluation process.”

2.18 **The second** school of thought is that insufficient consideration was given either to the selection of sites for rezoning or for the implications of rezoning for the sites in question. During the course of its inquiries, the Committee has found that the weight of evidence tends to support this latter view.

2.19 In his review of the Island Plan Consultation Draft, Professor McAuslan felt it necessary to make some brief comments on particular sites. He said –

“The objection to be dealt with here relate to the specifics of the site. The gravamen of many of these comments is that there are too many loose ends about the nominated sites: problems are acknowledged in the Plan but solutions are not proposed. This has clearly been a policy decision made about the scope of the Plan: identify the sites first; only after they have been accepted in principle, begin the work on their development feasibility.

I admit to some uneasiness about this approach. It will mean the debate about the sites will proceed in something of a practical developmental vacuum: assertions can and will be made about the impracticality of developing a particular site without there being any clear basis of fact about the matter.... there may be a temptation to argue for all the sites to be accepted “in principle” leaving the details to be sorted out later; there will then be the further temptation, having obtained the acceptance in principle, to forge ahead with the development, despite the problems.”

2.20 From a set of notes taken by the Principal Planner and another set of notes made by a parishioner, it is clear that, at a meeting held at the St. Lawrence Parish Hall on 24th October 2005, Senator Stuart Syvre (“Senator Syvret”) suggested that it might have been a mistake to rezone the land in the first place. He felt that the States Assembly had not had full knowledge of the facts about the potential nuisance from Jersey Steel and did not take fully into account the environmental aspects in this regard.

2.21 The Minister in his evidence, when asked if he agreed with the method used for rezoning the land, said –

“Frankly, I do not know too much about it. I was not a politician at the time. What I know about the method is really hearsay and it is very easy to form a judgment on something with the benefit of hindsight. If you were not there at the time it makes it rather more difficult. What I would say is that States Members’ recollection of how the process operated does seem to significantly vary depending on which States Member you approach.”

2.22 The opinion of the Director of Planning was –

“I have to say, I do not or did not find the process either in 2002, when it was debated or indeed in 1987 when the previous one had been debated wholly satisfactory I think the law (1964 Planning Law) did not help us. It did not prescribe procedures for engagement with the public. We went through a process of public consultation with certainly a static exhibition of the proposals we rented some premises on the Esplanade to display those for a month. In that period we also did the 12 parishes on the parish road show as it colloquially was called. But I do not find that a wholly satisfactory process for trying to bottom out the issues. It is a way of getting across that there is a plan in the offing and people have the opportunity of responding to those proposals in writing and obviously in public meetings.”

2.23 The Connétable said –

“If you were on the committee dealing with it at the time or the Minister today, you probably would have quite a detailed knowledge of it because you would have to be almost fully aware of what is in there. The officers give the advice based on the knowledge of it as well. But if it is presented to you along with 20 or 30 other bits of paper to discuss and debate at a particular meeting, I wonder how many went through and looked at the full detail.”

2.24 Mr. Donald George Filleul, OBE, a local resident and former States Member, (“Mr. Filleul”) wrote in his submission –

“I am unhappy about “approval in principle” of rezoned sites which encourage developers to make instant positive approaches to landowners ... It will be realised at that stage that little public interest would yet have been aroused ... which they (the public) would institute when they became fully aware of the scale of the project.”

“local residents noted with a degree of concern the rezoning of this semi-marshland but didn’t really believe planning permission would be given for this famously damp and environmentally important location.”

Did the States Members have sufficient information to enable them to make an informed decision in relation to the sites?

2.25 Although opinions on this matter vary considerably, the Committee feels that there was ample information available to States Members to make an informed decision on the general policies of the Island Plan 2002; however, in certain cases the site-specific information supplied in connexion with the sites listed for rezoning under Policy H2 of the Island Plan 2002 was not sufficient. States Members benefited from some information regarding specific sites, their location, site-specific problems which might arise and so on. They also had the opportunity to clarify any outstanding queries at various meetings and during the States debate. Nevertheless, they did not benefit from the parish impact assessments recommended by Professor McAuslan in his report on the Island Plan Consultation Draft. Ultimately the information provided in relation to the Site was lacking because the noise issue arising from the presence of Jersey Steel in the vicinity was not highlighted. The Committee considers that this error led to a flawed decision, the consequences of which have been delay, expense and frustration for all concerned. In this regard, the Committee considers that the Minister for Planning and Environment and his Department might wish to reassure Islanders that parish impact assessments will be conducted as part of the ongoing Island Plan Review.

2.26 States Members received the Island Plan Consultation Draft, which was published to allow not just them, but the public at large, an opportunity to comment on the proposals. Parish road-shows were held. They were also provided with copies of departmental feasibility studies concerning the Category A housing sites. Both States Members and Chief Officers were invited to an Island Plan Review Meeting/Briefing on 21st May 2002 in advance of the States Debate scheduled for 25th June 2002. The purpose of that meeting was to view a short presentation of the final draft of the Island Plan 2002 and to have the opportunity to discuss and clarify any matters of concern. Nevertheless, there was no organised programme of visits to the sites for all elected States Members.

2.27 Bearing in mind the large part that environmental issues have played in the development of the Site and the planning process, it is interesting to note that in correspondence dated 4th July 2000 and 19th March 2001, Environmental Health recommended that Environmental Impact Assessments be carried out for new housing developments in order to highlight all the impacts a new development would have on the surrounding area. This recommendation was not implemented.

2.28 A number of current States Members feel that the information provided was not sufficient. In his accompanying report to P.48/2006, the Connétable wrote –

“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.”^[3]

2.29 The point ought to be made that whilst the first of the Connétable's points is a matter of opinion, it is fair to the States Members to say that at the time of the Island Plan 2002 debate, the parishioners were not feeling badly treated. Very little opposition had been put forward at this time (see below under the heading "Views of the parishioners").

2.30 Senator Syvret, who had been a States Member in July 2002, said in the debate of P.48/2006 –

“Well, to be frank, this Assembly has made that error in approving the Island Plan, quite clearly, because the advice we were given was manifestly defective.”

2.31 Senator Syvret was referring, at least in part, to the absence of appropriate advice on the implications arising from the presence of the neighbouring Jersey Steel operation. This issue is addressed in detail later in this report.

2.32 Other States Members, such as Senator Le Main, were satisfied that they had all the information required. Officers within the Planning Department concurred with the view that States Members were suitably informed. The Principal Planner explained –

“May 2001 was a presentation to the States on the consultation draft by W.S. Atkins, our consultants. In that meeting they received an overview, if you like, of the strategy and the objectives and the policies in the consultation draft of the plan. The consultation draft of that plan was then forwarded on to them on 30th May, together with some key dates for the main process. So they would have had the consultation draft plan, they would have probably also had the explanatory leaflet that was produced, a glossy 4 or 5-page leaflet, which detailed or majored on the sites that were being proposed for rezoning, so they probably had that; that was distributed through the J.E.P. (Jersey Evening Post). There then followed the launch of the consultation draft plan and we had this very comprehensive consultation exercise then. So there would have been 12 meetings in all the parish halls, there were exhibitions, there was a standing exhibition in St. Helier, so they had all that and all the media coverage, so they would have known all that at the time. It is likely that they would have received a copy of Professor McAuslan's report and the committee's response to it that was produced in one document, but I would need to confirm that, I need to find that file. Then on 23rd April 2002 States Members were given advance warning of the publication of the final draft plan that was to be put to the States for approval, and the accompanying report proposition, and they again were invited to a presentation on 21st May 2002, so a year later. In advance of the States debate, before they made any decisions, they would have had that final report, [which] was also available on the website and at the library. They would have also had the committee's report proposition, and they would have had all the amendments from different Members to that report proposition, before they made their decision.

I think they were given the material information they needed to make decisions. There was a sensitive States debate, they could have raised a lot of queries, they did raise lots of queries during that States debate.....So, if they had not had all the information – and we have to remember this was at the end of a very long process and a very well publicised process – that they wanted, they could have asked for it, but I would have thought that most people who had taken an interest in it would have had the information they needed in order to make a judgment on the various aspects of that plan”.

2.33 Senator Le Main also said when asked if he could recall whether or not there was a debate on each individual site –

“No, I think it all went in one if I remember rightly. I think the whole lot – all the sites were put together.....if I remember rightly Members were entitled to speak on each individual site and I cannot recollect at this time anyone in the Assembly at that time specifically not supporting the particular sites. I am not going to say for sure that there had not been some comments perhaps on flooding but I cannot recollect anyone vigorously opposing.”

2.34 This view was endorsed by the Connétable of the time and one of the Deputies of St. Lawrence (see below).

Should rezoning be a decision of States Members as a body?

2.35 The Committee accepts that this is a particularly challenging question to answer. States Members consider it their duty to ensure that the views and interests of their constituents are properly accounted for when major planning decisions are taken. Yet a number of those members have formed the view that planning decisions generally should not be made by the States Assembly.

2.36 In the debate on proposition P.48/2006 on 4th July 2006, Senator P.F.C. Ozouf (“Senator Ozouf”) said –

“It is no disrespect to any Member of this Assembly when people say, that 53 people do not make very good planning decision. Planning Committees or the Planning Panel or the Minister sitting with officials, there is a 2-way interaction, there is a whole whack of papers that one receives, designs and a whole series of considerations; whether this be officer advice, development briefs, the developers, the objectors, you get the whole story over an extended period of time and this Assembly cannot do the job effectively. Emotion tends to rule the way, rule the argument and we end up with pretty, I have to say, uninformed decisions.”

2.37 His view was echoed in the same debate by Deputy P.N. Troy of St. Brelade, who said–

“I thought we had removed committees when we moved to the ministerial system, but we now have a 53-man Planning Committee and I think this totally, totally wrong.”

2.38 Mr. W.J. Bailhache Q.C., H.M. Attorney General, who gave his personal opinion in the same debate said –

“I wonder if I might start by saying that there are some very good reasons why the Assembly is not the right place to take planning decisions. The first of those reasons is that the Assembly does not have all the information which the planning authority does have in order to make an informed and appropriate decision in the interest of the whole Island. The Assembly does not have the benefit of having the officials, the planning experts, before it in order that the officials can be asked questions about why they advanced particular views, and what is wrong with another view that might be advanced. So those are very good reasons why the Assembly should not take decisions and Members may or may not wish to add to those. The sort of reason that Deputy de Faye advanced is that decisions might be taken for political reasons rather than planning reasons and it is very important, if one is to have a coherent Island planning policy, that decisions are taken for planning reasons.”

2.39 On the one hand, then, it is difficult for the States Assembly of 53 elected members to arrive at a fully reasoned and objective planning decision on material planning grounds alone. On the other, there is the finding of the Environment Scrutiny Panel’s report (“the Scrutiny Panel”) on the planning process that the delegation of power from the States Assembly to the Minister for Planning and Environment is already excessive in that it overly restricts the right of the States to intervene on specific planning matters (S.R.2/2007 refers). The difficulty for the Committee has been that it has heard little in the way of viable alternatives to the status quo.

2.40 The Committee believes that the States Assembly should still have the final say on rezoning sites for housing. Its members are elected and Jersey is a democratic society. However, it must be accepted that States Members are not experienced in planning matters. They must be given full information and recommendations from the Planning Department as to why the sites in question are being considered. They should rely heavily on this information and advice. The professional recommendations of the Planning Department should not be overturned by States Members without very good cause. If the States, for whatever reason, should be minded not to concur with the advice, either in respect of the whole Plan or a particular site, then that matter should be referred back to the planners for consideration of the objections/comments raised.

2.41 Interestingly, H.M. Attorney General continued by commenting on what exactly the key rezoning decision was that the States Assembly had been asked to make in 2002. He said –

“It is perhaps unfortunate that the Plan mentions potential yields from different sites. Unfortunate because this took Members’ attention away from the exercise which they were then conducting. The exercise was then not “are we approving this land for the development of 97 houses approximately?”; the

exercise was “are we approving this piece of land for development of Category A housing?”. Now, I can well understand why the figures were put in there. They were put in there so, when looking at the totality of the land to be designated for Category A housing, Members had a feel for how many houses were going to be constructed as a result, and therefore whether or not too much land had been designated or not enough land had been designated, but nonetheless, the purpose of the Plan was designating that area of land for use for Category A housing and it follows that the approximate description of 97 houses is really not material to what the Plan was about.”

2.42 Senator M.E. Vibert also made a related comment, albeit from a different perspective –

“If mistakes have been made in the past, make sure they are not repeated in the future. When we revise the Island Plan, perhaps in the future, it should state a maximum number rather than an approximate number and that would be clearer guidance for the Planning Minister and would mean that if there was to be any change above that, you would have to come back to the States to seek that change, but that was not done.”

Views of the parishioners

2.43 It appears from the documentation received and evidence given, that the parishioners of St. Lawrence were aware of the possibility of the Site being rezoned, but they appeared to be unaware of either the scale of the potential development, or the implications or impact that the rezoning decision would have. In addition, the Committee is of the opinion that, although houses have not been built on that part of the Site which is susceptible to flooding, the majority of the parishioners did not consider that the whole Site should be rezoned, due to flooding issues which had been evidenced over many years making this an unsuitable site for housing.

2.44 One of the conclusions reached by the Environment Scrutiny Panel in its 2007 report on the planning process was –

The “Island Plan Road-show” based consultation failed to provide many Islanders with a meaningful understanding of the Island Plan 2002”.

2.45 With this in mind, it is worthy of note that affected parishioners appeared to become alerted to the potential implications of the rezoning only when the first public exhibition by the developer was held in December 2003. This exhibition proposed 150 homes for the Site, which far exceeded the indicative yield of 97 homes outlined in the Island Plan 2002.

2.46 Mr. Henry Coutanche was Connétable of the Parish at the time of the Island Plan 2002 debate. He was asked if he could recall what the reaction of the parishioners was prior to the rezoning. He wrote –

“As far as I can recall I received no notification from any parishioner with regard to the zoning of this land. I supported the zoning on the number of homes as suggested in the projet (97). I felt that St. Lawrence should play its part in helping the housing situation in Jersey.”

2.47 Mr. M. Dubras (Deputy Dubras) was a Deputy of the Parish at the relevant time. He wrote–

“I felt that all the parishes had a responsibility to share the pain of rezoning and that the initial proposals for St. Lawrence appeared to be too much. Overall, I agreed with the approach being put forward for fewer larger areas where appropriate and that the Bel Royal area was one of these.”

“By now (mid-2004) the details of the developer’s proposals only now became clear as the new Environment and Public Services Committee published the first application for consultation.”

2.48 Mr. D. Filleul wrote in his submission to the Committee –

“It is my considered opinion that the local residents noted with a degree of concern the rezoning of this semi-marshland but didn’t really believe that planning permission would be given for this famously damp and environmentally important location.”

2.49 Unfortunately that was the great misunderstanding on the part of the parishioners. Once the land had been rezoned then, as night follows day, planning permission was going to be given for the development of the Site. For such a misunderstanding to have endured for an extended period indicates that the consultation process was unclear. Although meetings were held in the parishes, as the Director of Planning said, there were no prescribed procedures for engaging with the public and it is clear that the parishioners did not understand the nature and extent of the development.

2.50 Some parishioners understood that the landowner/s of the Site were willing sellers and they queried to what extent this would have made the Site attractive from the perspective of the Planning Department. It was clear from the letter from Mr. Webber that sites which had been put forward by the landowners themselves were considered. The Director of Planning, when asked if this was a factor taken into account, said –

“... we get approaches from landowners to consider their sites for development. So there is an internal process, if you like, of ranking the sites that we are aware of or have identified as potentially suitable sites ...”

2.51 The Principal Planner also confirmed this –

“The answer in my view is a clear yes. The sites were being considered for rezoning and they are intended to meet housing requirements in the first five years of the plan, and clearly sites rezoned for unwilling sellers, then we would seriously jeopardise the chances of that being achieved ... So naturally the planning authority favours sites that would not have such constraints on them, generally speaking, as long as they satisfy other planning and technical requirements. The only other way to overcome unwilling sellers is to employ compulsory purchase powers and historically there has been resistance ... in political circles to use compulsory purchase powers ... So compulsory purchase, I am afraid, has been seen as a last resort and to be avoided if possible.”

2.52 The fact that there is a willing seller of land which is provisionally suitable for the purpose intended is, in the view of the Committee, a material circumstance to be taken into account, albeit that the existence of a willing seller should not over-ride other material planning considerations. It does not feel that there is anything inherently untoward in the favouring of sites where the owners have indicated a willingness to sell for development purposes. As has been stated in evidence, the identification of willing sellers can assist in materially cutting down on time and costs and avoiding compulsory purchase proceedings as far as possible.

The Feasibility Study

2.53 The Feasibility Study (FS), dated 6th November 2001, was compiled by the Principal Planner. In the document he outlined existing uses and suitable future uses, availability for housing, conditioning factors of the site and extracts from the responses received. The Statutory Consultees had been asked for their comments on the Site and those responses were incorporated into the FS. The comments were outlined and interpreted in a table, assessed and rated by the Principal Planner. However the ratings used (Good, Fair, Poor or Bad) were not explained in the document. For example, drainage was rated “Fair”. The Principal Planner explained that there had not been anything in the comments received from the Public Services Department (“PSD”) to suggest that there were insurmountable planning or technical constraints to the development of the site. Therefore, his view on the matter was as follows –

“In the circumstances I considered that the word “fair” was a reasonable interpretation for the overview purposes. The position obviously could not be described as “good” and I considered the word “poor”, the next one down as it were, would convey the wrong message, because it basically would be one of inadequacy and undue constraint. In the event, I basically hedged my bets and I qualified the use of the word “fair”, and therefore you will see that there are footnotes, which refer to the need for considerable off-site foul drainage, expensive on-site attenuation, and preferably a surface-water pumping station.”

2.54 The Committee considers that the table containing the comments from consultees in the FS was fairly

arbitrarily drawn, with no specific criteria used in the selection of the scale. It believes that a more objective and clearly scored table would have been far more helpful, although it considers that this issue did not materially compromise the content and purpose of the FS. Some indication as to yield should be given (but **not** a final figure), with a built-in and clearly specified margin of error. States Members can then assess whether or not the housing needs of the Island will be satisfied.

2.55 It is important to note here that in response to the Island Plan Consultation Draft, the response received from Environmental Health Department was “No comment”. It appears that Environmental Health was not sent a copy of the FS and therefore that department was not afforded a subsequent opportunity to respond and/or pick up on their earlier omission prior to the States debate on the Island Plan 2002. In practical terms this meant that the potential noise issue from the nearby Jersey Steel was not brought to the attention of States Members. The Principal Planner was asked why such a terse response was acceptable and he replied –

“What you have to remember is that the department wrote, as it always does with feasibility studies, to the Environmental Health Officer and asked them specifically, and that is to do with all of the housing sites: “Do they want to make any observations regarding the environmental health impact implications of these sites?” It was made clear to them that they were being put forward in the consultation of the draft Island Plan. Essentially, as you know, we received a response from the Acting Chief Environmental Officer and that response covered all 15 sites and there were some very detailed comments, some of which dealt with noise, and there were some very curt comments, in this particular case I think there were 6 sites where they said: “No comment.” As far as the department was concerned then this meant that the site had been considered by the Environmental Health Department and they had no fundamental objections or concerns in environmental health matters. There is absolutely no reason, as far as I can see, why the department would not have accepted the written advice and observations of the Environmental Health Department, whether it was a “no comment” or some other comment”.

2.56 The Director of Planning was asked if basic replies such as “No comment” are usually accepted or would there be an onus on the Planning Department to make further enquiries. He explained –

“The purpose of consulting them in the first place is to recognise that they are experts in certain areas and for them to look at sites and make some form of assessment on whether there are likely to be any health, in the broad sense, environment health issues; noise, pollution, whatever it might be the consultation with the department was on all the sites that were being considered and there were 15 sites at the consultation draft stage put forward. My understanding is that on six of those sites they replied “no comment” presumably, and it was not unreasonable for us to infer from that that they had no comment to make. Equally on the other 9 they made comments and for us, we can infer that if they had had comments they would have made them”.

2.57 It is undoubted that the lack of response from Environmental Health at the appropriate time has caused a significant amount of delay and problems with the Site. The Committee has formed the view that if these concerns had been raised before the States’ debate on the Island Plan, it is likely that the Site would never have been rezoned for Category A Housing in the Island Plan 2002.

2.58 The Committee considered whether it was appropriate for the Principal Planner to accept the “No Comment” response from Environmental Health or whether he had a duty or an obligation to make further enquiries of that department. Given the letter of response which commented on several sites, some with detailed comments and others with none, and the evidence received at the hearing, the Committee believes that it was reasonable for the Principal Planner to assume that the Site had been considered properly by “the experts” and that no problems had been foreseen.

2.59 The Director of Planning was asked about the level of detail which required in the FS and he said –

... the technical feasibility study that is done by us before they put a site forward for development must be sufficient to establish that a site can be developed physically. It is not necessary at that stage, prior to designation, and others may take a different view, but my view is that we know that a site can be developed technically It is not necessary to establish in detail every issue that might arise technically frankly the detail of the technical feasibility, addressing the problems, how the issues are going to be

resolved, is a matter for the developer not for the department. Again, there is a resource issue there. Clearly we do not have the capacity to produce the solutions to some of the technical problems that arise. That onus is very much on the developer.”

2.60 One of the comments made by the parishioners was that no environmental impact report had been requested and the Principal Planner was asked why this had been the case. He advised –

“First of all, the main purposes of the feasibility study were to examine the planning and technical matters relating to the rezoned development sites, or those being proposed. It is also to look at likely constraints to development on those sites, to address their general suitability, and also to inform decisions on site evaluation and selection. It was not considered necessary or indeed practical, given the limitation of resources we had at the time, for them to be subject to consideration for fully-fledged environmental impact assessments. If the feasibility study had indicated there were severe unfavourable environmental effects this would have been weighed in the decisions regarding site collection. So in terms of the feasibility study, it was not normal practice to have asked for E.I.A.s The site may not have been rezoned if something had jumped out of a sufficient scale. I do not think that any of the sites had environmental impact assessments required as a result of the feasibility study”.

2.61 The fact that the matter of resources available to the Planning Department was raised was not lost on the Committee. This issue will be addressed at the end of this chapter.

2.62 A further issue for the parishioners was the lack of information collated at the time of the rezoning relating to issues such as traffic, education, drainage, flooding and so on. The question as to how much detail is required for a particular site and the varying stages of a development will be dealt with later in this report.

2.63 In his report, Professor McAuslan commented on the spatial strategy with regard to the distribution of housing as follows –

“On this matter, I find that the concern with fairness in the representations on housing to be a proper and legitimate concern and one that needs to be reflected in the Plan. I consider that the Plan has failed to give proper consideration to its distributional implications and that this has resulted in the Plan proposing decisions on the allocation of sites for housing which place a disproportionate and unfair burden of urban development with particular reference to social housing in the three parishes of St. Clement, St. Lawrence and St. Saviour. The spatial strategy needs therefore to be revisited with more explicit consideration being given to the Island’s overall vision to provide all with a high quality of life and a high quality of built environment.”

2.64 He went on to recommend that the Planning Department give careful consideration to –

- “(i) the importance of addressing the practicalities of developing specific sites where representations have drawn attention to specific practical problems in relation to those sites before determining whether to include those sites in Policy H2;
- (ii) undertaking a parish impact assessment in the parishes of St. Clement, St. Lawrence and St. Saviour before considering whether to agree to the sites proposed in H2 for development in those parishes be pursued.”

2.65 The response of the Planning Department to the first of these recommendations was that too much detail beforehand might present the site as a *fait accompli* in advance of public hearing and that detail could be dealt with as part of “on-going feasibility work”. On the second point, the Department stated that it had –

“instructed the Island Plan consultants to carry out detailed studies of areas where larger housing sites, or concentrations of housing sites have been proposed”.

2.66 Parishioners questioned whether this detailed study had been carried out and if so, why it had not recognised the noise, traffic and other issues in connection with the Site. The Director of Planning was asked if the study had been carried out and he replied that he could not recall that it had but he did recall

that a site at the rear of Bel Royal School had been withdrawn –

“... the committee responded to that point by withdrawing the sites from those areas. So, first of all, they reduced the concentration in the areas. I cannot remember why we did not but clearly the committee finally adopted a plan.”

2.67 The Principal Planner told the Committee that as a result of Professor McAuslan’s recommendations an additional point had been added to the draft spatial strategy, namely that the equitable distribution of housing sites was to be considered and this was eventually agreed in the Island Plan 2002. He maintained that the Planning Department had taken Professor McAuslan’s recommendations on board –

“It was only after Professor McAuslan report and the consultation draft that we had a situation where the committee recognised, in their view, that he had a point in his recommendation to more equitably distribute sites, that a new part of the process was added, and the committee then considered concentrations of development and in fact acted on that. In fact, they removed one of the St. Lawrence sites and others.”

2.68 Whilst it is accepted that the Planning Department did not implement the parish impact assessments recommended by Professor McAuslan, the Committee is of the view that the recommendation was considered when the various sites were withdrawn from the Island Plan 2002. It is probable that if these full studies had been carried out that the debate would have been delayed (which may nevertheless have been the appropriate thing to do). The spatial strategy in the adopted Island Plan 2002 was amended to include some of the recommendations from Professor McAuslan.

Could the process be improved?

2.69 The Committee is convinced that the process can be improved. Moreover, it has been encouraged to learn that improvements to the rezoning process are in hand, particularly regarding the element of public consultation which should occur. The Minister for Planning and Environment explained –

“We are trying to improve the process in the current Island Plan review work where there will be a formal process of public examination. I think that is very useful. I also think that we should not be specific at the planning review stage of identifying precise numbers of housing units that should be applied to each site. Too many things change between an Island Plan being considered and the actual implementation in terms of delivery of units on the ground. When you come to look at site specific work I think you need to have far greater flexibility. A lot of the problems in relation to the Goose Green site go back to one simple thing and that is the Island Plan identified the site for 97 houses. Had that not been the case I think the ride would have been easier.”

2.70 The Director of Planning said –

“We now have the 2002 Planning Law in being and that is a little more prescriptive in the way in which the Island Plan should be produced. It makes it, for example, a statutory requirement for there to be a plan, the Minister must bring a plan forward at least every ten years. In reality I am sure it will be more often than that, as things change. It also makes the requirement for the proposals to be formally published for a process for written representations to be made, but most importantly, a formal process for the hearing of those representations in public. What we anticipate is an examination in public, which is a process that is tried and tested, certainly in the United Kingdom and I think in France they have something very similar, where the substantive and controversial issues can be fully explored and considered objectively and in depth where necessary. I think that will bring a far greater rigour into the process of consultation on the plan this would be conducted ... by an independent person, probably a planning inspector borrowed from the U.K. to hear the representations, to ask questions, to call for evidence, more information, whatever is necessary to ensure that the plan at the end of the day is sound and suitable to go forward to the States for adoption.”

2.71 The Director of Planning went on to explain that the Minister would make the final decision to put the proposed rezoning sites to the States Assembly. Whilst he was of the opinion that States Members would still want to hold a debate on rezoning, he was hopeful that –

“the process leading up to the proposition going to the States will have had this more objective, more thorough assessment of the proposals being put forward hopefully this very objective, open transparent, public process, will improve people’s understanding of what has been put forward and why it has been put forward and hopefully the fact that it has been assessed objectively will carry some weight when it is eventually debated in the States ... I think if we can take some of the emotion out of the process with a more rigorous objection examination in public, hopefully that will improve the situation.”

- 2.72 The procedure explained by the Director of Planning being led by a professional independent person would go a long way in ensuring that the problems which have arisen in this case should not happen again. It is hoped that this new process will involve the production of guidelines relating to the detail of the information required for each site before the preparation of a feasibility study and also a list of the authorities/interested parties/States Departments who must be consulted. The zoning of land will always be a controversial process as people do not like developments approved on their doorstep. Against that background there will always be a need for more housing and it is no easy task to find suitable sites.
- 2.73 In view of the fact that both the Minister and his officers readily acknowledged the potential to improve the rezoning process, the Committee was most surprised to learn that in late May 2008 the Minister had elected to lodge ‘au Greffe’ a proposition to rezone approximately 58.5 additional vergées of land for lifelong dwellings (for people over 55 years of age) and for firsttime buyers, without having first conducted a formal examination in public or, as far as the Committee is aware, having commissioned an independent review of the proposed sites. Moreover, the Committee was disappointed that neither the Minister nor anyone from the Planning Department elected to brief the Committee regarding the reasons for proceeding with further rezonings in this manner. The Committee was also puzzled as to why it was not advised of the impending publication of a Green Paper with regard to the next Island Plan. This document, which outlined strategic options on which the next Island Plan might be framed, was sent out for consultation within 2½ months of the date of the relevant Public Hearing. Moreover, it is the Committee’s understanding that the Green Paper had been in development for some considerable time prior to publication.

Additional Comments

- 2.74 It cannot be denied that an enormous amount of work took place, both by members of the Planning Department and external consultants, in collating the information which went into the final consultation draft of the Island Plan Consultation Draft. Nevertheless, the Committee would have recommended changes to the process for the next Island Plan if that project had not already been in hand. As the Island Plan Review is already at the Green Paper stage, this report will not dwell too much on the changes the Committee might have proposed. Nevertheless, and further to the comments already made in this chapter, the Committee has several further observations to make.
- 2.75 The Committee notes that the process of developing the Island Plan 2002 commenced internally, due to lack of funding. It was affected by associated limitations on staff capacity. External consultants were nevertheless appointed later. This was not the only time throughout the whole process of the development of the Island Plan 2002, and the Site in particular, that the issue of funding and resources has been referred to. It has become increasingly clear to the Committee that there was a stark mismatch between the processes selected for development of the Island Plan 2002 and the level of funding allocated to facilitate those processes. If the States wants an effective planning process which runs smoothly and efficiently, then it should be prepared to pay for it at the outset. Such an important issue to the Island as rezoning land for housing should not be prejudiced because insufficient funds are allocated from the start. With this in mind, 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 ongoing Island Plan Review are truly satisfactory.
- 2.76 The Committee has also found, as became clear at the debate on P.48/2006, that not **all** States Members had a clear understanding as to what the information they were given in connexion with the Island Plan 2002 actually meant; consequently those States Members were not clear on what they were actually being asked to approve at that time. The tentative yield figure of 97 is a perfect example of this. As was pointed out by H.M. Attorney General, States Members were being asked to rezone land for Category A housing. It is evident that some States Members thought that this was the case and that the numbers set out were only indicative, others clearly thought that these numbers were “cast in stone”. There is nothing to be gained by going through the various arguments supporting either point of view – suffice it to say, at the time of the debate, for some unknown reason, the relevance of the numbers was not raised and this resulted in the feeling from some States Members that they had been misled or “bamboozled”. Some States Members even stated that they would not have agreed to the rezoning of the Site if they had realised that these numbers were only indicative of the yield.

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

3.1 There is no doubt in the minds of the members of the Committee that significant problems affected the process of formulating the development brief for the Site during the period 2002 – 2004. These problems included a consultation process that intensified opposition to the proposed development over an excessively long period, a potentially flawed decision to approve the Development Brief and, again, a lack of resources affecting delivery of what was undoubtedly a major project.

The Development Brief

3.2 Policy H6 of the Island Plan 2002 states –

“Development permission will not be granted for sites zoned for Category A housing by the States until a development brief has been approved by the Planning and Environment Committee. The brief will include requirements for:

1. appropriate mix of types, tenures and sizes of properties;
2. the provision, as appropriate, of sheltered and specially designed homes to suit specific requirements of the elderly and disabled;
3. design matters including density, form, landscape works and materials;
4. a satisfactory relationship between the proposed development and neighbouring uses and the local character of the surrounding area;
5. access by car, cycle and pedestrians and links to bus routes within and in the vicinity of the site;
6. provision of car parking;
7. provision of service infrastructure;
8. requirements for amenity space and public open space; and
9. the need for social, community education and health facilities within the site and implications for off-site facilities.”

“A development brief is intended to provide a framework of advice for the development of a site. Its purpose is to make clear the Environment and Public Services Committee’s expectations for a particular site thereby providing some clear and detailed guidance for all interested parties. The development brief also includes the views and requirements of bodies, which have direct interest in the site and/or its development, including statutory authorities and utility companies.”

Early 2003 – May 2004

3.3 A draft Development Brief (“DDB”) was prepared in early 2003 by the Planning Department to guide development of the Site. The process included the consideration by the Principal Planner of the FS, which was then expanded to include greater detail. It defined the extent of the Site, established the principles for the development of the Site and set out guidelines to be adopted when preparing detailed proposals. It was presented to the Environment and Public Services Committee (E&PSC) for approval as a basis for consultation with the land owners/developers, the Housing Committee, the Parish, other relevant bodies and members of the public. The DDB was approved on 12th March 2003 along with several other development briefs for the other rezoned sites. The DDB stated –

“The theoretical yields specified in the Island Plan for the various zoned sites are entirely notional and based on a common average density of 70 habitable rooms per acre. On this particular site, it is anticipated that the density of development will be above 70 h.r.a.”

3.4 There was no specific figure with regard to the number of houses. However, in a letter dated 12th March 2008 a representative of the developer explained to the Committee –

“We understand that a draft brief was first prepared in February 2003.... Critically, the draft Development Brief included a “Background Information” note identifying the potential yield on the Site as being 162 homes at a density of 89 habitable rooms per acre, which established a clear base line density for our initial appraisal of the Site and our subsequent development proposals.”

- 3.5 A copy of the “Background Information” note referred to above can be found at Appendix 7.
- 3.6 On the same date the E&PSC also approved the presentation of the DDB to local residents and agreed to receive the findings of the local consultation exercise before the finalisation of the DDB and the invitation to the developer to submit a formal application.
- 3.7 The developer acquired the land on 2nd May 2003. In the letter dated 12th March 2008 referred to above, it is stated –
- “From May 2003 onwards, with our appointed consultants, we entered into an extensive and detailed process of dialogue and consultation with the Planning Department on behalf of the Committee, the Parish community and other stakeholders with the explicit aim of finalising the Development Brief for the Site as required through the planning process and preparing an outline design scheme for further discussion and comment.
- The main objective of this process was to engage with the local community and other stakeholders at the earlier possible stage and to prepare a design proposal that fitted with the evolving Development Brief for the Site. Critically, we were informed by the Committee that an application for planning approval could not be submitted until the Development Brief had been finalised. It was therefore a pre-requisite and is a matter of record that we have engaged fully an openly throughout this process with all stakeholders.”
- 3.8 In July 2003, the developer’s architects Axis Mason Limited (“Axis Mason”) submitted outline proposals for the development of the Site for information and comment. The developer said –
- “It is very important in our view, to understand that this process was very much a collaborative endeavour where Dandara, our architects and consultants, met regularly with the planning, highways and public service officials appointed by the Committee to discuss the emerging proposals for the Site and to adapt these as necessary to fit with the development brief as it evolved ...
- A formal written response to these initial proposals was received from the Planning Department on 14th November 2003 who commented that “the proposals have the making of a very good scheme ... in most instances, the scheme performs well against the requirements in the brief ... It is particularly important we believe, that even at this relatively early stage in the process, the fundamentals of the scheme were strongly supported by the planners and properly, by extension, the Committee who had specifically tasked these officers to engage with our architects and consultants to bring forward and appropriate proposal for the Site”.
- 3.9 After amending the initial proposals to take on board some amendments suggested by the planners, the developer proceeded with the public exhibition of the scheme for 150 homes held at St. Lawrence Parish Hall from 1st to 3rd December 2003. This event was well-advertised and attended, and appears to have been the major trigger for public and Parish opposition to the development of the Site. Residents were given the opportunity to make written representations. Although an application for this number of houses was never formally submitted, it started the long and complicated process that took over 4 years to be finally resolved in March 2007.
- 3.10 A Public Meeting was called by the Connétable on 19th January 2004 at the Parish Hall, following representations from local residents resulting from the exhibition the previous month, during which various concerns were raised about the development of the Site. The developer attended at the Connétable’s request. As a result of the issues raised at that meeting, the Connétable responded to the DDB emphasizing concerns with regard to flooding, traffic issues, tree retention and potential water pumping measures. He requested a detailed response from relevant parties on exactly how the flooding issue was to be addressed.
- 3.11 On 19th February 2004, the E&PSC was presented with a detailed report prepared by the Principal Planner on the public response and a detailed appraisal of the initial housing scheme. It recalled –
- “... that the Island Plan had indicated the site was suitable for the building of 97 homes. In contrast, the draft Development Brief deliberately omitted a guide figure in order to allow design and layout factors to

dictate the number of homes that could be included within a suitable scheme.

The Committee recognised that the consultation process had identifies a significant level of opposition to the development of the site. Particular matters of public concern included traffic levels, drainage and localised flooding.”

- 3.12 At that time the E&PSC was facing a vote of no confidence concerning a matter not related to the development of the Site. The E&PSC decided at that meeting that its officers should work with the developer to secure necessary information and to hold a technical seminar to be held with the parishioners in order to try and –

“instil public confidence in the general planning process prior to consideration by the new Committee of a final Development Brief for the site”.

- 3.13 Following that meeting, Deputy Dubras notified the States Assembly of his decision to resign as President of E&PSC. The E&PSC was subsequently reconstituted under the Presidency of Senator Ozouf, with Deputy J.A. Hilton re-appointed as Chairman of the Planning Sub-Committee (“PSC”).

- 3.14 The Principal Planner amended his report on 16th March 2004 (Appendix 9) to take account of the responses he had received. He recommended the approval of the DDB, as amended. This report was received and considered by the PSC at its meeting on 4th May 2004. PSC decided that the technical seminar should take place **following** the receipt of a formal application from the developer. PSC noted that there had been 10 letters of objection to the proposed number of houses being suggested for the Site a substantial increase from the 97 figure mentioned in the Island Plan 2002. The Principal Planner advised that the number would be likely to be reduced in order to achieve planning requirements. The minutes of that meeting go on to say –

“In noting that it was likely that the yield would be reduced, the Sub-Committee was minded of the tenuous balance between reducing the yield and ensuring the financial viability of the site, given the necessity for a substantial investment in infrastructure to address the drainage issues. It was also conscious that any limitation on numbers must be firmly based on planning grounds or it would be open to legal challenge.”

- 3.15 PSC therefore decided that it would not specify the number of homes which would be deemed to be acceptable but leave the final yield to be determined by design and layout. Finally, PSC approved the DDB, subject to specific amendments which had been discussed at the meeting and decided to invite the submission of a formal planning application.

- 3.16 The Chair of PSC met with Deputy Dubras on 10th May 2004 to –

“inform him of the Sub-Committee’s decision, prior to notifying the developers and issuing a press release.”

- 3.17 Deputy Dubras was adamantly opposed to the deferment of the technical seminar until a formal application had been submitted as he considered it to be contrary to E&PSC’s decision on 12th March 2003. The Chairman considered that it would be “politically prudent for the Sub-Committee to review its earlier decision” and accordingly, on 11th May 2004, PSC decided to hold the seminar prior to the receipt of a formal application and also to defer and review the decision made on 4th May following the seminar. This of course meant that the decision to approve the DDB was deferred.

- 3.18 PSC sat again on 21st May 2004. The minutes of that meeting show that the Director of Public Services, who had been charged with the task of organising the seminar, had expressed misgivings about convening a meeting because of the lack of detailed drainage proposals available at that point. A meeting had been held on 13th May 2004 attended by the Chairman of PSC, the Director of Planning, the Director of Public Services and other senior officers. The minutes (Appendix 10) detailed an agreement which PSC was advised had been agreed by “the said parties” at the meeting. Further comment will be made on those minutes later but the upshot of the meeting of PSC on 21st May 2004 was that PSC considered that it

would be acceptable to give qualified approval to the DDB subject to drainage and transport issues being satisfactorily resolved, and a technical seminar being held by the developer, with support from PSD in advance of any formal planning application being submitted. The developer would be invited to prepare an application which should have regard to the requirements set out in the Principal Planner's Report (Appendix 9), and the requirements approved by PSC on 4th and 11th May 2004.

3.19 On the same day, letters were sent to the developer, the Parish, as well as to known objectors and a Press Release was made informing interested parties of the decision.

The remainder of 2004

3.20 The technical seminar requested by E&SPC was held on 12th October 2004. An application for 140 houses was submitted on 5th November 2004. A second public meeting was called by the Connétable on 8th November 2004 to give people a "last chance" to convey their concerns before the application was considered.

Should there be development briefs and if so, what should they contain?

3.21 The Committee heard differing opinions about the status of and need for Development Briefs. In his evidence to the Committee, the Minister stated the following –

"I am not a fan of development briefs. The problem with development briefs is that however you caveat them they do tend to be regarded as crossing a line in the sand from which a developer tries to negotiate. What you really need, in my view, is a broad outline of your aspirations and wait for the developer to make an application, at which point you test whether the application concurs with the broad aspirations. The problem in this case, of course, is that there was clearly an indication that the development brief would be part of the process and, of course, the development briefs preceded my appointment as Minister".

3.22 In the States debate on P.48/2006, the Deputy of St. Peter said–

"The problem is that this particular development brief, and the one in St. Lawrence, is taken out to the developer before we go to public consultation and before it is heard by the committee of the day who is going to allow for that development. Yet there is already a legal presumption on the part of the developer that he is being given a green light to go ahead no matter what, and this is how we end up with the differing numbers..."

3.23 In the same debate, Deputy S. Power of St. Breladé's view was –

"these development briefs that have been written since 2002 are the root problems of why we are here, and it is my view that these development briefs are a blot on the Jersey landscape."

3.24 The Scrutiny Panel stated in its 2007 report –

"Development Briefs produced since 2002 had proved to be highly controversial. Interpretations of various Island Plan policies within these briefs was often questioned and the manner in which they were consulted on and subsequently finalised was open to criticism."

3.25 The Scrutiny Panel also found there was a –

"suspicion ... that development briefs produced at the pre-application stage had all too often fulfilled developer's aspirations at the expense of the public at large."

3.26 The Connétable said in his evidence –

"This morning we touched on development briefs. A lot of effort seemed to have gone into producing a development brief on the site and in fact that was part of the Island Plan. It was the policy to do so, the requirement to do so and that had to be approved by the full committee in the time when we had committees. We know there was a technical glitch in terms of the approval in this particular case. But this

morning the officer talked about, in some part of his response, cast in stone and other times he was talking about guidelines. Now, if it is just guidelines then what value is it really? I mean, how far can you stray from those guidelines? what is the point of having a development brief? What does it mean? Does it mean anything? If it does not mean anything, why waste time having one?"

3.27 The Director of Planning's view on the way forward with regard to development briefs was that –

“... there is a necessity for briefs in that they should probably be in a more outlined form and included in the Island Plan with an illustration, something which conveys something other than a few paragraphs in a text, what the development is going to look like, how big it is going to be, that sort of thing. I think if we can put that in the plan, we can roll up the consultation into the plan. People have a clear idea of what is proposed any way and then the consultation will be confined then to the application process after the plan has been adopted. I think all the briefs are too detailed.”

Comments

3.28 Although the DDB had been approved by E&PSC in March 2003, this was only for consultation purposes. As there were subsequent amendments made to the DDB prior to final approval, it was an amended and therefore different document. The Island Plan 2002 clearly states that the requirement is for the Development Brief to be approved by the full E&PSC. This point was also raised by the Scrutiny Panel –

“Authority to determine such matters had not been delegated to the Planning Sub-Committee by way of a formal Act and other States Members may not have been aware that the Committee had decided to deviate from a policy which was arguably designed to ensure that development briefs received effective political consideration by an appropriate number of States Members.”

3.29 The Committee could find no record of this power being delegated to the PSC but the Principal Planner advised –

“The Planning and Environment Committee considered the draft development brief in March 2003 as the basis for public consultation ... It was later on decided among the committee members– there is nothing documented on this – that approval of the brief should be addressed by the planning sub-committee of the day and any other members of the planning committee who wished to make a contribution.”

3.30 It does seem extraordinary that an edict of the States Assembly that development briefs must be approved by E&PSC can be changed without reference back. It is even more extraordinary that the change was not recorded at a formal Committee meeting. Nevertheless, the question as to whether or not the decision to approve the DDB was therefore invalid or *ultra vires* is a legal issue and is beyond the remit of the Committee.

3.31 Almost from the outset, the Committee had concerns in respect of the delay from the rezoning of the land in July 2002 to the approval of the Development Brief in May 2004. It now considers that this delay was unacceptable, particularly as the developer had been advised that it could not submit a formal application until the DDB had been approved. The Director of Planning was asked if it was usual for a draft development brief to be put out for consultation with developers. His response was –

“It is unorthodox, I would agree. It was consistently done over the 11 sites that were eventually sold. That was the approach we adopted. Primarily, we did not have the resources within the department to produce drawings to show how the sites could be developed, so what we decided to do was to produce a draft brief because the developers were interested in all these sites ... There were developers and architects on board for nearly all of the sites, so we were able to produce a draft to ask them to interpret the draft and obviously they will put their own wishes in there. We would use that as the basis for the public consultation. Unorthodox certainly and not the way I would do it now, frankly.”

3.32 The Principal Planner was of the opinion that the extensive public consultation on the DDB had caused a delay in the process. Normally development briefs would have been approved by the planning authority in consultation with the various technical advisers and not subject to a fully public consultation exercise.

The Director of Planning said in his evidence –

“I have to say, when we produced the consultation draft of the plan, we had not intended that the production of briefs would necessarily be a public consultation process.”

- 3.33 The Committee is of the opinion the DDB should not have been sent out for the extended public consultation and that the normal process described above should have been followed. Of great concern again, is that phrase “lack of resources”. When setting out his thoughts on the form development briefs should take, the Director of Planning remarked –

“I think we would be better off going for a less detailed outline brief which conveys sufficiently to people what is required and the developer, not just the local public, make it part of the plan. So instead of 2 or 3 paragraphs that we had as a description of each site, to show drawings and perhaps an illustration of what the development could look like. I know there is a resource issue there but frankly, if we had a resource at the time, we would have saved a hell of a lot of time later and it could have been used more productively on other things”.

- 3.34 The Committee entirely agrees with this comment on an issue that was recognised as recently as 2007, when the Scrutiny Panel wrote in its report –

“The efficiency and effectiveness of the planning process was suffering due to the limited resources made available to the Department.”.

- 3.35 It is a sorry state of affairs when the lack of funding available to a government department has contributed to the upset caused to all parties who have been involved in this saga.

- 3.36 The problem was further exacerbated by the note which was sent to the developer with the first draft of development brief (Appendix 7) which contained the number 162. If a single, final development brief had gone out for consultation, with no indication of the potential yield, as was eventually the case, then certainly a lot of problems could have been avoided. Unfortunately, this was not the approach adopted and it was therefore entirely understandable that parishioners were appalled when, in December 2003, they were presented with the DDB and asked to comment on a scheme for 150 homes. The only number they had previously seen was 97. It is also understandable why the developer had submitted such a large scheme as it believed that it had received encouragement from the Planning Department. The publication of the scheme had perturbed the parishioners and the natural opposition to such a large increase in numbers was, understandably, strong and passionate.

- 3.37 In the opinion of the Committee the consultation process during this period was flawed. It would have been more helpful for all concerned if consultation had taken place sooner with regard to a finalised development brief or a submitted application, rather than a “hypothetical scheme”.

- 3.38 Neither the DDB nor the approved Development Brief was sent to Environmental Health. This omission caused enormous problems which led to delays and other problems which are addressed elsewhere in this report.

- 3.39 Bearing in mind the fact that, as at 19th February 2004 no formal application had been submitted, the Committee finds it more than a little surprising that the outgoing E&SPC should decide that the developer should be put to the expense of a technical seminar before the DDB could be approved, and before there was any certainty as to what was being proposed for the Site.

- 3.40 The process of the “approval” of the DDB, and the recording of that approval, during the period from 4th to 21st May 2004 can only be described as confusing and generally unsatisfactory. Although it is not entirely clear to the Committee whether this state of affairs was symptomatic of issues with the general operation of the E&PSC and the PSC, or with the recording of their decisions, it considers that both the decision-making processes and the minutes of the E&PSC and PSC during the period 2003 – 2004 inclusive are worthy of comment.

3.41 There is inconsistency in the use of the “Committee” and “Sub-Committee” within certain key minutes, especially in the PSC minutes of 4th May 2004. This inconsistency causes confusion. On one page the scheme is described as showing 151 proposed dwellings and yet on the next page, the figure referred to is 150. There is no mention of the names of attendees at certain meetings, which would surely have been helpful for members of the Planning Department, and for future Committees or Ministers, in light of the fact that the system was changing.

3.42 A desktop review of the available evidence gave the Committee the clear impression that the PSC making the decision on the Development Brief had not been informed of decisions made by the previous E&PSC; yet the members of the PSC in May 2004 were all members of both the current and the previous E&PSC. The Committee was also somewhat bewildered by the PSC minutes of 4th May 2004, which recorded that the Sub-Committee “was minded of the tenuous balance between reducing the yield and ensuring the financial viability of the site”. The Committee does not believe that the financial viability of the Site was a matter for PSC.

3.43 When asked why the DDB had been approved by PSC and not E&PSC, the Director of Planning replied –

“It was early on. We had a change in committee only about a month before and Deputy Dubras resigned and Senator Ozouf replaced him as the President of the Committee. It was at a time when we were a totally new Committee There were new members on the Committee and a new President. As I understand it and as I recall it because I remember Senator Ozouf asked me to deal with it, we had a scheduled meeting with the Planning Sub-Committee and an application was made on 4th May and the other members of the Committee were invited to come along to that to sign off the Development Brief. In the event, for whatever reason, those members did not turn up but the Planning Sub-Committee made the decision. The brief had already been to the former Committee's meeting, which I think was in February That is where the issue of there being a technical seminar was raised and the Planning Sub-Committee agreed the brief. Effectively, it might have been delegated, I suppose, to the Planning Sub-Committee and any other members of the full committee turned up to that meeting, although there is not any decision to record that. It was just an off-the-cuff decision, I think, taken by Senator Ozouf. Normally it is for the Committee In this particular instance, I recall the President asked to let the other members know it was going to be discussed at the Planning Sub-Committee on 4th May and they were welcome to come along at the end of that meeting and make the decision.”

3.44 It is the Committee's view that the circumstances outlined above strongly reinforce the need for all material decisions of Committees or Ministers to be properly and clearly recorded. Where minutes of meetings are produced, they should be accurate and suitably comprehensive in all respects. With regard to the approval of the Development Brief, the minutes show that the PSC approved the document and that the additional members necessary to allow for the decision to be made by a properly constituted full Committee were not present. In the circumstances, whether those States Members had or had not been invited to attend is immaterial.

3.45 The PSC minutes of 11th May 2004 contained more extraordinary statements. The Committee was taken aback that the Chairman of PSC had arranged to meet with Deputy Dubras to advise him of PSC's decision **before** advising the developer of the outcome. It is recorded that Deputy Dubras had reminded the Chair of the decision made in February with regard to the technical seminar. The minutes went on to say –

“The Sub-Committee was informed that the Deputy of St. Lawrence maintained that it was essential that prior to the submission of the applications, the residents should be –

- (a) Given confidence that the Public Services Department understood the current flooding problems;
- (b) Made aware of why flooding to the extent experienced in recent years was a relatively new phenomenon;
- (c) Convinced that the current problems were solvable.

The Principal Planner confirmed that the developer had not been informed, in writing, of the Sub-Committee's earlier decision, although the decision had been conferred by phone. On reflection the Chairman” (note the inconsistency in the minutes again) “considered that it would be politically prudent for

the Sub-Committee to review its earlier decision and to acquiesce to the Deputy's position.”

- 3.46 Apart from the fact that the Committee feels the parishioners should have been convinced of these matters before the Site was rezoned in 2002, several questions arise here.
- (i) Why was Deputy Dubras being told of the PSC's decision before the developer?
 - (ii) With respect to all parties involved, upon what planning ground was PSC **bound** to convince parishioners that all would be well before the developer could submit an application, when it had already approved the DDB containing the technical requirements which would have to be adhered to?
 - (iii) Why consider political prudence when determining this particular issue?
 - (iv) Having consulted with the Parish, should PSC not also have consulted with the developer?
- 3.47 If the earlier minutes were somewhat extraordinary, then the Committee regards that content of the minutes of the meeting held on 21st May 2004 as positively startling. A meeting had been held on 13th May 2004 between the Chairman, the Directors of Planning and Public Services, other senior officers and Deputy Dubras. The minutes indicate that no representative of the developer was present. They go on to state that the Sub-Committee was advised “that the said parties” had reached an agreement. This agreement, *inter alia*, said that the Sub-Committee would give qualified approval to the brief, and that the seminar would be led by the developer. PSC went on to “endorse the agreement”. **It is not right that decisions of PSC should be made for it.** In addition, why did the parish (again) have input into a PSC decision when the developer did not? If any committee, panel or the Minister is to receive a delegation from interested parties, which they are perfectly entitled to do, then it is only right that “the other side” be invited to attend the meeting as well. Whether or not he, she or it does or does not is a matter of choice, but at least the process will be seen to be transparent. In this regard, the Committee welcomes the introduction by the Minister of the Public Hearings for applications referred to later in this report.
- 3.48 The developer made the point that the public meetings held on 19th January 2004 and the 8th November 2004 were not part of the planning process in that those meetings had not been called by the Planning Department. It felt, and the Committee agrees, that a lot of the points discussed at these meetings were more pertinent to a discussion as to whether the Site should be rezoned rather than specific issues relating to the application post-rezoning. The Committee was surprised that in the light of such vociferous opposition to the development of the Site that no attempt was made, through the proper process, to have the Site referred back to the States Assembly for further consideration of its suitability for housing.

Recommendations on the Development Brief process

- 3.49 The Committee agrees with the comments made above by the Minister and the Director of Planning regarding revisions to the process of producing development briefs^[4]. It hopes that these proposals will be carried through if they have not already been implemented. Development Briefs should contain indications and guidelines for the development of a site in more detail than those included in any feasibility study, although they should not be 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. 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.
- 3.50 It is also suggested that it should be made clear to development brief consultees that a simple “No comment” answer is insufficient. Some reason for the disinterest in the application, however brief, must be given thus enabling the planning officer to be assured that due consideration has been given to the application. If the reasons for the response from Environmental Health in this case, even if brief, had been given then the oversight of the proximity of the Jersey Steel property and the noise issue might have been avoided.

- 3.51 The circumstances of this case have emphasized the danger of circulating more than one version of the DDB. There should be no more than one DDB sent out to statutory consultees for their consideration.
- 3.52 Very little was achieved between March 2003 and the publication of the final Development Brief in May 2004, other than generating public resistance to development of the site following the public exhibition of a scheme for 150 homes. A developer should not be permitted or encouraged to propose any scheme until the Development Brief is finally approved following consultation with statutory bodies and others as outlined above. In this case it was clearly a counterproductive move, which resulted in massive opposition to the development.
- 3.53 It seems from the sequence of events that there was a general lack of control of, and several specific flaws affecting, the planning process during this period. This was due in part to the changing structure of various departments, but lack of communication between Committees, confusing and/or insufficiently comprehensive minutes of certain meetings and antipathy between departments contributed to the delays and misunderstandings. The Committee suggests that clear and realistic time scales should be identified for each stage in the planning process so that this type of delay is not repeated.

The noise issue during the period from rezoning to the end of 2004

- 3.54 It is clear to the Committee that, prior to the decision of the States to rezone the Site, Environmental Health failed to advise the Planning Department of the potential noise issue arising from the nearby Jersey Steel premises. Subsequent errors and omissions by various parties, including the Department, compounded the problem.
- 3.55 As briefly stated above, in October 2001, the Principal Planner wrote to Environmental Health requesting observations with regard to potential health implications which might be caused as a result of developing the sites being short listed for Category A housing. The departmental response in respect of the Site was "No comment". Mr. S.D. Smith, Head of Health Protection Services, was asked why there had been no comment and he quite openly admitted that he did not know why. The officer in whose area the Site was situated had left the department. The Head of Health Protection Services said that it was usual for officers to visit each site, but he could not confirm whether or not the officer concerned had visited the area as there were no notes of such a visit. He recalled that he had visited the area with the officer in September or October 2000 as a result of a complaint from local residents with regard to Jersey Steel's hours of operation. From knowledge of the area he was surprised that there had been no comment. The usual process would have been to visit a site to see if there was potential problem which might be serious enough to remove it from the short list for rezoning.
- 3.56 A further complaint about Jersey Steel was received from a neighbour on 31st July 2002. Mr. A. Irving, Environmental Health Officer visited Jersey Steel and realised the close proximity of the Site. On his return to the office, he telephoned the Principal Planner and then wrote to him stating –
- "The above development is likely to be subject to noise from Jersey Steel and therefore may lead to complaints about noise nuisance.
- Careful consideration is needed in deciding whether these fields are suitable in light of the aspects of noise and potential flooding".
- 3.57 The Principal Planner replied on 6th August 2002 pointing out the fact that the Site had already been rezoned, advising that there would be a buffer strip and stating that he would welcome advice as to how the impact of noise emissions from Jersey Steel could be reduced to acceptable levels. In a letter dated 16th September 2002, the Environmental Health Officer wrote to the Principal Planner, outlining his department's concerns relating to the quality of life of those purchasing houses built so close to Jersey Steel. The Principal Planner thought that at that time he probably took the view that there was a noise issue, and it was likely that there were going to be technical and design solutions to that issue which could be addressed as part of the final development brief.

3.58 No further contact was made with either Environmental Health or the now Health Protection Department until over 2 years later in November 2004 when HPD was asked to consult on the application for 140 homes. The Principal Planner said–

“I cannot find any records of correspondence between the Planning Department and Health between those periods, basically until they were formally consulted on the formal application. I do not think it is as strange as it sounds given Health Protection’s position was known to the department and the brief reflected that and also included a contact number and address for them to be consulted by the applicant in response to the brief. Okay, it was a long, drawn-out period but a lot of things happened in that period. The draft brief was approved in that period; the public exhibitions of the brief and the developer’s initial scheme took place in that period; the associated public consultation with that took place in that period; the approval of the final development brief and also the technical seminar that was required. All those events happened in that period. I would have thought that Health Protection, if that is what the inference is, would have known about that. They were all widely publicised exercises and they probably attended the various events; although you will have to ask them that, but I think they probably did. So it was only when I got their comments in response to the 140 homes that basically we started quite a detailed process of trying to resolve those.”

3.59 It was during this period that the DDB and the final Development Brief were formulated and approved, neither of which were sent to the Health Protection Department. As such, it was not consulted upon, or able to verify comments made on the noise issue in either of the briefs resulting in the noise issue being given a much lower profile than the HPD would have required if properly consulted.

3.60 The Head of Health Protection Services mentioned that Environmental Health had received a letter dated 18th February 2003 from the Director of Planning with regard to the issue of consultation between the departments. He advised that the Planning Department had received an increasing number of requests for copies of applications and plans from departments and parishes, from whom his department neither needed nor required information in respect of the application, leading to an increased administrative cost. He advised that with effect from 24th February 2003, copies of applications and plans would no longer be provided to States Departments or other bodies unless it specifically required advice on a planning issue or had a statutory duty to consult. At that time, P&E was under no statutory obligation to consult the HPD. The Head of Health Protection Services spoke with the Director of Planning and also wrote to him stating that he felt it was important that his department should be consulted at the earliest opportunity and “preferably prior to submission”. In a later follow up letter, the Head of Health Protection Services wrote –

“The consultation process between ourselves is critical if the States are to safeguard both environment but more importantly issues affecting the health of the population. The immense difficulties over the housing development have arisen because of past inadequate consultation at the Planning stage. I should be pleased to receive confirmation from your office that your future consultation process with Health Protection will at least be in accordance with the F.3.3 document. In the meantime I feel that it is important that we meet to discuss the implication of any changes in your planning process consultation prior to the need for this department to consider political intervention to safeguard the interest of the Health and Social Services Committee in what is an extremely important part of the States government process”.

3.61 The Head of Health Protection Services went on to say that the matter was not resolved without political intervention some time in 2004. He said –

“In fact, the law has changed now so that we are a statutory consultee, but up until that period it was quite fraught and there were a number of issues that came to a head that we were not given an opportunity to comment on.”

3.62 The recollection of the Director of Planning differs somewhat from that of his colleague at Environmental Health. He advised –

“Specifically in relation to Health and Social Services [the Head of Health Protection Services], rang me and wrote straightaway (20/2/03) with his concerns. He wrote again at the end of April with a new list of

consultation triggers, and he and I met with [the Assistant Director – Development Control] on June 19 and agreed the new triggers”.

3.63 It was, of course, during this period of time that the DDB was sent out for consultation and then finally approved early in 2004. The Committee can only speculate, once again, as whether or not the noise issue would have become such a serious one if there had been full consultation between P&E and HPD at this time.

3.64 On 11th November 2004, HPD was asked to comment on the application for 140 houses. Following a site visit, the department raised 15 issues about the Site in a letter dated 30th November 2004. The Department’s view was that the Site was not suitable for Category A housing, one of the reasons given being the noise from Jersey Steel. HPD also called for the developer –

“to appoint a suitable noise consultant to assess the main sources of noise likely to affect the proposed development and determine suitable mitigating measures as far as they are achievable for reducing the impact of noise”.

3.65 The Head of Health Protection Services quite candidly said that if the visit to the Site which had occurred in November 2004 had taken place before the rezoning of the Site, then the concerns set out in the letter would, from HPD’s point of view, been a “show-stopper”, although as the Environmental Health Officer pointed out, that view might not necessarily have been accepted by the Planning Department. The Principal Planner said that he recognised that the issue of noise was potentially more serious than he had first imagined when he received this response. An urgent meeting was set up between officers of both departments which took place on 21st December 2004, the result of which was that agreement was reached with regard to the immediate way forward.

Comments/Recommendations

3.66 It is unfortunate that once HPD had raised the issue of noise at the Site in July – September 2002 that no further consideration was given to the issue. At that stage, the developer had not acquired an interest in the Site, and the possible rezoning of the Site could have been referred back to the States with little, if any, threat of legal action or compensation, as it is assumed that no great expense would have yet been incurred by the developer.

3.67 The DDB appears to have been widely circulated for public consultation and yet it was not sent to HPD – even though the issue of noise had now been raised. HPD was not sent a copy of the final Development Brief in May 2004. The Committee finds it hard to understand why HPD was not consulted on either of these documents. It is suggested that if HPD had been consulted on the briefs, greater importance could have been given to the noise implications which caused such delays at a later stage.

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

- 4.1 Before considering whether or not the Planning Department was effective or not in dealing with the Site application, it is worth setting out the duties of the Minister and officers of the department. H.M. Attorney General said in the debate on P.48/2006 –

“What I would like to do next is to go on to things which the planning authority is required to do. The first of them is that the Minister is bound to take his decision within a reasonable time, or his lack of action can be reviewed judicially. That reasonable time will depend, as all reasonable things depend, on the circumstances When the Minister takes his decision he must do so having regard to all material planning considerations There will be documents in existence which go to the policies which are to be applied and these can, and do have a bearing on whether or not a decision which the Minister takes will be upheld by the Court. For example, the Minister will be hard put to depart from the planning policies which have been approved by the States, hard put to depart from planning policies which are set out in the development brief which has been published in relation to this particular site He would have to come up with some very convincing reasons if the planning policies set out in the development brief are to be ignored, and part of the reason for this is that members of the public are entitled to expect that their planning applications will be dealt with in accordance with published policies.”

- 4.2 The duties attributed to the Minister would also have applied to the Committees in the previous system of government.
- 4.3 The Minister himself stated –

“... the applicants have a right to have their application properly determined within a reasonable time period Applications must be determined in a consistent, fair and reasonable manner, on proper planning grounds, having regard to all the material circumstances of the case, including the representations of local residents, the relevant policies in the Island Plan and the site specific supplementary guidance provided in the planning authority’s approved development brief”.^[5]

Background

- 4.4 Only 3 formal planning applications were made in respect of the Site. The first, for 140 homes, was made in November 2004. The second, for 129 houses, was in September 2005 and the third, for 102 houses, in November 2006. It therefore took over 4 years from the production of the DDB to planning approval being granted in March 2007. Was this a reasonable length of time? What led to the delay?
- 4.5 The developer’s view in January 2005, as set out in a letter from Axis Mason to the Principal Planner, can be summarised as follows –
- i. The developer had shown its willingness to engage in open dialogue, to be flexible and to take on board comments and to amend the development proposals accordingly.
 - ii. It was frustrated with the 22 month period of consultation which had elapsed, and aggrieved as it believed that certain people were trying to frustrate the process and delay the application.
 - iii. The developer’s architect recognised that there were valid concerns which had to be addressed and the letter went on to list 20 matters and discuss each in turn.
 - iv. The letter pointed out that the existing properties in the vicinity were at risk from flooding, and no proposals or funding for mitigation existed to enable the States to address the problem. Axis Mason’s view was that the appropriate development of the site was the only route for funding construction of a surface water pumping station necessary to improve the existing flood situation.
 - v. The issue of capacity of the schools was viewed as a matter entirely for the States to resolve, as this must have been a material factor considered at the time of rezoning the land for Category A housing. Axis Mason said –

“The developer is entitled to assume that in meeting the requirements of a Development Brief approved by the Environment and Public Services Committee, that due process has been followed in assessing the impact on schools.”

vi. The developer rejected any notion that it had not made full and transparent contribution to the process of dialogue and consultation. In its view it had properly engaged the community in the decision making process.

4.6 The application came before E&PSC for formal consideration on 4th August 2005. It is worth quoting extensively from the minutes of the meeting in order to show what the view of E&PSC and the Planning Department was with regard to density and the guidelines which were being given to the developer –

“The Committee noted that the recommendation of the Department was not to accept this application, but to provide clear guidance as to what level of development would be considered. The Committee also noted that this proposed development had been through an extensive pre-application process, including a period of public consultation and a debate in the States The Department stated that it expected to receive an application in due course for approximately 120 homes and that in order for the development to meet the Department’s criteria the total yield would have to be less than 130 homes. The Committee was aware that this deviated from the figure of 97 homes put forward in the Island Plan 2002, but considered that the number of houses constructed on the site should be a factor design and utility considerations, not an arbitrary figure established prior to the detailed consideration of the site. Additionally, the Island Plan stated that “the figures are only an indication of yield for the site, because of the mix of size and type of homes will be determined through the development brief process for each site”.

4.7 It is interesting to note again, that present at the meeting were the Connétables of St. Peter and St. Lawrence, the then Deputy Dubras and Deputy C.H. Egré of St. Peter. The application was withdrawn and the application for 129 homes was submitted in September 2005.

4.8 The Parish was still opposed to this application on the grounds, not only of density, but also possible flooding and increase in traffic. A further public meeting and manned exhibition on the revised proposals was held on 24th October 2005 at the request of the Connétable.

4.9 HPD still had serious concerns about the application. It requested a new noise assessment in November 2005 to be undertaken based on maximum, not average, noise levels which it felt to be inappropriate for the Site.

4.10 In December 2005, the responsibilities of the E&PSC passed to the Minister for Planning and Environment as the ministerial system of government was introduced.

4.11 In the same month, the developer submitted revised layout plans and noise assessment reports. However, HPD was still dissatisfied about the likely impact of Jersey Steel and appointed its own UK firm of noise consultants to review the position. At that point the revised application was, in effect, held in abeyance pending a resolution with regard to the noise issue.

4.12 It was only in February 2006 that the newly appointed Minister was fully briefed on the revised application for the Site. He added his own series of concerns such as elevational design issues, flooding and further comments on density.

4.13 On 21st February 2006, the developer’s legal advisers wrote to the Planning Department expressing frustration about the handling of the application, in particular the delays which had occurred. The letter outlined the history of the involvement of the developer in the various applications and amendments over a period of 3 years from the purchase of the Site in May 2003. The final frustration from its point of view appears to have been the late involvement of the Minister in February 2006, which, as far as the developer was concerned, would add “additional and revised criteria” to the application. The letter outlined the considerable care and expense that the developer had taken in order to comply with the various requirements of the Planning Department and expressed frustration that the application had still not been decided upon 15 months after its submission. The letter concluded with a request for a decision within

2 months and a statement that if that application was refused or delayed an appeal to the Royal Court might be lodged. This letter appears to have put a “cat amongst the pigeons” in the Planning Department. It resulted in a reply from the Minister 2 weeks later reassuring the developer that he would make a decision within the timescale requested. In the event, the application was not decided upon until August 2006, almost 5 months later, but that was due mainly to ongoing negotiations over the noise issue.

4.14 The Minister then held meetings to ascertain the state of play and to address outstanding concerns. A report was received from HPD in March 2006 outlining potential mitigation measures for the noise issue and the applicant agreed to fund these.

4.15 However in April 2006, Parish opposition to the site was still very strong and the Connétable lodged proposition P.48/2006.

4.16 On 7th June 2006, at the request of the Council of Ministers, PAP gave informal consideration to the amended application and was minded to grant the application for 129 homes. The Committee notes points made in the minutes relating to consistency and the potential for litigation (which will be dealt with later) –

“The Panel noted that the Department considered that there were no planning grounds for requiring a further reduction in homes (the original application had been for 140 homes) to some arbitrary figure (the 97 referred to in the Island Plan being merely indicative) and that it would be unreasonable to do so and that such action would be open to challenge through the Courts. It was accepted that the present scheme met the development brief for the site, as did the number of homes and the density of the proposed development. Furthermore, it was evident that throughout the protracted planning process since the approval of the brief, the former Committee had given consistent guidance that the final yield of homes must be determined by an acceptable design and layout that met the planning requirements.”

4.17 The States approved P.48/2006 on 4th July 2006, and on the same day the Minister announced that he would personally determine the application to develop the Site.

4.18 The Minister took the unusual step of holding a public hearing on 17th July 2006. He advised the attendees that he had received had read the full application and he wished to hear all of the objections and the endorsements relating to the matter. After consideration, on 14th August 2006, against officer advice, he refused the application on the grounds of overdevelopment, site boundary, education, noise impact and design. He had accepted that the flooding issue had been adequately dealt with.

4.19 The developer submitted a further revised application on 10th November 2006 for a reduced figure of 102 homes (97 family homes and 5 units of sheltered housing). The Minister informed the State Assembly later that month that the amendment to the Island Plan was now unnecessary, as the figure of 102 homes was so close to the maximum of 97 proposed. He reassured the States Assembly that he would personally determine the application on its merits having regard to the Island Plan 2002 and other material considerations. He would expect the new application to satisfactorily address the 5 reasons he had given for his refusal in August.

4.20 A further public meeting was held on 23rd January 2007, again called at the request of the Connétable. Although invited, the developer declined to send a representative. Meetings between the developer and officers of the Planning Department and HPD were held early in 2007, to try and resolve outstanding fears and issues, including the noise issue. Finally on 20th March 2007, a Ministerial Public Applications Meeting was held, with evidence and opinion being presented from interested parties and objectors. On 21st March 2007, the Minister approved the application for 102 homes, subject to a number of planning conditions being incorporated into the permit and a Planning Obligation Agreement to be agreed and signed by the appropriate parties (POA). This decision was published on 4th May 2007 in a report which included details of the planning conditions (62 of them) and the POA. In the Planning Permit issued, the Minister permitted the developers to commence “a limited amount of site preparation”.

4.21 There was a query raised at the outset of this Inquiry with regard to the actual date upon which the

Minister made his decision. However, it was finally conceded that the decision to approve the 102 houses was made on 21st March 2007 when the Minister instructed the Principal Planner to write up the consent, subject to finalisation of the conditions to be attached to the permit. The Minister agreed on 4th May 2007 to release the permit and the reasons for the decision made in March.

4.22 The consideration of the process from January 2005 onwards will be dealt with under various subheadings –

1. Density
2. Consultation
3. Size of the Site/Encroachments
4. Delays/Noise issue
5. General comments
6. Planning Obligation Agreements/Conditions attached to permits.

Density

4.23 In the view of the Committee, one of the few remaining points to consider with regard to density is whether or not the Minister, having been requested by States Members to amend the Island Plan 2002 to stipulate that there should be a maximum number of 97 houses on the Site, should have complied with that request. The Minister himself addressed this point in his written reasons for approving the scheme for 102 houses. He said –

“At the outset, I should address the latter mentioned decision of the States. I note the decision and fully respect the views of the States Members that underpin it. However, as Minister for Planning and Environment, I must continue to judge planning applications on their individual planning merits. I would also acknowledge that, if this were a “blank sheet” scenario and was constrained by the Island Plan and other consequential decisions, it is possible that I would reach a different conclusion on this matter.”

4.24 Whilst the Committee can sympathise with the views of the parishioners, it can also see that the Minister found himself in a very difficult situation. He had, in the Committee’s view, taken a very bold decision in August 2006 when he refused the application for 129 houses against the recommendation of the planning officers and also the PAP. The Committee has had sight of files, documentation and correspondence which have not been available for public scrutiny. It is clear that that by this stage, the developer would have had more than a reasonable expectation that as the land had been rezoned, an application to develop it would be successful if it complied with the policies set out in the Island Plan 2002 and with the final Development Brief. These documents indicate the manner in which the Planning Department proposed that the Site should be used. They act as statements of intent as to the policy to be followed in considering applications for development. Anyone reading those documents objectively will have a good understanding of what was expected of any development of the Site. The developer would have placed reliance on those documents throughout the application process, and would have legitimately expected an application to stand a reasonable prospect of success if it complied with the policies and guidance contained within them.

4.25 The Committee accepts that the Minister has to make a decision which is consistent with the **indications** given in the Development Brief. In addition, there must be consistency between his decision in respect of the Site and decisions taken in respect of comparable sites elsewhere, e.g. the H2 site at Mont à l’Abbé, which was rezoned at the same time as the Site. The density on that smaller site had increased from a theoretical yield of 91 homes to 123. This fact could have been used by the developer as a precedent for an increase in the number of homes on the Site. It is clear from the minutes of the PAP set out above, that the issues of consistency and potential litigation were highlighted back then in June 2006. They must have been more at the forefront of the Minister’s mind some 9 months later. As the Minister said, if the situation had been different, the decision might well have been different.

4.26 One other general point should also be made. In 2007 the Scrutiny Panel observed that Policy H7 of the Island Plan – which refers to the need for a relatively swift policy review in respect of housing density

and specifications – had not yet been followed through. The Committee notes that, as of August 2008, the Planning Department still appears not to have published its new supplementary guidance on the design of new homes, which might well clarify the position on acceptable density standards.

Consultation

4.27 Evidence given to the Scrutiny Panel about public consultations on major applications was that it had often failed because too little meaningful information had been put in the public domain at an early stage. Consultees were not necessarily clear as to what it was that they were being invited to comment on. The Director of Planning's view at that time was –

“The trawl around the parish halls is not the best way to get a measured public view on what is being put forward.”

4.28 In the States debate in relation to P.48/2006 on 4th July 2006, Deputy Le Fondré stated that the residents of both St. Lawrence and St. Peter were consulted on the Development Brief approved in May 2004 and they made representations about flooding, traffic, the number of houses and the capacity of the schools. He said –

“We were consulted and we were ignored”.

4.29 The Connétable said in the report attached to P.48/2006 –

“Essentially residents feel entirely let down by the whole situation and do question the integrity of the consultation process”.

4.30 The Director of Planning told the Scrutiny Panel that he thought that the problem was not so much a lack of consultation as the ‘nature of it’. He explained –

“There were too many stages. We were going to the public basically asking them the same thing on 3, 4 or 5 times... we were just upsetting the public.”

4.31 He confirmed that view to the Committee in his evidence –

“There were 6, possibly 7 points at which public consultation could have taken place and frankly, it is overkill. It simply was not necessary for that many stages and it confused people, created suspicion.”

4.32 If “consultation” in the context of the Site is taken to mean opportunities given by the parishioners or their representatives to raise concerns, ask questions and so on, then there were at least 2 public “exhibitions”, one technical seminar, 6 public meetings (including the 2 Public Application Meetings) and in addition, various meetings between members of the Planning Department, E&PSC and representatives of the Parish. It is therefore reasonable to conclude that difficulties arose primarily out of qualitative issues with the consultation process, rather than any lack of opportunity to comment.

4.33 There is no doubt that the consultation process associated with the Site did not help the Planning Department, the parishioners or the developer. The attempt by all concerned to keep parishioners informed, concerns addressed and so on, backfired seriously. It led to anger, fear and suspicion. It is however, important to remember that not all of the public meetings were part of the planning process but were called at the behest of the Connétable of the Parish, and attended by members of the Planning Department and the developer with a view to assisting parishioners by answering any queries. The Connétable, of course, has every right and indeed, it is one of his duties to call meetings so that parishioners can express their views. It might, however, be considered in the future that such meetings should not involve the Planning Department or the developer. Instead, views or concerns expressed should be conveyed back to the Minister in writing. However, if the consultation is part of the formal planning process then it should be called and chaired by the Minister.

4.34 In any application where the public is consulted, there will always be a fine line between “feeling

ignored” and “not getting one’s own way”. A clearer more precise consultation process will hopefully help to give members of the public confidence that their views are listened to, even if they are not always followed.

Size of Site/Encroachments

- 4.35 There were 2 sets of comments related to the size of the Site. The first related to whether or not Field 85 should be built on and the second was the encroachment of the development onto land which had not been rezoned.
- 4.36 The size of the Site was identified as approximately 9.5 acres in the Island Plan 2002. It was thought at the time that the northern part, which was overgrown and disused, would mainly be retained as a landscape buffer to the development.
- 4.37 In the final Development Brief, Field 853 was included in the area upon which houses were to be built. The Site was still described as being 9.5 acres.
- 4.38 In a report from Axis Mason in January 2005, the area to be developed was described as 9.76 acres, the whole Site being 20.57 acres, the remainder being given to landscaping, buffer zones and so on.
- 4.39 On 7th June 2006, the PAP considered that the submitted application for 129 homes, responded reasonably to the previously expressed concerns about the degree to which Field 853 was to be developed or retained as a buffer. In the final application, no houses were planned for Field 853 and the area was to be used to provide a naturally planted bank to screen the development from Le Perquage.
- 4.40 One of the reasons for refusal of the application by the Minister in August 2006 was that the Site boundary agreed by the States Assembly should not be compromised, and it was unacceptable for the housing development and the associated road infrastructure and community building to fall outside the housing site boundary. The Minister was satisfied that the vast majority of the final scheme was within the designated housing site boundary. A previous PSC had, on 21st May 2004, approved an encroachment beyond the southern boundary of the Site but this was later rescinded. All the proposed houses were located within the designated housing site boundary and the only incursions were, in the Minister’s opinion, of a relatively minor nature. The community centre, access road and parking areas were, however, outside the designated housing site. The Minister explained in his evidence that his aim in considering the application was to improve the development for everybody. The decision to allow the community building to be constructed outside the boundary was pragmatic, and was taken because the building would have a wider use than just for the residents of the development. The point being made by Deputy Le Fondré throughout was that the DDB had required a smaller scale community building for the residents of the development, not for the wider public, and therefore it should have been contained within the Site.
- 4.41 The Principal Planner explained that although the land on which the road and the community centre would be built had not been rezoned for Category A housing, that did not mean that the land could not be built on at all. The Minister looks at each application on its merits and having regard to all the facts. In this case the Minister had made the decision to allow the development of the community centre, parking and the roadways outside the Site so that the public at large could access the facilities.
- 4.42 The Committee considers that issues arising from the size of the site and the matter of encroachments beyond the land intended for housing have now been resolved satisfactorily.

Delays/Noise issue

- 4.43 It is helpful to recall the timing of the applications during the period from January 2005 to the date of the approval of the scheme for 102 houses. The application for 140 houses had been submitted in November 2004 and it was informally considered in August 2005 (9 months). The scheme for 129 houses was submitted in September 2005 and refused in August 2006 (11 months). The application for 102 houses was submitted in November 2006 and approved in March 2007 (4 months). This is not an acceptable

process. Many reasons for the delays caused have been referred to throughout this report and it is not proposed that each issue should be revisited at length.

4.44 When asked about the delays in this case, the Principal Planner said –

“I think there were delays throughout the whole process; I think the process had built-in delays into it, starting with a process where you needed extensive public consultation to approve the development brief. Normally development briefs would have been approved by the planning authority in consultation with the various technical advisers, not subject to a fully public consultation exercise. I think that was a change. That obviously involved an extensive process of a lot of work and a lot of time involved in that. There were other things that caused delays. There were things like the change to ministerial government when basically the new Minister came in who had completely different ideas on design and what was acceptable design and what was relevant to Jersey and so forth, built-in delays as a result of that sort of change in the process, late on in the process. So the politicisation of the process, you might argue, created delays. The vast amount of time involved in public consultations and so forth and the implications of those would have had implications for time in dealing with the process. Even though they were not part of the actual process, many of them, they did extend the time.”

“I think the progress could have been significantly faster if the advice and the steers and the decision-making of the planning authority had remained consistent throughout the whole process. I think it changed in the frame of that process. You have talked about some of changes already. If it had remained consistent, that would have helped enormously in making the process faster. I also think that if the advice and requirements of all the statutory consultees, all of them, had remained consistent, that would have made the process a lot faster; and in that I have particular regard to Health Protection advice which appeared to become increasingly onerous throughout the application process”.

“As I have said before, [in] major applications nearly always the process is slower than would have been expected. The application process associated with this site’s question has been protracted because it is a major application with major issues to resolve. I say “major”. It is the size of the development, the complexity of the issues, the level and nature of public opposition, the highly politicised nature of the application from the outset; all those things build in, if you like, delays. The process from the submission of the first application to the decision to grant planning permission took 2.5 years.”

4.45 There is no doubt in the mind of the Committee that the change from committee to ministerial style government did add delays to the process. The Site history is such a prolonged one that it has seen various decision-making bodies evolve or change completely during its development^[6]. All of these changes have involved changes of personnel who then had to be briefed on the Site and needed time to familiarise themselves with the issues involved. It was, in fact, over 2 months into his new post that the Minister was able to be fully briefed on the Site. This is hardly surprising in the light of the numerous applications with which the Minister must have had to familiarise himself. It must be said that after a long period of delay it was only when the Minister took control in 2006 and provided some leadership on the application, that things finally began to be resolved.

4.46 The Director of Planning was asked if he thought the later arrival on the scene of Health Protection had caused major delays and problems. He replied –

“Yes, I do and I am not altogether happy that their position changed from one of no comment in 2001 .. to making requirements in excess of best practice in other places. We seem to have gone from a situation in a relatively short period of time where there did not seem to be an issue, and that was the view we took into account prior to zoning ... It is not satisfactory from our point of view because we obviously rely on the advice we get from the various departments and for there to be a fundamental shift in the view of a department, having relied on their first view, made life difficult, extended the process and created a great deal of frustration, I am sure, for the developer and indeed for the Planning Department.”

4.47 The single greatest factor which caused the most delay to the application process in this period was undoubtedly the issue of the noise which might emanate from Jersey Steel. Negotiations over noise have been both problematic and time-consuming. The problem was addressed at a much later stage than should have been the case, causing delay to the whole process.

4.48 It was only as a result of the re-establishment of working relations between the 2 departments, following receipt of the first application, that in January 2005 a full report was prepared by the Head of Health Protection Services commenting on the application for 129 homes. In the report, he outlined the continuing grave concerns that remained over noise at the site, including large gaps in information. He also considered other areas, such as traffic, flooding and schools and concludes –

“this site should not be considered appropriate for Category A housing”.

4.49 From January 2005 through to March 2007, the noise issue continued to be a difficult one and was even included in some detail in both the permit conditions and in the POA attached to the final planning permission. The Principal Planner’s recollection of the process was that HPD had produced a specification for comment by the developer, who appointed Peter Brett Associates (“PBA”). He said –

“After that we had this long and torturous series of reports and correspondence between the various parties, and there were lots of twists and claims and counterclaims between those parties and lots of inconsistencies, I would say in the advice that was given, and that has resulted in the developers having to meet, in my view, increasingly onerous conditions with relation to noise ... I believe that an acceptable and proportionate solution was found when we dealt with the application for 129 homes. That solution was put forward by Health Protection’s own consultant The solution that was eventually arrived at for the 102 homes was a much greater level of mitigation was required for that, and again that was deemed to be suitable and reasonable and proportionate”.

4.50 In the reasons he gave for refusing 129 houses, the Minister noted the various reports which had been compiled, noted that subject to various provisos, HPD had confirmed that the proposals at that stage would provide the necessary acoustic reassurance to overcome the outstanding concerns of noise nuisance. Whilst the Minister recognised that the developer had responded in a reasonable and proportionate manner to the noise issue, he still had concerns in particular that Jersey Steel had not been party to discussions and the need to address the potential consequential operational and occupational problems raised.

4.51 Attached at Appendix 12 is an extract (paragraphs 3.60 to 3.72) from the Minister’s written reasons for approving the application for 102 homes which clearly sets out what happened with regard to further reports.

4.52 The Head of Health Protection Services was asked to comment on the statement made that HPD had been moving the goal posts. He said –

“But as we became more involved and our investigation became more in-depth because of the requirements of answering the consultation process, it became more apparent that this was a far bigger issue than even we had probably suspected in the first instance. The noise levels that we were finding for the measurement which [the Environmental Health Officer] did showed a significant problem for us and why that first comment of “No comment” was apparently so wrong”.

4.53 It is the Committee’s belief that all of the above stems from 2 fundamental omissions; firstly the “No Comment” in the FS from Environmental Health, and secondly from the failure by the Planning Department to send a copy of the FS and the DDB to HPD. Both of these events occurred early in the process and could have saved months, if not years, of delays and wrangling over issues that were still unresolved at the date of the Committee’s public hearing.

4.54 The Head of Health Protection Services is satisfied that the chances of such an error occurring again are now comparatively remote. He explained –

“We have officers in positions now who have far more experience of the work that they are being asked to look at. We have checks by senior officers, again to try and ensure that we get consistency and to ensure we avoid having any problems. I think we can safely say, touch wood, that since this time we have had no instances where this has become an issue. We are certainly not aware of any. We are always resolved to try and ensure that we cover things very carefully, but we are down to human error, at the end of the day. It

would be foolish of me to say to you that in the future this will never happen, because human error may dictate, with the best process in the world, we would still suffer a problem. But I have to say that I am far more confident that what we have in place now will ensure that we do not run into this again.”

4.55 He also explained that it would help if HPD could “map the Island for noise to get an understanding of where the hotspots of issue might be.” However, as with the Planning Department, there is a resource issue. He said –

“It is resource intensive and at the moment I do not anticipate that we will ever get to being able to do that effectively.”

4.56 Once again, lack of resources prevents a department from implementing what could be said to be “best practice”.

General

4.57 Several other issues have been raised throughout the Inquiry.

Independence of the case officer

4.58 One of the criticisms raised by the Connétable was that one member of the Planning Department was too involved in all stages of the process, including the rezoning and the application itself. The Connétable made it clear that this criticism was directed at the process, and not the officer involved in this case. The Director of Planning praised the Principal Planner’s work on the development of the Site as exemplary, and then went on to explain the Planning Department’s approach to the allocation of sites to particular officers –

“We took the view that the person had produced a brief and would know more than any other planner in the department of the specific site conditions and so on; it made sense for that person to see the application through ... We did have some particular resource problems in development control at that time and our normal applications processing team and I think to take on these large items would have just totally disrupted the normal application channel through the department.”

4.59 The Director of Planning advised that reports by planning officers are all signed off and endorsed by a senior officer who could, in effect, pull rank and make changes to the report before endorsing it. In this instance, he had personally signed off the report on the application for 129 houses and had not felt it necessary to make any amendments –

“I have to say I saw the other reports for the second application and I thought they were exemplary reports and I do not think I have ever seen reports on applications as thorough and as detailed addressing all the concerns as the 2 reports produced on those 2 applications.”

4.60 The Principal Planner believed that the criticism showed a failure to understand the nature of the relationship between members of the various Committees, decision-makers and officers. He pointed out that, although he had negotiated with the developer, been involved in processing applications, made numerous recommendations, not all of which had been followed, the decisions were taken by former Committees or by the Minister.

4.61 The Minister himself dealt with this criticism. He said –

“Having reviewed the report in the light of these allegations, I find the report to be balanced and objective. It provides a clear, thorough and comprehensive examination of the planning issues relating to the application and was read and endorsed by the Director of Planning and Building Services and the Chief Officer of the Planning and Environment Department in advance of the Public Hearing.

I found the report dealt with the wide range of complex issues in an open transparent and considered manner and the information it contains has been helpful to me in reaching my conclusions.”

- 4.62 The Committee does not believe that the Principal Planner was biased towards the developer, either in his reports or in his dealings with the developer. As he said, he did not make the decisions with regard to the Site.

Environmental Impact Assessment

- 4.63 Questions have been raised as to why this application has not been subject to an Environmental Impact Assessment (“EIA”). The Minister’s response to the question was that it had not been required in the Development Brief and that throughout the process, the developer had, in any event, provided all the supplementary information that would have been required by an EIA. It is not within the Committee’s remit to consider the detail of the supplementary information provided by the time the Minister considered the application for 129 homes. The Minister was satisfied with the Environment Statement which was attached to the application for 129 homes, and did not feel that it was necessary to call for a separate EIA.
- 4.64 The Committee has considered whether or not an EIA produced at the outset would have led to less delay. The Principal Planner was asked for his opinion, and responded by stating that this would probably not have made a difference. The Committee takes the view that the issues which would have been covered by an EIA in relation to the Site changed so much during the process that even if an EIA had been produced at the outset, it would have had to be constantly updated. The Committee does not feel that the fact that the information was provided in a way other than in an EIA had a particularly detrimental or prejudicial effect on the process. However, the question as to whether or not sufficient information was requested and provided, and whether or not there should have been an EIA, will be answered later in the report when looking at the issue of the trees.

Conditions attached to the permit/Planning Obligation Agreement

- 4.65 The POA was finalised in March/April 2008, over a year after the Minister had made his decision with regard to the application. It contains a copy of the permit issued on 8th May 2007, which has 62 conditions attached to it. One of those was a requirement that the POA would be entered into within 6 months of the date of the permit, and that commencement of a certain amount of development in advance of the POA being signed and registered would be allowed. In the report on the final application, the Minister accepted that it was unusual to permit the commencement of any development in advance of POAs on sites zoned for Category A houses. Apart from the fact that a previous Planning and Environment Committee had set a precedent, he considered that there were good grounds for doing so in this instance, one of which was to obviate the need for the developer to lay off a large proportion of its workforce. The Minister had made it clear to the developer that any work carried out before the registration of the POA was entirely at its own risk and did not prejudice the Planning Department’s position or put it at risk. The developer had confirmed in writing that this was accepted.
- 4.66 The parishioners, and indeed the Committee, queried whether it was usual for a planning permit to have so many conditions, some of which related to fundamental basics of the development such as drainage. It was said that the permit acknowledged that there were serious problems to be overcome in relation to these fundamental issues, but that there was too much reliance on words such as “this will be addressed” in relation to these matters. The question was raised as to whether or not such problems should be resolved before the permit was issued.
- 4.67 Whilst the Committee feels that it would be better for as many of the issues accompanying an application to be resolved before a permit is issued, it has to accept that there will be instances, such as this, where there have to be conditions in relation to unresolved issues. Had the Minister taken the view that more of the conditions should be resolved before the issue of the permit, then this would have resulted in an even greater delay in providing housing on an approved Category A site than was experienced. The basic fact of the matter is that the Site had been rezoned in the knowledge that these problems were in existence. There were no solutions put forward at the time of the Island Plan 2002, and the Committee makes no apology for repeating Professor McAuslan’s comment –

“I admit to some uneasiness about this approach. It will mean the debate about the sites will proceed in something of a practical developmental vacuum: assertions can and will be made about the impracticality of developing a particular site without there being any clear basis of fact about the matter... there may be a temptation to argue for all the sites to be accepted “in principle” leaving the details to be sorted out later; there will then be the further temptation, having obtained the acceptance in principle, to forge ahead with the development, despite the problems.”

- 4.68 This is exactly what has happened with regard to the development of the Site. A decision such as “well we can’t find an answer to that problem so we won’t develop the Site” was not an option, although the parishioners and possibly even the Minister himself, might have preferred such an option. Whatever the problem, a solution has to be found – neither the Minister nor the developer has a choice. All of this could have been avoided if the States had been asked to reconsider the zoning of the Site early in 2003.
- 4.69 The Connétable made a very valid point in his evidence with regard to the involvement of parties unconnected with the development of the Site who are almost involuntarily drawn into the development. He pointed out that the purpose of POAs is to ensure that the developer provides various amenities or benefits for the community, such as the community centre and children’s area in this case. Yet the Parish was not asked until very late in the day if it would take on the responsibility for administering the community centre. After consideration, Parish Officials answered in the negative. Another example related to Jersey Steel. Various suggestions were being made with regard to ways in which the noise levels at Jersey Steel could be minimised; however, actual consultation with Jersey Steel did not take place until a very late stage. The Connétable suggested, and the Committee agrees, that parties who could potentially be asked to participate in a POA should be identified at the earliest stage possible and involved in discussion.

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

5.1 The Committee, in its consideration of this part of its remit, has organised the impact of the development into four sub-headings –

- i. Traffic
- ii. Flooding and drainage
- iii. Education
- iv. Trees.

Traffic

5.2 Traffic in the Bel Royal/Beaumont area has long been an issue for concern. As outlined earlier in this report, traffic was mentioned as a potential problem as early as 1996 when Mr. T. Gottard, another Principal Planner within the Department, studied the area and stated –

“the existing planning policies for this area should be maintained to protect the route (Beaumont/Bel Royal) from any form of development.”

5.3 Traffic has been identified in every study, report and parish objection since 1996. Professor McAuslan in 2001 asked about solutions to these potential traffic issues as well as the impact on traffic of re-zoning –

“The criticism of all the St. Lawrence sites is the traffic congestion that would be caused...”

5.4 Although some traffic problems are acknowledged (paragraphs 9.74, 9.78 and 9.86 of the Island Plan 2002), Professor McAuslan notes that no details are provided of what “improvements would be needed or provided or their likely impact or cost”.

5.5 The FS acknowledged traffic problems, and even calculated traffic projections, but only concluded that “careful consideration needs to be given to encouraging alternative means of travel”. The FS stated that there would be a “potentially significant increase to traffic flow” and “delays would increase by a much higher percentage” if the Site was developed. Traffic, as a conditioning factor of the Site, was nevertheless rated “fair” as it was considered that the Site offered mitigating factors such as the coastal cycle track offering alternative means of transport.

5.6 In his evidence Mr. D. St. George, Manager Transport Policy (and formerly the Highways and Traffic Engineer), Transport and Technical Services said –

“What I did in that letter (2001) was I talked generally about the fact that all these sites were going to generate quite a bit more traffic. I made particular reference to the fact that a number of sites would increase traffic on St. Aubin’s Inner Road. I predicted at that time that St. Aubin’s Inner Road traffic might increase by about 14 per cent if all these sites came to fruition. The point of that was that careful consideration needs to be given to encouraging alternative means of travel if this number of housing units is to be provided outside of the town area, particularly those in the west of the Island. That particular site was not seen as one of the worst sites”.

“If a site is seen as reasonably good in that it is close to schools, shops, cycle routes, bus routes, then you might be more flexible in the amount of potential extra traffic you would get because you would know that the alternative modes are there”.

“It was really a question of what the alternative is, bearing in mind at the time the Planning Department was faced with having to rezone a certain number of sites to provide for housing need. What I was trying to do was weigh up one site against the other. That site was reasonably good in terms of the fact that the trip generation rate could be expected to be relatively ... well, not low, because it is not. You could walk to town from there, but in this day and age people think it is too far to walk. As I say, if you can site places within definite walking distance of St. Helier then your trip rate comes down significantly”.

- 5.7 The Manager – Transport Policy made a comment which is interesting in the light of previous issues raised in this report –
- ... the important thing was that we were commenting on 15 sites at the time as opposed to going into any great detail on one particular site”.
- 5.8 The Island Plan 2002 concluded that it is not the purpose of any Island Plan, or for the Planning Department, to tell people where and how to travel.
- 5.9 The Development Brief approved in May 2004 contained little reference to traffic other than referring to bus routes and cycle paths, as well as access points. Yet Parish representatives and local residents had raised traffic generation as an issue from the beginning. In the Parish Meeting held in 2001 on the Island Plan Consultation Draft, there were several questions from parishioners about traffic concerns. Responses to these were perfunctory.
- 5.10 In a letter dated 21st May 2004 to Axis Mason outlining the approval of the Development Brief, and inviting the submission of a formal application, the Principal Planner discussed traffic impact as follows –
- “Members do have serious concerns about the increase in traffic which will occur as a result of the proposed development More specifically the Sub-Committee recognise that the impact of the traffic generated by the development proposals for the site in question could be mitigated to some extent by:
- the proximity of the primary school, beach and certain other community facilities (i.e. within walking distance);
 - the availability of two main bus routes to the north and south of the site;
 - the good access to the main cycle route into town.
- The Sub-Committee considers that the planning requirements referred to in my reports and below, will be important in this respect, because they will, in effect necessitate a reduction in the number of new homes on the site”.
- 5.11 Axis Mason responded to continuing concerns about traffic with the following –
- “It is widely accepted that the issue of traffic volume and generation is an Island-wide problem that should be addressed strategically.”
- 5.12 Objectors in 2006 questioned why the impact of all the developments in the west had not been considered.
- 5.13 The Manager – Transport Policy explained that when traffic impact assessments are done in the UK it is quite common to apply a national growth rate to traffic. That does not happen in Jersey because TTS monitors traffic levels and continues to carry out survey work to assess the volume of traffic on the roads.
- 5.14 Various traffic impact assessments have been undertaken during the history of the Site, including one in June 2005 undertaken by PBA on behalf of the developer. All of these studies have concluded that the development will result in a considerable increase in traffic flows in the area, particularly at peak times. However, the PBA report concluded that the additional impact of the proposed development of 129 homes would be negligible in comparison with a theoretical development of 97 homes, as indicate in the Island Plan 2002.
- 5.15 Following receipt of the planning application for 129 homes, TTS concluded that although there would be significant increases in traffic on Rue de Galet, and that traffic congestion would be noticeably worse at peak times, the outlined solution of encouraging journeys other than by car, including the excellent existing cycle route into town, and the developer contributing to 2 additional bus services at peak times for 5 years, would provide adequate mitigation.
- 5.16 The Manager – Transport Policy explained that the Site was not looked at in isolation. If he knew that there was another development just along the road then he would take that into consideration. He said –

“I remember discussing at the time with Dandara who appointed a consultant to do the traffic impact. I said there were these other known sites and they said: “You cannot really blame us for the traffic that is going to be generated from those other sites”. My answer to that was: “I cannot blame you for it but I can certainly bear it in mind when I take on your information and pass on my comments to the Planning Department” which we did do.”

5.17 When the Minister considered the application for 129 homes, he realised that the Site had some advantages which supported the use of alternative forms of transport. He also concluded that the proposed mitigation of the provision of 2 additional peak time buses was not sufficient to override the likely adverse traffic impact of the proposed development.

5.18 When the final application for 102 homes was approved, the Minister pointed out that this represented a 21% decrease in traffic numbers from the previous application. He confirmed that TTS had taken into account the potential traffic impacts of recently approved developments in the west of the Island. For various reasons, he did not consider that there was justification for refusing the application on traffic grounds, and went on to describe other factors which lend weight to the position^[7]. Development at the Site was thought to be more sustainable than other alternative sites, due to its proximity to a well-established cycle path and alternative means of transportation. The additional buses that would be provided by the developer were seen as an added bonus.

5.19 Ultimately, the traffic issue at the Site will always be just that, an issue with people (and not just the parishioners) who use La Vallée de St. Pierre. The Committee’s view is that this development and many others will simply tend to displace traffic from one part of the Island to another, while other factors will be more directly responsible for any overall increase in traffic volumes Island-wide that might occur post-development. It therefore follows that traffic issues, although worthy of consideration, will probably not be a primary matter of concern in this or any similar cases, unless the anticipated vehicular displacement is expected to have a particularly negative localised effect on traffic volumes. The Minister is not a traffic expert, nor are the members of the Committee. In this case, the Committee concludes that the Minister has correctly relied on the advice of the Manager – Transport Policy and of other experts. As a result he has been satisfied that the impact would not be such as to warrant refusing the scheme.

5.20 The Committee agrees with comments made by the Minister when asked about traffic. Indeed, the Committee considers that his observations relate to many of the issues discussed in relation to the Site rezoning and subsequent application. He said –

“This is a site that was re-designated, rezoned in the Island Plan 2002 for 97 houses. I think it is unreasonable at a later time, some four years later, to turn round and say: “Well, we are going to reassess the site because we decided that there are an additional X hundred number of houses in the area and therefore we do not consider that the traffic implications are fundamentally changed.” I do not think that is a sustainable position. The growth of number of housing units on the west of the Island *was predictable when the States approved the Island Plan 2002* and if there were traffic issues then there were traffic issues in 2006 as well... I felt we had done a pretty good job getting the traffic down from the traffic that would be generated by 129 down to 102, which is very much in line with the 97 approved in the Island Plan 2002.”

5.21 The Committee considers that traffic issues become far more important at an Island-wide level. Considerable development has taken place in the west of the Island over the past few years and the cumulative effect of this on traffic has not yet been considered. Yet none of these other developments have been turned down on traffic grounds and it would be unfair to do so with this site. The Manager – Transport Policy has explained that there is a draft policy called the Integrated Travel and Transport Policy, which is overdue in being referred to the States. **The Committee considers that such an Island-wide traffic study and plan is long overdue and suggests that the Minister for Transport and Technical Services should publish the Integrated Travel and Transport Policy without further delay.**

Drainage/Flooding

- 5.22 The drainage issue is a complicated and emotive one, which at the date of writing, has still to be finally resolved. It is split into 2 major parts, namely surface water (flooding) and foul water (sewage).
- 5.23 Drainage was identified early on in the planning process for the Site, which is located next to Le Marais de St. Pierre. This area, and the general locality, has long been subject to flooding during times of high rainfall and spring tides. It was flooded during the storms of March 2008 and there are many photographs on record of historical flooding in the area, including to those houses situated to the south of the Bel Royal development.
- 5.24 As public opinion at the time generally seemed to be that development of the Site would never come to fruition, due to the known and recognised flooding history of the area, local residents were clearly surprised when the Site was rezoned in 2002.
- 5.25 At a Parish Meeting held in June 2001 on the Island Plan Consultation Draft, several local residents raised the issue of flooding, and were advised by consultants and officers of the Department that, although it was acknowledged that there had been flooding problems in the area in the past, there were appropriate methods of attenuation available, and that comprehensive measures would be adopted to address the situation throughout the entire area. It was made clear that approval of the proposed sites would be the topic of a debate in the States Assembly, and that previous development proposals for the Site had failed because of the prohibitive cost of drainage work. It may have been therefore, that objectors were placated and may have been convinced that rezoning of the Site would fail due to this major issue.
- 5.26 Professor McAuslan in his report highlighted –
- “The particular criticisms here are that development will cause flooding and that there will be a need for flood relief measures and traffic problems. How feasible will flood relief measures be; how costly?”
- 5.27 The FS identified the site as –
- “a low lying area which is subject to flooding during wet periods, particularly if heavy rainfall coincides with high tides”.
- and –
- “on-site attenuation would be required to ensure that the rate of discharge from the proposed site does not exceed the current rate of discharge from the undeveloped land. In view of the area of the proposed site, the scale of the on-site attenuation works will be considerable”.
- 5.28 Despite these significant comments, the Conditioning Factors table in the FS listed both foul drainage and surface water drainage as “Fair” with the attached comments –
- “Considerable off-site costs for sewer” “will need expensive on-site attenuation and preferably a S.W. pumping station to ensure area and site protected from flooding as sea levels rise”.
- 5.29 When the then Planning and Environment Committee visited sites proposed for rezoning in November 2001, they were advised that the Site did not present insurmountable problems with regard to surface water, although a new pumping station would be needed at the back of the development.
- 5.30 The DDB included the following –
- “The most obvious potential constraint to development is posed by the periodic flooding of Goose Green Marsh to the south of the land zoned for housing. Drainage solutions will be required, which avoid any exacerbation of the current problems”.
- 5.31 There followed a whole section (paragraph 3.3) on “Drainage and Flooding Issues” which highlighted the fact that the then E&PSC did not hold any funds for any options to address flooding in the area. It

concluded that potential developers should carry out a detailed feasibility study of the requirements for surface water drainage and remedial flood measures.

5.32 With regard to foul drainage the DDB concluded that –

“an off-site sewer will be required across difficult ground conditions to connect the site to this sewer. Off-site costs will therefore be considerable”.

5.33 In its approval of the final Development Brief for consultation, the E&PSC identified that studies on flooding in the area should be updated in the light of the latest predictions of the United Kingdom Climate Impacts Programme.

5.34 The Connétable had also, in response to receiving letters of concern, taken specialist advice on the nature of the research or studies required in relation to the drainage for developments near wetlands. He communicated his findings to both the developer and the PSD drainage engineers. PSD responded by setting out what they would expect the detailed drainage scheme and its supporting technical report to include in order to make a proper assessment.

5.35 This prompted a comment from the Principal Planner in his report dated 16th March 2004 as he recognised this had become a political issue. “Is the Committee happy to deal with the proposed drainage scheme and flood relief measures as part of the normal application process?” This led to the agreement by the PSC in May 2004 to hold a technical seminar –

“with local residents and interested parties, prior to the application being formally submitted, to resolve outstanding issues regarding flooding and traffic”.

5.36 Perhaps this statement raised expectations that these issues could be resolved to the satisfaction of all concerned, when this was obviously not the case with such an emotive and complicated issue.

5.37 The Development Brief included a specific drainage requirement and a section on global warming and rising sea levels –

“Drainage solutions will be required which avoid any exacerbation of the current problems”.

“Any application must be accompanied by drainage proposals, which meet the requirements of the Public Services Department – Drainage Engineers and must be supported by a detailed drainage report”.

5.38 It also includes a section on “contribution to reducing flooding in the area”. These changes appear to have been made as a result of the consultation and representations made on the DDB.

5.39 The requirements of the Development Brief led to the developer subsequently appointing PBA as experts in flood risk analysis and Ross-Gower Associates as local engineering consultants. It was pointed out that –

“appropriate development of the site is currently the only route for funding construction of the surface water pumping station and on-site attenuation measures necessary to improve even the existing flood risk situation.”

5.40 The Parish however, questioned the impartiality of the appointed consultants and remained sceptical about their proposals, and the Connétable lodged P.48/2006.

5.41 By the time the PAP gave informal consideration to the application for 129 homes in June 2006, the majority of its members considered that the flooding issue had been properly addressed, but their support was on the proviso that the mitigation measures were designed to do what they were intended to do and that they were put in place **prior** to the commencement of house building.

5.42 In the States debate on P.48/2006, Deputy G.W.J. de Faye, Minister for Transport and Technical Services,

explained how the flooding occurred when heavy torrential downpours coincided with a very high tide. He explained that the intention was to install a very substantial capacity pumping station by the sea wall. He had been assured that having the new pumping station would protect the area in the future – it would be an overall improvement having a pumping capability in area where none exists at the moment.

5.43 In the first formal planning application for 129 homes, the Minister refused the application on the grounds of education, site boundaries, overdevelopment and noise impact but stated –

“I am satisfied that the proposed measures (for drainage) adequately address the flooding issues”.

He did however, have outstanding concerns over the siting of the required pumping station.

5.44 Local residents remained unconvinced that the flooding issue had been adequately addressed and that flooding risks had been properly taken into account. Their view was that well-documented evidence from UK Planning authorities showed that there should be a presumption against housing developments on flood plains. Unfortunately, it does not appear that this view was strongly expressed at the time of the rezoning. Mr. D. Filleul expressed the view in his written submission that –

“Local residents have little confidence in these measures and are concerned not only for their security but also what the insurance implications might be. It is especially in this area of concern that the quality of advice from Planning’s consultants has been challenged. Their admission that the computer modelling which preceded their report was based on a “similarly configured area in the UK” was not received with the same confidence as that shown by the Public Services engineers”.

5.45 In the Minister’s report with regard to the approval of 102 homes he made it clear that–

“the proposed development would not be susceptible to future flooding and that it would not result in the flooding of existing property”.

5.46 The Minister nevertheless acknowledged that a number of local residents considered the issue unresolved. In his evidence to the Committee he said –

“My concern is to make sure that before the properties are occupied, that the drainage solution is in place, is functioning and is to the satisfaction of TTS. Effectively the concerns are addressed by the fact that all development works are being carried out at the developer’s risk and basically if the developer does not complete a drainage solution that meets TTS’s requirements and the Planning Department’s requirements then, very simply, the houses will not be able to be occupied.”

5.47 The Minister was asked why the conditions with regard to the drainage had been changed since the permit was issued. Mr. S. Fisher, Manager- Engineering Design and Technical Records at TTS, had explained that it was for the developer to provide proposals or designs which are sent to the department for approval. TTS replies with its comments, the proposals are revised and resubmitted. The Minister explained that it would be a mistake to stick rigidly to one solution when, throughout the process, it had become apparent that better solutions were available. This resulted in negotiations between the developer and TTS to come up with the best system, but the important thing to be remembered was that it was the developer’s risk if a solution could not be found and the houses could not be occupied. He also understood that the proposed flooding mitigation would significantly improve things for the houses to the south of the Site, and that TTS would not sign off the development without ensuring that those houses are adequately protected “and perhaps better protected than had been originally proposed”.

5.48 At the hearing Deputy Le Fondré said with regard to the drainage –

“I will say, drains were a big concern at the beginning. I think to an extent that has subsided a lot because essentially the connection is meant to go into a larger foul system that will take the capacity. My inference imagines that there is a capacity on the one that goes under the main road.”

5.49 Certainly this was the view of the Manager – Engineering Design and Technical Records, who

commented that if the pumping station had been in place in March 2008 when there was severe flooding, the pumping station would have cut in and would have helped to get rid of some of the water. He confirmed that the pumping station would have been of a much smaller capacity had it been used just to serve the Site. The capacities which have been required of the developer “will give quite significant benefit to the general area as well”.

- 5.50 Rather late in the process, it came to light that there was a legal problem with the original proposed siting of the pumping station in the car park. This has now been resolved and does not need comment other than that the Committee was surprised to learn that what could have been a fundamental problem was not recognised far earlier in the process.
- 5.51 Conditions 50 – 55 inclusive in the permit refer to drainage and flooding issues and the POA (Appendix 13) contains specific references to the pumping station and its maintenance, attenuation tank maintenance and the restoration of the fabric of Le Perquage.

Conclusions

- 5.52 Flooding and drainage issues were, and still remain, one of the most contentious issues surrounding the Site. Public opinion and memory of occurrences in the area remain strong, and local residents are still unconvinced that measures outlined and accepted will be sufficient to avoid flooding in the future. This is despite the considerable consultation that has taken place over this issue.
- 5.53 The developer followed, and continues to follow, all requirements on this issue, which has involved considerable expenditure.
- 5.54 The Planning Department perhaps underestimated, and certainly underplayed, the flooding issues in the first instance. The rating of the flooding and drainage in the FS as “Fair” was, with hindsight, an understatement.
- 5.55 Although the positive contribution made by the Minister for Planning and Environment in driving the planning process forward is acknowledged, the Committee considers that the Minister partially undermined the process as a transparent and reliable one by going back on his stated commitment that the developers would be required to adhere strictly to any planning condition. While this state of affairs is regrettable, the Committee also recognises that the Minister was left with minimal room for manoeuvre. Drainage and other major issues should have been dealt with properly, well before the Minister was required to determine the application for 102 homes. Compromises were effectively made by the Minister out of necessity. The fact that the Minister found himself in this position is **again** symptomatic of the failure to allocate sufficient resources to the Island Plan process at an earlier stage.
- 5.56 Whilst the Committee appreciates the serious concerns of parishioners with regard to these issues, the fact remains that the Site was rezoned for Category A housing, and no amount of public expression of those concerns could alter this position. It was anticipated all along that serious works would be required, but the issues would have to be resolved. There was never any thought from the planning/developer side that the issues could not be resolved and therefore the Site could not be developed. On the other hand, the parishioners believed that these issues might lead to a reconsideration of the development itself and also a reduction in the number of houses. Unfortunately, the only way the development could have been stopped would have been by the States Assembly voting to rescind its decision to zone the Site as Category A housing, but no proposition to this effect was ever lodged.
- 5.57 The Committee has to comment on the fact that the drainage system, which is a fundamental part of the development, had not been finalised at the time of the approval and still remains incomplete. The Manager – Engineering Design and Technical Records, confirmed to the Committee that it is usual at the planning application stage for the actual principle of how a site is going to be drained to be agreed. In addition, it was unusual, in his experience, for drainage requirements to be included in a POA. The Minister has emphasized that the houses cannot be occupied until the system is working. The Committee has to ask the question “What happens if it cannot be sorted out?” The houses are built but empty. The

developer would inevitably go bankrupt. Parishioners would be left with a development on what could have remained as a green field. This is hardly likely to happen, but that fact remains that it cannot be discounted. Major issues such as flooding should be flagged up at the earliest stage possible, and as suggested by Professor McAuslan, addressed in more detail from the outset.

5.58 In expressing his satisfaction with the measures to address the flooding issues in the application relating to 129 homes, it was indicated that the SWD would be in place and operational prior to commencement of housing development.

5.59 Subsequently, on the final approval of application to build 102 homes in May 2007, the concept of permanent flood mitigation measures was introduced. These do not have to be in place and operational until prior to the completion of the development.

Education

5.60 Education, Sport and Culture (“ESC”) is a statutory consultee, and therefore once the Site had been identified in the Island Plan Consultation Document, educational issues had to be addressed as part of the consultation process.

5.61 Throughout the process, it has been stated on behalf of the Parish that the local primary and secondary schools did not have the capacity to take in all the children who might move to the Site. Mr. Jim Westwater, Head of Planning and Projects at ESC, has given his views on capacity in respect of the different schemes.

5.62 The Development Brief devotes a whole section to Education Issues (3.5). This section outlines the most recent developments in school place planning and concludes –

“The onus is on the Education Department to meet the educational requirements of the Island’s children and, in this instance, it may have to consider altering boundaries of school catchment areas, or explore what it considers to be more suitable options”.

5.63 It includes details of projected numbers over the next few years which are estimated and variable. It suggests that the developer discuss the matter with the Education Department in advance of any planning application being submitted.

5.64 The developer’s view expressed through Axis Mason was that the issue of capacity at Bel Royal Primary School was –

“a matter entirely for the States to resolve.”

5.65 It is clear from the documentation the Committee has seen, that the answer to the question of whether or not local schools, both primary and secondary, have had sufficient capacity, has, understandably, varied during the time between the rezoning of the Site and the approval of the permit for 102 homes. Prediction of numbers cannot be an easy task, as those numbers must fluctuate on a regular basis. The parishioners were, in effect, victorious on this issue, as the capacity in schools was cited by the Minister in his refusal of the application for 129 homes –

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

5.66 However, by the time the application for 102 houses was considered, the Minister had the following comments to make –

“Clearly the potential child yield has diminished for the current application for 102 homes. I am advised in a letter from the Education Department of 11th December 2006, that the proposed development is expected to yield a total of 36 “new” children seeking entry to Bel Royal School and a further 16 seeking

entry to Les Quennevais School. This compares to 42 and 18 respectively for the previous application and 32 and 14 respectively for a theoretical scheme of 97 homes. The Education Department has confirmed that, based on demographic trends, Bel Royal and First Tower Schools may be able to accommodate all the extra children seeking entry as a result of the proposed development and that by 2011, Bel Royal School alone may be able to accommodate all these extra children ... In considering the nature of the school capacity situation, it is also important to have regard to the temporary nature of the school capacity problems ... In view of the above, I do not believe there is sufficient justification to warrant refusing the existing application on the grounds of inadequate school capacity.”

Conclusions

5.67 School capacity issues are not fixed and are difficult to predict with accuracy. They are reliant upon a number of factors, some of which are notoriously difficult to ascertain, and some of which change rapidly and unpredictably. The Committee can find no fault in the consultation process with the Education Department. It is clear from the reasoning for the Minister’s decision set out above that he had followed the advice of the “experts”.

Trees

5.68 A chronology of events relating to the trees on the Site can be found at Appendix 14.

5.69 It is important to note what had happened prior to the commencement of the felling of trees on the Site on 11th May 2007. From that chronology it is important to note the following –

1. It was anticipated as far back as the DDB in 2003 that the roadside trees would be felled.
2. A decision was made in May 2004 by the then PSC that the roadside trees would be removed in the interest of safety.
3. In the letter to Axis Mason dated 21st May 2004, the developer was told that it was recognised that the trees would have to be felled in the interests of safety.
4. As at 16th May 2006, when the Principal Planner wrote his report on the application for 129 houses, he noted that “this matter has never really featured strongly in the public consultation to date”.
5. When the Minister refused the application on 14th August 2006, he declared himself satisfied with the environmental work which had been carried out. He said –

“Most developments will have some impact on habitat and wildlife and this is no exception. However, the effect is considered reasonable in this case.”

6. Condition 3 of the permit issued advised that preparation of the Site could be commenced Condition 9, although it did not specifically state that trees could be felled, certainly inferred by the reference to “realignment/reinstatement ... of the trees” that they could be felled, and then condition 20 stated that no tree could be felled, lopped or topped without the written consent of the Minister.

5.70 In the Committee’s view, the position was, at that stage, somewhat confusing. The developer assumed, once it had received the permit, that it could go ahead and fell the trees. The Committee understands why the developer thought this, bearing in mind that approval had been given 3 years before for the trees to be felled. Certainly it does not feel that there was anything suspicious in the fact that the developer knocked the trees down so quickly after receiving the permit. It had, after all, been waiting for several years to start work on the Site and it was anxious to get going. In addition, it was confirmed by the Planning Department on 14th May 2007 that the developer had felled the trees **in accordance with the terms of the permit**, so although Islanders in general, not just the parishioners, were unhappy with what had happened, there could be no blame laid at the developer’s door for what had happened. That being said, one has to ask whether or not sufficient thought was given to the issue of the felling of the trees, the timing and the impact.

5.71 In the States sitting on 15th May 2007, the Minister was asked by Deputy Le Fondré if he would ensure that no further felling or scrub clearance would be carried out before the end of July. The Minister advised that the developer had already agreed, in writing, not to continue with the felling until the end of July. He quite candidly took full responsibility for the situation and undertook to carry out a full survey of the Site to ensure that there were no protected nests in any of the trees due to be felled. He accepted that he had not appreciated that the permits that were issued would allow the trees to be felled immediately, and possibly result in the destruction of nests of protected wild birds contrary to Article 6 of the Conservation of Wildlife (Jersey) Law 2000.

5.72 In the report headed “Rapid assessment of breeding birds at Bel Royal Development Site, La Vallée de St. Pierre, Jersey” (Appendix 15) Dr. H. Glyn Young (“Dr. Young”) said –

“Before this study, birds had been poorly represented in reviews of the site and no Environmental Impact Assessment (EIA) carried out. The only written account of fauna in relation to the proposed development is from Mike Felton Limited (2004) and this document, never intended as a faunal assessment, includes only a passing interest in breeding birds.”

5.73 Mr. M. Freeman, Principal Ecologist at the Department, commented in a report he compiled in relation to tree habitats at the request of the Minister –

“Had a full Environmental Impact Assessment (EIA) been carried out for this site, the value of these trees would have been noted. However, it appears that some consideration was given to the value of these trees, but the apparent over-riding importance of providing clear site-lines for traffic and new footpaths led to the decision to cut these down.

It must become standard practice to recognise that mature trees have infinitely greater value than ones which have just been planted. It is appreciated that a replanting scheme is necessary where tree losses are inevitable, however this must be seen as a less favourable option.

It will be useful to review the current practices when determining such applications in the future. The value of trees for wildlife and their importance for people is evident and it is the responsibility of everyone involved in the removal of trees to comprehensively consider all options before the decision is taken to remove trees.”

5.74 The Committee agrees with the view of the Principal Ecologist that an EIA should have been carried out, and should be carried out as a matter of course in such large developments in the future. Whilst an EIA in this case might not have prevented the ultimate felling of the trees, it is assumed that such an assessment would have given the Minister the information which he lacked with regard to the timing of the felling. It would appear from the documentation provided to the Committee that the only comment on the application for 102 houses from the Environment Division was with regard to the use of waste materials which is very strange when one considers the above comments from the Principal Ecologist. In his report, the Principal Ecologist recommended that there should be a “more robust and integrated cross-departmental system of appraisal of trees on development sites to prevent this happening again”. The Committee is pleased to note that in his decision of 23rd July 2007, the Minister asked his officers to enter into discussions about this with the Environment Department. While the Committee does not see why these discussions are limited just to the matter of trees on development sites, it hopes that those discussions are either ongoing or have reached a satisfactory conclusion.

5.75 There is no doubt that the situation with regard to the trees led to further delays in the process, albeit after the issue of the permit. After the public had voiced their concerns with regard to the felling of the trees, the Minister decided to provisionally list 2 of the remaining 3 trees. In practical terms this meant that the developer could not comply with the terms of the permit with regard to road safety improvements. A compromise was eventually reached by all concerned which resulted in the proposal that the tree be moved. However, after a further appraisal of the tree’s condition by the States Arboriculturalist, it was decided that the tree should be downgraded and removed. There have been points of view aired that there was nothing wrong with the tree. The Committee cannot, of course, comment on whether or not there was

anything wrong with the tree. What it can comment on is the fact that the Minister did his best to save the tree, and he could have done no more than obtain and rely on the further report from an expert, namely the States Arboriculturalist. There could have been serious consequences if the Minister had agreed to leave the tree, against expert advice, and then it had fallen onto a car or pedestrian and caused damage.

5.76 One final comment needs to be made about the planning process in relation to the trees. It seems incredible that the issue about the retention of the trees and the access to the Site should come to a head at such a late stage in the development. This should have been highlighted far earlier on, possibly even before the approval of the development.

Section 6– Miscellaneous matters

Sheltered Housing

- 6.1 The question has been asked as to why there was a substantial reduction in the number of Homes for Life from the number outlined in the DDB to the final approved plan. At the request of the Minister, the Principal Planner produced a note explaining why the number of proposed sheltered housing at the Site had been reduced (**Appendix 16**). The Committee accepts the explanation in that document and does not feel the need to comment further on this point.

First-Time Buyer Eligibility

- 6.2 As part of its terms of reference, the Committee was charged with considering the present demand for the type of houses being constructed on the Site.
- 6.3 Initially, the answer to this question seems somewhat obvious and straightforward. The average price of a 3 bedroom family home in the Island has risen markedly during the course of this Inquiry. In the 4th quarter of 2007, the prices of such homes were rising at an annual rate of approximately 21%^[8], indicating that the level of demand for family homes may have been significantly greater than the availability of supply. As the Committee has not been made aware that the developer has experienced any difficulty in finding buyers for the homes being built at the Site, the hypothesis of a supply side shortage in the housing market seems eminently plausible. However, the Committee has discovered demand levels for Category A homes are more difficult to understand than it first thought.
- 6.4 Section 8 of the Island Plan 2002 refers to Category A housing as affordable or 'need' housing intended to provide States, parish and housing trust rental homes and homes for first-time buyers. It claims –
- “The two categories of housing are clearly understood in Jersey and thus will remain.”
- 6.5 The Committee’s understanding of the term ‘first-time buyer’ had been a literal one. It now understands that the definition of a first-time buyer can be affected or extended by one of the following scenarios –
- The owner of a Flying Freehold flat will be eligible, assuming the existing flat is to be sold to a first-time buyer.
 - The owner of a Share Transfer flat will be eligible, assuming the existing flat is to be sold, but not necessarily to a first-time buyer.
 - Where property was owned by a spouse in a former marriage, the couple will be considered as first-time buyers, providing that the spouse who has not owned property is fully residentially qualified in their own right. If not, then the couple will not qualify as first-time buyers. There may be some exceptions where no financial benefit has been gained, but these would have to be considered individually by the Minister.
 - Owners of existing flats will not be eligible to purchase first time buyer flats of the same size as their present accommodation.
 - Individual cases will be treated on their merit where land not being a home has been previously owned, e.g. such as by inheritance of agricultural land, joint inheritance with siblings of family property, or other general minor land/property ownership.
 - In limited cases, the owner of a one or 2 bedroom house may be granted consent to purchase a larger house (in terms of number of bedrooms) on a Category A site, where there is a proven element of need; e.g. a couple with 2 children of different sexes in a 2 bedroom terraced house with no scope to extend could demonstrate an element of need for a 3 bedroom house.
- 6.6 The Committee has been advised that concessions granted along the lines of those outlined above are not

significant in terms of the total number of Category A homes provided in the last 5 years, and that in fact the majority of purchasers have been bona fide first-time buyers in the Island. While the Committee readily admits that it is not well-qualified to comment on economic policy, it is aware that the above scenarios appear to have some potential to complicate and to distort the Island's housing market.

6.7 With the foregoing in mind, and with a view to making future planning for housing need as straightforward a process as possible, 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.

WITNESSES INTERVIEWED BY THE COMMITTEE OF INQUIRY

Public Hearing Thursday 24th April 2008

Senator F.E. Cohen, Minister for Planning and Environment

Mr. P. Thorne, Director of Planning

Mr. R. Corfield, Principal Planner (and case officer for the Site)

Connétable G.W. Fisher of St. Lawrence

Deputy J.A.N. Le Fondré of St. Lawrence

Public Hearing Friday 25th April 2008

Senator T.J. Le Main

Mr. S. Smith, Head of Health Protection Services

Mr. A. Irving, Environmental Health Officer

Mr. D. St. George, Manager– Transport Policy

Mr. S. Fisher, Manager – Engineering Design and Technical Records

WRITTEN SUBMISSIONS/COMMENTS RECEIVED BY THE COMMITTEE OF INQUIRY

Mr. D.G. Filleul, OBE

Mr. M. Clancy (Dandara Ltd.)

Mr. Ellis (Jersey Steel)

Mr. G. Webber (Axis Mason Consultants)

Mr. G. Voisin (former Deputy of St. Lawrence)

Connétable G. Fisher of St. Lawrence

Deputy J.A.N. Le Fondré of St. Lawrence

Deputy D.W. Mezbourian of St. Lawrence

Deputy C.H. Egré of St. Peter

Mr. H. Coutanche (former Connétable of St. Lawrence)

Mr. M. Dubras (former Deputy of St. Lawrence)

Submissions from the public/interested parties (received following JEP advertisement)

RELEVANT LAW

Island Planning (Jersey) Law 1964, as amended

Planning and Building (Jersey) Law 2002, as amended

States of Jersey Law 2005

Standing Orders of the States of Jersey (2007)

TABLE OF APPENDICES

		<i>Page</i>
Appendix 1	P.49/2007: Fields 848, 851 and 853, Bel Royal, St. Lawrence: Committee of Inquiry.....	83
Appendix 1A	Amendment to P.49/2007: Fields 848, 851 and 853, Bel Royal, St. Lawrence: Committee of Inquiry.....	83
Appendix 2	Procedure Note for Committee of Inquiry.....	84
Appendix 3	General Chronology.....	86
Appendix 4	Jersey Island Plan Consultation Draft – Report of Professor Patrick McAuslan MBE.....	91
Appendix 5	The Feasibility Study.....	96
Appendix 6	Act of the Planning and Environment Committee dated 24th January 2002.....	106
Appendix 7	Background note concerning the draft Development Brief for the Site.....	108
Appendix 8	Schedule showing the history of the noise issue prepared by The Principal Planner with added comments from HPU.....	110
Appendix 9	The Principal Planner’s report dated 16th March 2004.....	130
Appendix 10	PSC minutes dated 21st May 2004.....	135
Appendix 11	Scrutiny extract re changes in the Committees.....	137
Appendix 12	Extract from Minister’s report May 2007.....	139
Appendix 13	Planning Obligation Agreement containing planning permit.....	143
Appendix 14	Chronology re trees.....	210
Appendix 15	Dr. H. Glyn Young’s report.....	214
Appendix 16	Notes re sheltered housing.....	227

The Committee would like to record its thanks for the assistance provided during the course of its Inquiry by officers of the States Greffe. In particular, it wishes to thank Mrs. J. Bell-Cook, Clerk to the Committee of Inquiry, and Mr. I. Clarkson, Acting Clerk to the Committee of Inquiry during the closing stages of the Committee’s deliberations.

FOLLOW THIS LINK TO: [APPENDIX 1](#)

FOLLOW THIS LINK TO: [APPENDIX 1A](#)

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Procedure Note for Committee of Inquiry, Bel Royal, St. Lawrence

“The Committee of Inquiry is made up of 3 members, as follows –

1. Mrs. Carol Canavan
2. Mr. David Watkins
3. Mr. Peter Kemble.

The quorum of the Committee is 2, and in the absence of the Chairman, Mr. Watkins will chair meetings. The Committee is supported by an Executive Officer/Committee Clerk from the States Greffe.

The Committee has reviewed the large number of documents that exist relevant to their Terms of Reference and has called for such further documents as it requires. The Committee will take written evidence as read, and will hold oral hearings to explore points of disagreement, inconsistencies or matters it wishes to elucidate.

Meetings: The Committee’s business meetings and deliberations will be held in private and are covered by exemption 3.2.1(a)(iii) of the Code of Practice on Public Access to Official Information –

“3.2.1 Information shall be exempt from disclosure, if –

- (a) such disclosure would, or might liable to –
 - (iii) prejudice legal proceedings or the proceedings of any tribunal, public enquiry, ... Board of Administrative appeal or other formal investigation”.

Hearings: The Committee’s hearings will be held in public. Witnesses will be notified of their requirement to attend in advance of the meeting in the first instance by notice, but if required by summons, in accordance with the provisions of the States of Jersey (Powers, Privileges and Immunities) (Committees of Inquiry) (Jersey) Regulations 2007. Please refer to the Notice for full details of relevant procedure and privileges. The notice will identify the areas the Committee wants to address. The Committee will not generally question witnesses on oath, but reserves the right to request an oath do so. The hearings will be recorded and transcribed.

Stages of Investigation: The Committee has split its work into 4 Heads of Inquiry –

- Part 1: Pre-Zoning/Rezoning of the Site
- Part 2: Development Brief *et al* 2002 – 2004
- Part 3: 2004 – 2007 Planning Applications
- Part 4: Impact on Infrastructure

The Inquiry is taking the following course –

- Collection and collation of documentation;
- Call for Written Evidence;
- Site Visits.

Areas for further investigation –

- Call to witnesses to give oral evidence;
- Public Hearings;
- Deliberation;
- Production and publication of a Report; and
- Recommendations.

Public Hearings will be held on Thursday April 24th and Friday April 25th in the Blampied Room, the States Building, Royal Square. Access for witnesses and the public is via the public entrance onto the Royal Square.”

The Chronology of the Bel Royal Site

February 1996	A. Gottard's report on planning study
21st March 1996	Proposals for sports facilities shelved. No housing planned on the site.
1996 – 2000	Preliminary identification of sites carried out.
19th March 2000	Atkins appointed.
April 2001	Professor McAuslan appointed.
11th April 2001	Housing Committee considered report by W.S. Atkins re draft Island Plan.
24th May 2001	Briefing for States Members re draft I.P.
June 2001	The site was short-listed among 15 sites for rezoning in the Consultation Draft Island Plan.
14th June 2001	Parish meeting.
July – October 2001	Research was carried out on the Bel Royal site to enable the preparation of the Feasibility Study.
September 2001	Professor McAuslan MBE, Independent Consultant, produced independent report on the draft Island Plan 2002.
6th November 2001	Feasibility Study produced which included "No comment".
26th November 2001	P&E visited site and favoured site for rezoning.
20th December 2001	P&E agree to hold Parish meeting for essential public consultation.
24th January 2002	P&E agree the site for rezoning.
July 2002	The Bel Royal Site was rezoned by the States for Category A Housing as part of Island Plan.
31st July 2002	Health Protection Unit raises concerns.
March 2003	A Draft Development Brief was prepared by P&E to guide development for the site.
2nd May 2003	Developer acquired the land.
July 2003	Axis Mason submitted initial outline proposal for information and comment.
1st – 3rd December 2003	Developer holds public exhibition of scheme for 150 homes. Draft Development Brief presented.

19th January 2004	Public meeting at Parish Hall.
19th February 2004	E&PS Committee was given appraisal of scheme. Outgoing Committee requested technical seminar for local residents.
2nd March 2004	E&PS Committee appointed by the States: Senators Ozouf and Vibert, Connétable Ozouf, Deputies Hilton, Taylor, Huet and de Faye.
4th May 2004	Sub-committee approves the Development Brief
11th May 2004	Decision reconsidered – hold technical seminar first.
21st May 2004	Sub-committee approves the amended Design Brief and invites, with conditions, the submission of a formal application.
28th September 2004	E&PS Committee appointed by the States: Senator Ozouf, Connétable Dupré, Deputies Hilton, Dorey, Taylor, Huet and de Faye.
12th October 2004	Technical seminar held.
12th October 2004	Deputy Hilton resigned.
2nd November 2004	Planning application submitted for 140 homes.
8th November 2004	Further public meeting called by Connétable.
January 2005	Developer chased for outstanding information request by P&E with regard to the application.
March 2005	Committee received interim report indicating no houses to be built on Field 853.
4th August 2005	Planning application for 140 houses formally considered. Withdrawn in the light of new sketch proposals for 129 homes.
28th September 2005	Revised application for 129 homes submitted.
24th October 2005	Third public meeting is held at the request of the Connétable.
28th October 2005	Revised layout plans submitted incorporating garage blocks along western boundary.
17 November 2005	Initial comments on revised application received from HPU. New noise assessment requested by HPU based on maximum, not average, noise levels as previously requested.
2nd December 2005	Further amended layout plans submitted including introduction of garages and re-shaped acoustic bunding.
5th December 2005	Committee falls as Ministerial Government introduced.

16th December 2005	Architect's revised noise assessment reports submitted addressing the revised scheme.
24th January 2006	HPU comments about scheme and noise response received. HPU appoints its own UK noise consultants re impact of noise from Jersey Steel. The revised application is held in abeyance.
31st January 2006	E&PS seeks legal advice.
6th February 2006	Minister briefed on revised application.
16th February 2006	Legal advice received.
17th February 2006	Meeting held with developer's agents to discuss revisions to the elevations.
21st February 2006	Letter received from Developer's legal advisers.
6th March 2006	Report from HPU's consultants received. Roller shutter doors suggested as a noise mitigation measure.
10th March 2006	The Developer's lawyers advised that the application can be expected to be dealt with within 2 months.
17th March 2006	Meeting between Minister, officers and local representatives to address outstanding concerns.
23rd March 2006	Further legal advice received from H.M. Solicitor General.
20th April 2006	Proposition lodged by Connétable asking for an amendment to the IP stating that a maximum of 97 homes are to be built on the site.
8th May 2006	Minister's comments on proposition presented to States.
12th May 2006	Minister's addendum.
16th May 2006	Officer's Report produced.
25th May 2006	Council of Ministers request that PAP look at the application.
7th June 2006	Informal consideration given to application by Planning Applications Panel – minded to allow 129 houses.
4th July 2006	<ol style="list-style-type: none"> 1. Minister announces he will determine the application. 2. States adopts the proposition to amend the IP to state that a maximum number of 97 houses should be built on the site.
17th July 2006	A Public Hearing is held.
14th August 2006	Minister's decision to refuse 129 houses.

14th November 2006	A revised application is submitted for 102 homes.
December 2006	The Design Review Group addresses the application.
16th January 2007	Scrutiny Panel Report.
23rd January 2007	Public meeting held.
26th February 2007	Meeting held with interested parties to try and resolve noise issues.
9th March 2007	A Revised Acoustic Assessment is submitted.
16th March 2007	Updated Officer's Report produced.
20th March 2007	A Ministerial Public Application Meeting is held.
21st March 2007	The Application is approved by the Minister.
27th March 2008	Parish advised of the decision.
28th March 2007	Developer advised of the decision.
2nd April 2007	Proposition lodged re Committee of Inquiry.
4th May 2007	The Minister for Planning and Environment publishes a report about his decision to approve the planning application including details of planning conditions and the Planning Obligation Agreement.
8th May 2007	The Planning Permit is issued with 62 conditions. The developers are allowed to begin "a limited amount of site preparation".
4th July 2007	Committee of Inquiry approved.
21st August 2007	Minister releases further phased development.
28th January 2008	Minister approves an application from the developer to vary a number of planning conditions to allow more time for compliance.
18th February 2008	Further conditions varied.
March 2008	The Minister approves the draft Planning Obligation Agreement.
April 2008	The Planning Obligation Agreement is signed by all parties.

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**JERSEY ISLAND PLAN
CONSULTATION DRAFT**

Report of

*** The Independent Review Officer**

Professor Patrick McAuslan MBE

**on Representations submitted
on the Draft Plan**

September 2001

Report of the Independent Review Officer
on the Jersey Island Plan Consultation Draft

brief to indicate whether in the light of the representations received policies ought to be reconsidered and amended.

On this matter, I find that the concern with fairness in the representations on housing to be a proper and legitimate concern and one that needs to be reflected in the Plan. I consider that the spatial strategy in the Plan has failed to give proper consideration to its distributional implications and that this has resulted in the Plan proposing decisions on the allocation of sites for housing which place a disproportionate and unfair burden of urban development with particular reference to social housing in the three parishes of St Clement, St Lawrence and St Saviour. The spatial strategy needs therefore to be revisited with more explicit consideration being given to the Island's overall vision to provide all with a high quality of life and a high quality of built environment.

2.2.29 Many of the representations on housing and the built environment do offer suggestions as to how the accepted need for housing could be met. Without choosing between these different alternative scenarios, it may be useful to draw attention to them, if only to make clear that those making representations were motivated by more than just a negative approach to future development.

- First, several representations urged that consideration be given to developing a new village or new town; one specifically making the point that this would promote "a better balanced economy and justice for future generations" (R55).
- Second, many representations explicitly made the point that all parishes in the Island should share the burden of providing new housing equally; one representation (R164) suggesting that each parish should take responsibility for its own first time buyers. I do not think that these representations meant that there should be a strict numerical equality between all the parishes but the point was made many times that there should be a fairer parcelling out of sites for social housing around the island.
- Third, there were some representations both specifically on housing but more so on the built environment which suggest that more medium and high rise development should be permitted and this would then use less land for urban development. R222 argues for development of medium 4 storey housing at 95 habitable rooms per acre; R 178 for 5+ storey development in St Helier. R244 suggests raising the height limit to 7 storeys for office buildings with "top-outs with residential for employees". R273 argues for 7 – 10 storey buildings in St Helier and makes the interesting point that if Jersey is to aim for the European average of houses per 1000 of the population, then a more European as opposed to UK style should be adopted; "i.e. we should build better designed apartments rather than small box like houses which consume more land."

2.2.30 The representations calling for more medium and high rise developments are concerned with the amount of land likely to be lost to urban, particularly housing, development with R222 making the point that their proposals would only consume 167 acres of land whereas the Plan's proposals would consume 276 acres. It is not clear where this figure of 276 acres comes from since nowhere in the Plan – perhaps surprisingly – is there a figure of the total amount of land needed to meet the developments suggested by the Plan over its time-span but the point which must be made is that these representations and others which specifically approved the spatial strategies of the Plan are concerned to minimise the loss of agricultural and rural land-use to urban development. Thus, in calling for a reconsideration of the distributional implications of the allocations of land to housing, it should not be assumed that this is impliedly a call for rapid and large-scale conversion of agricultural land to urban uses.

2.2.31 It is necessary to make some brief comments on particular sites set out in H2 to respond to particular criticisms made of those sites. The criticisms which are taken up here are not those which are basically saying 'its too much; put the development elsewhere' since these have been dealt with in the general comments. Nor are they related to objections concerned with loss of privacy, loss of view, loss of peace and quiet and lowering the tone of the neighbourhood. These too have been addressed, indirectly in the general comments above. The objection to be dealt with here relate to the specifics of the site. The gravamen of many of these comments is that there are too many loose ends about the nominated sites; problems are acknowledged in the Plan but solutions are not proposed. This has clearly been a policy decision made about the scope of the Plan: identify the sites first; only after they have been accepted in principle, begin the work on their developmental feasibility.

2.2.32 I admit to some uneasiness about this approach. It will mean that debate about the sites will proceed in something of a practical developmental vacuum: assertions can and will be made about the impracticality of developing a particular site without there being any clear basis of fact about the matter; sites might get eliminated before they have been fully investigated on grounds which would not in fact have stood up to a full study, leaving a shortfall of sites. Alternatively, there may be a temptation to argue for all the sites to be accepted 'in principle' leaving the details to be sorted out later: there will then be the further temptation, having obtained the acceptance in principle, to forge ahead with the development, despite the problems. In the circumstances:

I recommend that the Committee give careful consideration to:

- (i) **the importance of addressing the practicalities of developing specific sites where representations have drawn attention to specific practical problems in relation to those sites before determining whether to include those sites in Policy H2;**
- (ii) **undertaking a parish impact assessment in the parishes of *St Clement, St Lawrence and St Saviour before considering whether to agree to the sites proposed in H2 for development in those parishes be pursued.**

2.2.33 *Site 1: Fields 516, 517, and 518, Patier Road, St Saviour*

The particular criticisms which came up time after time concern the traffic problems which will be caused by any development. This is acknowledged in para. 9.68 but no indication is given of any possible solutions.

2.2.34 *Site 3: Fields 848, 851, 853 and 854, Bel Royal, St Lawrence*

The particular criticisms here are that development will cause flooding and that there will be a need for flood relief measures – mentioned in para. 9.74 – and traffic problems. How feasible will flood relief measures be; how costly? The ecological value of the site has not been considered.

2.2.35 *Site 6: Field 865, Bel Royal, St Lawrence*

Site 14: Field 873 Bel Royal, St Lawrence

The criticism of all the St Lawrence sites is the traffic congestion that would be caused and the need for extensive road works and radical changes to traffic arrangements before any new housing development takes place in Bel Royal. Although some traffic problems are acknowledged in paras. 9.74, 9.78 and 9.86 of the Plan, no details of what “improvements” would be needed are provided or their likely impact or cost.

2.2.36 A more general comment on development in St Lawrence is that if there is to be development in the parish, it should be located around St Lawrence itself creating more of a village centre there.

2.2.37 *Site 5: Fields 181, 182, and 183, La Route de la Pointe, St Peter*

A criticism made to this site in R59 is that all the reasons given for turning the site down in 1991 still apply: the fields are in an Agricultural Priority Zone; they are in a noise zone; they are too close to the airport; there would be a loss of good agricultural land; and there is a drainage embargo in the area. On the other hand, R75 strongly supports the development.

2.2.38 *Site 8: Fields 786 and 787, La Rue des Cosnets, St Ouen*

The specific objections here relate to traffic congestion and the fact that facilities such as shops are too far away. No mention is made of any traffic problems in para. 9.80. These objections were counter-balanced by some positive support for development here.

2.2.39 *Site 9: Field 690A Maufant, St Martin*

The particular criticism here is the narrowness of the roads around the site and the difficulty of having more development and thus more cars attempting to use these roads. The problem of narrow roads is not mentioned in para. 9.81.

2.2.40 *Site 11: Field 81, La Croix, La Rue de Samares, St Clement*

The specific concern here is that the field is still in agricultural use; the traffic is particularly bad and the roads could not take the increase.

2.2.41 *Site 13: Field 145, adjacent to Priory Farm, St Clement*

This site is at present used by a motor car company as a base for their hire car business and as a car depot generally. A representation was submitted indicating that the company might have to leave the Island if they lost the use of this site for their

business as another equally convenient one was unlikely to be available. The importance of this site for its present use is not fully brought out in para. 9.85.

2.2.42 A general criticism of proposed developments in St Clement – sites 4, 7, 11, 12, 13 – is the overload on the infrastructure, particularly roads and schools and the need to sort that out before commencing new housing development.

2.2.43 These criticisms point to a general issue which it is legitimate to raise because it comes out of the specific representations made: there is no general overall consideration of the impact of proposed new housing development on the specific parishes where considerable development is being proposed. This is a separate point to the more general one discussed above on the overall distributional implications of where new development should be. This point is parish-specific: what the representations are saying is that one cannot make a sensible judgement about specific sites unless and until one has undertaken what, for want of a better term, may be called a 'parish impact assessment', considering the overall impact on infrastructural, social and community facilities which such development may have and how and at what cost these will be dealt with. This is recommended in para. 2.2.32 above.

2.2.44 It would not be right to end this section on housing policies without drawing attention to the fact that representations were made which were strongly supportive of the spatial strategy which is based on the principles of ensuring that new developments are stitched in to the existing built up areas rather than encroaching on the countryside and making use of land which has already been developed again in preference to green field sites. It is this strategy which explains the site selection in policy H2. One representation urged the Committee to "stand firm" against objections to the strategy and the proposed location of new housing. There was also some support for specific sites though this was greatly outweighed by objections.

2.2.45 It would also be right to point out that when both existing housing developments and the safeguarded sites in policy H3 are taken into account, the percentages of new housing allocated to the three parishes of St Clement, St Lawrence and St Saviour is less than the 60% which they are allocated under policy H2. For instance of the 990 category A homes in tables 9.1 and 9.2, 74% are in St Helier and the majority of sites referred to in policy H3 are also in St Helier. Notwithstanding this, the fundamental point remains valid that outside the town of St Helier, the three aforementioned parishes are being expected to shoulder a disproportionate burden of new category A housing development (of the 990 homes in tables 9.1 and 9.2, St Saviour and St Clement are taking 15% between them with the rest taking 10%).

3. Representations on Policy H1

2.3.1 There are several representations on policy H1 to the effect that the Plan has allocated insufficient land for housing. These criticisms are at two levels. The first level is that the Plan should not have made assumptions about what the economy of Jersey could cope with in terms of the number of houses that could be built on a yearly basis. The Plan should have allocated enough land over the 10 years of the Plan to meet the need identified by the Plan; it would be for other Committees, other

APPENDIX 5



**Proposed Category A Housing Sites
Final Draft of New Island Plan
(Policy H2)**

FEASIBILITY STUDIES

Site 1.

Fields 848, 851, 853 and 854, Bel Royal, St. Lawrence

Department of Planning and Building Services

Proposed Category A Housing Sites, Final Draft of New Island Plan

Feasibility Studies, 2001/2

SITE NO.	DESCRIPTION	PLANNING REF.
1.	Fields 848, 851, 853 and 854, Bel Royal St Lawrence	Check if planning history must be recent for Sarre land

OWNERS	TENANTS
<p>Field 848 and Adjacent Land: Sandybrook Orchards Limited c/o Advocate Dorey.</p> <p>Fields 851 and 854, St. Lawrence Mr. Michael Blair Sarre (N.B. Mrs Gwenda M B Sarre has lifetime enjoyment) C/o BHI Sarre, La Vallette, Le Chemin des Moulins, St. Lawrence. JE3 1HY.</p> <p>Field 853, St. Lawrence The exact ownership of this land is somewhat vague and will require confirmation by the family. (N.B. Field 862 is owned by Michael Sarre's sister, Mrs Valerie Clarke and if not already sold to the States, Field 862A and 863A are owned by Mr Le Miere.)</p>	

EXISTING USE/S
<p>Fields 851,853 and 854 – Agricultural Land Field 848 and adjacent – Overgrown and disused Field planted with bushes and a small orchard.</p>

SUITABLE USE/S
<p>Mixed tenure housing/mix of flats and houses/predominately 2 storey. Possibly small community building/facilities. Possibly public car park to north exit. Adjacent land to south to become public/country park with natural wetland areas (i.e. public amenity area). Landscape buffers to north and west.</p>

APPROX. SITE AREA Acres (vergees)	LIKELY . AREA AVAILABLE FOR HOUSING DEVELOPMENT
<p>9.5 acres (21.4 vergees) 38,446 m²</p>	<p>9.5 acres less landscape buffer strips to the north and west: 2.7 acres leaves 6.8 acres less area normally required for amenity open space/children's play space, (10% site area): 0.7 acres leaves 6.1 acres</p>

AVAILABILITY FOR HOUSING

Sandybrook Orchards Limited is willing for the site to be subject to further consideration as a possible site for housing development and would be keen for such to be the case. Bill Sarre, his father and brother, are willing to see the land rezoned for housing with public open space/wetlands on the southern section. They have stated "we would be prepared to look at the site as a whole and therefore we would be able to provide compensation to Mrs Clarke and Mr Le Miere as their land in effect would be changing to public park and wetlands whereas ours would be rezoned for housing".

AREA	THEORETICAL YIELD			
	@ 65 h.r.a.		@ 70 h.r.a.	
	2 bed homes	3 bed homes	2 bed homes	3 bed homes
Likely Area Available for homes	99	79	107	85

I.B. The yield from a sketch scheme prepared by Naish Waddington Architects for the Sarre Land in December 2000 includes:- 6x3 3-4 bed private houses, 200-225 x 3 bed first-time buyer houses, a community centre, a public car park and a public park and wetlands.

N.B. The yield calculated by W.S. Atkins in the Consultation Draft of the Island Plan and based on a site of 9.5 acres @ 65 hra was 130 x 2 bed or 105 x 3 bed homes.

CONDITIONING FACTORS OF SITE (see individual comments of appropriate bodies)				
	Good	Fair	Poor	Bad
AGRICULTURAL STATUS	✓ (part)		✓ (part)	
ECOLOGICAL STATUS	✓ (part)		✓ (part)	
ENVIRONMENTAL HEALTH CONDITIONS	NO COMMENT			
LANDSCAPE VALUE		✓		
TRAFFIC AND VEHICULAR ACCESS		✓		
PUBLIC TRANSPORT		✓		
EDUCATIONAL FACILITIES – PRIMARY		✓ *		
EDUCATIONAL FACILITIES – SECONDARY				
OTHER COMMUNITY FACILITIES		✓		
MAINS WATER SUPPLIES		✓		
FOUL DRAINAGE		✓ *1		
SURFACE WATER DRAINAGE		✓ *2		
GAS SUPPLIES	✓			
ELECTRICITY		✓		
TELEPHONE				

* Although Bel Royal School is nearby it may be necessary to phase development or reduce the proportion of family homes on the site, to assist in ensuring adequate capacity is available at the school

*1 Considerable off-site casts for foul sewer

*2 will need expensive on-site attention and preferably a S.W. pumping station to ensure area and site protected from flooding as sea levels rise.

PLANNING HISTORY

It will be recent if there is any, for Sarre Land?

REPRESENTATIONS RECEIVED IN RESPONSE TO CONSULTATION DRAFT OF NEW ISLAND PLAN

"2.2.34 Site3: Fields 848,853,854 Bel Royal, St. Lawrence

The particular criticisms here are that development will cause flooding and that there will be a need for flood relief measures – mentioned in para. 9.74 – and traffic problems. How feasible will flood relief measures be; how costly? The ecological value of the site has not been considered."

Professor McAuslan's Report.

PLANNING REMARKS

The site is well located on a main distributor road, with links to 2 major bus routes and direct cycle access via Le Perquage to the waterfront cycle path.

There are a number of community facilities within walking distance of the site, including Bel Royal School, a local shopping precinct at Sandybrook other facilities at Beaumont, Bel Royal and the beach. Accessibility to community facilities is further enhanced by a regular bus service and links to cycle path along the front.

The site comprised low lying agricultural land (some disused) in the southern coastal plain at the foot of St. Peter's Valley below the south coast escarpment and above the wetland areas of Goose Green Marsh. It backs onto existing development fronting Sandybrook Lane and St. Peter's Valley Road, and nestles below the south coast escarpment to the north.

With careful planning, generous tree planting, and creation of a landscape buffer strips to the north and west of the site, it should be possible to ensure that the natural landscape remains a dominant element in the scene.

The development of the site provided an opportunity to improve public access to the wetland area of Goose Green Marsh through the creation of a public park with natural wetland across and a network of footpaths situated at its heart, as a much needed 'focus' for the sprawl of peripheral development at Bel Royal, Beaumont and Sandybrook and thus achieve wider community benefit.

The nature and layout of surrounding developments to the north and northwest means that any development will have little impact on existing residential amenities. The development also provides an opportunity to improve pedestrian routes along the valley.

All the required services can be provided, although off-site drainage costs could be relatively high. It is possible that a new surface water pumping station will need to be developed on the back of the housing development to lift water over the tide level.

All the owners are willing to see the land developed for Category A Housing purposes.

It is recognised that the Agriculture and Fisheries Committee opposes the loss of Fields 851 and 854. Furthermore, it may be necessary to either phase the development or reduce the proportions of family houses, in order to ensure the nearby primary school has sufficient capacity to

accommodate all the pupils which would be generated. However, in view of the favourable location and the opportunities for associated community development, it is considered that, in this instance, the provision of homes outweighs any arguments in favour of retaining part of the site in cultivation.

Response from Consultees and Other findings

AGRICULTURAL STATUS

Land Assessment

- 851,854 good depth of soil capable of sustaining wide range of crops. South west aspect quite early area...
- 853 Subject to waterlogging
- 848 good depth of soil but difficult shape
- (1.5 verges workable land, 1 verge orchard)

Area (verges)

F851, (10.0.0)

F854, (9.0.0)

F853, (7.0.0)

F848, (2.20.0)

Committee Recommendations

Fields 851 and 854 The Committee would object to the loss of these fields to the industry.

Fields 853, 848 no significant loss to the industry.

Fields 848, no significant loss to the industry.

Officer Report September 2001

Committee Decision

1st October 2001 - Agriculture & Fisheries Committee endorsed the conclusions of the Agricultural Land Sub-Committee

- **no objection to 853 x 848**

- **OBJECTION to 851 x 854**

LANDSCAPE VALUE

Situated on the southern coastal plain of the Island at the foot of St. Peter's Valley below the south coast escarpment and above the wetland areas of Goose Green Marsh.

The Goose Green Marsh Area provides an important (albeit inaccessible) visual amenity for the residents of surrounding developments. It is considered that a sensitively designed development with extensive tree planting and the creation of northern buffers need have minimal impact on the wider landscape or the more immediate area.

ECOLOGICAL STATUS

The general response to the proposed housing sites was one of appropriateness. Most sites are adjacent to suburban areas and do not appear to encroach into existing natural habitat, with the exception of site 3, which has many mature trees in its north-west corner and site 7, a site consisting in part of woodland habitat.

Sites 1,3,4,6 and 9 all have existing boundary features consisting, in part, of mature trees. It was considered that retention of these trees within the development would provide and maintain valuable wildlife habitat as well as being of aesthetic and amenity value. The current planning advice note on trees on building sites should naturally be followed closely.

Site 3^(now site 1) is situated on low lying land requiring drainage considerations. The site is in close proximity to the important marsh habitat at Goose Green Marsh and consideration must be exercised throughout any development, including during construction and after completion, to avoid possible contamination of the marsh. Access to site 3 also appears problematic and it is essential that access routes must avoid the nearby Goose Green Marsh.

ESU comments – 21st August 2001

ENVIRONMENTAL HEALTH CONDITIONS

No comment

Environmental Health – 3rd October 2001

TRAFFIC AND VEHICULAR ACCESS

General Comments

Generally, although our road system has been improved over the last decade, it has very little spare capacity and if the housing stock of the Island and presumably the population, is to continue to increase, it is vital that sustainable transport policies are effective so that traffic generation rates are reduced. The 15 housing sites are spread fairly evenly throughout the southern half of Jersey, but Field 1218 Mont A L'Abbe is the only site which is within reasonable walking distance of the town centre. Assuming no significant shifts in current travel modes, and taking the mid value of housing yield for each site, I would therefore predict increases in traffic flows on main routes into St. Helier, roughly as follows (morning peak hour figures):-

Road	Number of additional vehicle trips AM peak	% increase
Victoria Avenue	98	5
St. Aubin's Inner Road	139	14
St. Clement's Coast Road	86	8
St. Clement's Inner Road	85	21
Queens Road	30	4
St. Saviour's Hill	40	4
Bagatelle Road	32	6
Trinity Hill	8	1

The 98 trips predicted for Victoria Avenue would also be likely to use the Beaumont junction and increase demand at that junction by 8%. As the junction is already over capacity, delays would increase by a much higher percentage. The obvious alternative route to Victoria Avenue is St. Aubin's Inner Road, which is predicted to have an increase of 14% even without some transferred trips from the Avenue.

Careful consideration needs to be given to encouraging alternative means of travel, if this number of housing units is to be provided outside the town area, particularly those in the west of the Island.

Site Specific Comments (based on 105 - 130 units)

Footpath to inner road bus routes needed. Road widening for footpaths and pedestrian crossing islands is recommended. Visibility required 50 x 2.5m. Access from St Peter's Valley Main Road.

Positive Points

- Close to a primary school
- Some shopping facilities within walking distance
- Excellent cycle facility via Perquage path and coastal cycle track

Negative Points

- Poor direct bus service (route 8), although frequent bus service (several routes) is 0.7km away on Inner Road.
- Potentially significant increase to traffic flow on the Inner Road to/from St. Helier

David St. George, Public Services Department – 10th July 2001

PUBLIC TRANSPORT

On a bus route through St. Peter's Valley. This has a regular daily service (Monday-Saturday) from St. Helier and Sunday service (currently infrequent).

The site would also be linked, via Le Perquage, to the main bus service route along La Route de la Haule.

EDUCATIONAL FACILITIES

NB. Comments based on a theoretical yield of 130 x 2 bed or 105 x 3 bed homes (for this site) + 40 x 3 bed homes on Field 685, Bel Royal (abandoned for time being) + 10 x 3 bed homes on site 10 (Field 873).

"These sites, depending on how they are developed, will generate an extra 51 children seeking entry to Bel Royal Primary School. If it is assumed that the proposed development is occupied in 2003/2004 then Bel Royal would not be able to accommodate all of the pupils seeking entry. The population predictions indicate that by 2006 the numbers seeking entry may have reduced to an extent that the development could be accommodated at the time".

Jim Westwater, Education.

OTHER COMMUNITY FACILITIES

In addition to Bel Royal Primary School, there are some other facilities available in the general locality, including the beach and the small shopping precinct at Sandybrook, comprising café, laundrette, hairdresser, general store (recently closed).

The intention is also to create new facilities including a new public/country park.

MAINS WATER SUPPLIES

(N.B. Comments based on yield of 130 dwellings)

The existing distribution system will require to be reinforced to be capable of supplying the proposed development.

We would recommend that all dwellings have water storage provisions together with a vented domestic hot water system.

H.Snowden, Jersey New Waterworks Co.Ltd. – 14th August 2001

FOUL AND SURFACE WATER DRAINAGE

Foul

There is an existing foul sewer to the west of the site, which would require localised upgrading before it could accommodate the foul flows generated by the development, and an off-site foul sewer will be required across difficult ground conditions to connect the site to this sewer. Off-site costs will therefore be considerable.

Surface Water

There is an existing watercourse along the western boundary of Field 853. Surface water from the site could drain to this watercourse, but extensive on-site attenuation would be required to restrict the discharge rate from the site to this watercourse. Improvements to the watercourse will also be required, giving rise to further off-site costs.

D Johnson, PSD - 10th August 2001

Additional Comments on Drainage

- (i) The area below site 3 Goose Green Marsh, is a low lying area which is subject to flooding during wet periods, particularly, if heavy rainfall coincides with high tides.

The watercourse, which runs from Sandybrook to the coast is fed by the streams further to the north, predominantly the watercourse in St. Peters Valley. The watercourse through Goose Green is shallow, due to the topography of the area, and the outlet onto the beach is protected by a flap valve to prevent the tide flowing back through the outfall and into the marsh.

During high tides, the flap valve is held closed by the tide, and the flow coming down from Sandybrook is stored in the marsh area, which is a natural impounding area. Once the tide falls, the tide flap opens and allows the water in the marsh area to drain slowly to sea.

- (ii) There are two major options for dealing with the water which is currently stored on the marsh. The first would be to construct a pumping station at the downstream end of the watercourse system to lift surface water flows over the tide level, and hence keep the marsh area drained even during high tides.

The ^{second} option is to construct attenuation ponds across the watercourse in St. Peters Valley. This option has the benefit that it would provide protection against flooding for the properties in the Sandybrook area.

At the present time, the Public Services Committee do not have funds for either of these two options, but intend to seek funding for the attenuation ponds in the capital requests for 2006 or 2007. There are no plans to seek funding for the pumping station at the present time as the marsh itself effectively balances flows to sea.

- (iii) Providing the levels of the proposed development at the Southern extremity of the site on Field 848, 851, 852 and 854 are kept well above the flood levels in the marsh, there should be little risk of flooding of the site due to the storage of the water on Goose Green Marsh.

As I indicated in my response to you on 10th August 2001, on-site attenuation would be required to ensure that the rate of discharge from the proposed site to the watercourse does not exceed the current rate of discharge from the undeveloped land. In view of the area of the proposed site, the scale of the on-site attenuation works will be considerable.

- (iv) In order to ensure the proposed site is protected from flooding due to a possible increase in water levels on the marsh as a result of rising sea levels etc, it would be appropriate, I believe, for the development on this site to be conditional on funding the construction of a new surface water pumping station at the lower end of the main watercourse adjacent to Le Perquage walk.

D S Johnson, PSD - 10th Sept. 2001

GAS

Mains gas could be supplied for the site.

ELECTRICITY

At least one substation would be required but the HV would have to be laid from the Residential Home, up Sandybrook Lane, into St. Peter's Valley.

B.H. Miles, Jersey Electricity Company - 8th August 2001

SERVITUDES AND OTHER MATTERS WHICH COULD IMPACT ON THE DEVELOPMENT OF THE SITE

There are no restrictive covenants affecting the above fields, which could prohibit their development.

The owners of Field 848 and land to the West have a right of way to connect to the avenue forming part of 'Le Perquage' for the benefit of all buildings or houses which may in future be constructed on the land. They also enjoy a right to provide all mains services under the avenue to serve such a development.

The track, which runs between Fields 848 and 851, is of unknown ownership, although the respective owners of both fields have rights of way over the track, as does the owner of Field 853.

OTHER FACTORS



868(12)
APPENDIX 6

PLANNING AND ENVIRONMENT COMMITTEE

24th January 2002

Confidential:
exemption
3.2(a)(xiv)
Draft new
Island Plan:
way forward
868(12)

B1. The Committee, with reference to its Act No. B12 of 22nd November 2001, welcomed Mr. G. Webber and Mrs J. Hughes, Consultants, WS Atkins to the meeting.

The Chief Executive Officer having expressed an interest in the proposed rezoning of sites within the draft new Island Plan, withdrew from the meeting.

The Committee was advised that the Chapters regarding Monitoring and Implementation were to be completed shortly and that numerous areas of future work required had been identified which would have implications for other Committees.

Matters appertaining to Housing needs were considered and the Committee was advised that the original breakdown of the results of a housing survey undertaken by David Couttie Associates had been reanalysed by the Policy and Resources Statistics Unit. The Committee noted, however, that the difference between the original and the latest figures was not dramatic and did not consist solely of social rented and first-time buyer homes for which sites were being rezoned.

The Committee was also advised that the Housing Committee had felt it appropriate to sell unrestricted first-time buyer homes on the Waterfront, St. Helier and at the former Sunshine Hotel, Havre des Pas. This had been vehemently opposed by the Committee as Category A Housing sites were essential.

The Committee noted that Policy H2 - Sites to be Zoned for Housing had been reviewed in order to provide the necessary land requirement for the first five years but in recognition that the development of such land would not be completed in that period and would, in part, be dependent upon the capacity of the construction industry.

The Committee, with reference to its Acts Nos. B1 of both 26th November and 10th December 2001, in respect of proposed housing sites to be incorporated in the draft Plan, was advised that each of the categories of proposed housing sites, namely, rezoned, safeguarded and newly included sites had been reassessed following the outcome of the public consultation meetings and the report of the Independent Reviewer.

On consideration of the density of the sites, Deputy J.B. Fox expressed his concern that newly constructed properties should take into consideration growing families and the requirement for related future amenity space and quality of life.

Consideration was also given to the incorporation of two from 18 sites included within the Glasshouse Managed Exit Strategy and the Committee agreed that it was unaware of any progress currently being made with this scheme.

Having given in-depth consideration to all sites included within each of the categories, the Committee agreed that the revised proposed sites better fulfilled the criteria of the spatial strategy across the Island and took note of letters of representation. The Committee, noting that eight Parishes would be involved following the revisions made, discussed the most appropriate means of public consultation and the means by which this might be incorporated into an already tight schedule. The following new categories were agreed -

- (a) sites for rezoning - consultation already taken place and confirmed willingness to rezone by owner;

- (b) safeguarded sites - both where consultation had already taken place and new sites;
- (c) further proposed sites where zoning would be subject to public consultation.

Finally the following sites were agreed for rezoning -

- Field 1218, Mont a L'Abbe, St. Helier;
- Fields 848, 851, 853 and 854, Bel Royal, St. Lawrence;
- Extension to Hodge Nurseries, St. Clement;
- Fields 181, 182 and 183, La Route de la Pointe, St. Peter;
- Fields 203, part 204 and 252, Rue de Jambart, St. Clement;
- Fields 786 and 787, La Rue des Cosnets, St. Ouen;
- Field 690A, Maufant, St. Martin;
- Field 190, 191 and 192, La Rue de la Sergente, St. Brelade;
- Field 40, La Rue de Maupertuis, St. Clement;
- Field 873, Bel Royal, St. Lawrence;
- Field 1370, La Rue de Mon Sejour, St. Helier.
- Field 391 (part), La Longue Rue, St. Martin.

The following sites were proposed new sites, subject to public consultation

- Field 1368, La Rue de Mon Sejour, St. Helier (enlargement of site proposed for rezoning);
- Field 812A, Bagot Manor Farm, St. Saviour (enlargement of site proposed for rezoning);
- Fields 413, 415, 415A and 470, Five Oaks, St. Saviour;
- Field 139, Les Quennevais, St. Brelade;
- Field 525, La Rue de la Mare Ballam, St. John;
- Field 76B, La Vallette, Grouville;
- Channel TV and Field 1248, St. Helier (phase 1);
- Field 402, La Grande Route de Faldouet, St. Martin;
- Fields 890 and 888, La Rue Cappelain, St. Peter;
- Field 410, La Rue des Buttes, St. Martin.

The following sites were recommended for Safeguarding -

Field 494, rear of Midlothian Close, St. Mary;

- Field 145, adj. to Priory Farm, St./ Clement;
- Field 284, La Grande Route de la Cote, St. Clement;
- Glasshouses, La Lourderie, St. Clement;
- Samares Nursery, La Grande Route de St. Clement, St. Clement;
- Field 605, La Route de Nord, St. John;
- Le Mourin Vineries, Les Chasse du Mourin, St. Martin;
- Field 114, Le Passage, Carrefour Selous, St. Lawrence;
- Field 1404, La Grande Route de St. Jean, Trinity;
- Field 785, La Rue des Cosnet, St. Ouen

It was decided that Field Nos.865 and 866, Bel Royal and Fields 516, 517 and 518, Patier Road, St. Saviour would be excluded from the rezoning schedule at this stage and would become a matter for the States if they were to be rezoned at a later stage. It was agreed that the new plan should make reference to these sites and explain that their inclusion did not preclude them from being considered in future land availability reviews.



CM Newcombe
Greffier of the States

Ⓢ 1437

Category A Housing Sites
Zoned under Policy H2 of the Island Plan, 2002.

DEVELOPMENT BRIEF
(DRAFT)

**Site 1: Fields 848, 851, 853 and 854,
Bel Royal,
St. Lawrence**

A REPORT PREPARED ON BEHALF OF THE
ENVIRONMENT AND PUBLIC SERVICES COMMITTEE
February 2003

Background Information for Office Use Only

1. Potential Yield @ 90h.r.a.

The developable area of the site for residential purposes (i.e. less area of public open space/buffer strips etc.) is estimated to be approximately 8.0 acres.

Given that the proposed development mixes for each tenure group are very similar, the calculation of theoretical yield is based on 55% of the developable area being used for first-time buyer homes and 45% being used for social rented homes.

If one were to apply a residential density of 90h.r.a to the developable area for first time buyers and social rented accommodation, the theoretical yield could be the equivalent of 396 habitable rooms and 324 habitable rooms respectively. Having regard to the proposed development mix for each tenure group, the potential yield has been calculated as follows:

Housing Type and Size	First-time Buyer	Social Rented	Total
4 bedroom houses		7	7
3 bedroom houses	68	46	114
2 bedroom houses / bungalows		7	7
2 bedroom flats	9		9
1 bedroom houses / bungalows		11	11
1 bedroom flats	14		14
TOTAL	91	71	162
Percentage	56%	44%	100%

If one assumes the average number of residents occupying a 4 bedroom, 3 bedroom, 2 bedroom and 1 bedroom home to be 5, 4, 3 and 1.5 respectively, then one might calculate that the new development could accommodate a maximum estimated population in the order of 577 persons.

It is possible that the proportion of flatted development may have to increase in order to achieve the numbers and sizes of new homes required at the density proposed.

For comparative purposes, the potential theoretical yield @ 70 h.r.a. would be as follows:

Housing Type and Size	First-time Buyer	Social Rented	Total
4 bedroom houses		6	6
3 bedroom houses	53	35	88
2 bedroom houses / bungalows		6	6
2 bedroom flats	7		7
1 bedroom houses / bungalows		8	8
1 bedroom flats	11		11
TOTAL	71	55	126
Percentage	56%	44%	100%

This extent of development could accommodate a maximum estimated population in the order of 450 persons.

HISTORY OF THE NOISE ISSUE IN RELATION TO PROPOSALS FOR THE SITE'S DEVELOPMENT

Black text = Planning and Environment Department

Blue text = Health Protection

	<p><i>History</i></p> <p><i>Prior to the Bel Royal investigation a large amount of partnership work was carried out with the Planning Department and other stakeholders in relation to the Island Plan Review. This resulted in many recommendations from the then Environmental Health to the Planning Department. In correspondence dated 4th July 2000 & 19th March 2001 it was recommended that Environmental Impact assessment be carried out for new Housing Developments. This was recommended in order to highlight all the impacts a new development would have on the surrounding area, e.g. human, animal, flora, fauna, infrastructure and pollution etc and if any existing developments would impact on the new development. This recommendation was unfortunately not implemented.</i></p>
October 2001	<p>Planning Department (The Dept) wrote to Environmental Health, after the Consultation Draft of the Island Plan had been produced, which included a proposal to rezone the above site. It was explained that the Dept was undertaking a more detailed technical and planning appraisal of all the proposed housing sites in the Draft Plan (i.e. feasibility studies). Environmental Health was asked whether it wished to make observations regarding the potential environmental health implications of developing the sites (ref 8/17/3).</p> <p><i>Letter dated incorrectly from Planning actually received by Environmental Health (now Health Protection) on 17th September 2001 requesting inspection of various sites. See copy of letter 1</i></p>
October 2001	<p>Dept. receives the response of Environmental Health (dated 3/10/01) regarding the site in question which was “no comment”. Therefore, there was no reason at that time to expect any fundamental objections on environmental health grounds.</p> <p><i>Environmental Health response sent on the 3rd October 2001 saying no comments – See copy of letter 2</i></p>
1/May 2002	<p>The Final Draft of the Island Plan (including the proposed rezoning of the site in question) was finalised and lodged for States debate. Clearly, the final selection of the sites proposed for rezoning in the document was informed by the feasibility studies referred to above.</p>
July 2002	<p>Site in question zoned for Category A housing, etc. under policy H2 of the Jersey Island Plan, 2002. Zoning subject to various provisos, including the need for a development brief to guide future development.</p> <p><i>The States of Jersey approved the Jersey Island Plan on 11th July 2002 (P.69/02) and, in doing so, approved the zoning of 11 sites for Category A housing purposes, under IP Policy H2.</i></p> <p><i>Complaints from residents living on the north east across the main St. Peter's Road were made on October 2000, 30th July 2002 and 18th August 2002. These complaints related to work on Sundays and before 8.00 a.m. resulting in noise complaints. Letters were written to Jersey Steel requesting they work within normal working hours, e.g. 8.00 a.m.– 6.00 p.m. weekdays and 8.00 a.m.– 1.00 p.m. Saturdays. No working Sundays or Bank Holidays. See copy of letters 3</i></p>
July 2002	<p>Health informed Dept. of its concerns that the development of the site in question was likely to be subject to noise from Jersey Steel and, therefore, may lead to complaints about noise nuisance. It suggested “careful consideration in deciding whether these fields are suitable in the light of the aspects of noise and potential flooding”.</p> <p><i>Environmental Health informed Planning of their concerns: Discussion on the phone with Roger Corfield. Confirmed in writing the same day – See copy of letter</i></p>

August 2002	<p>Dept. replied pointing out the States had already rezoned the land and that, following public consultation, a development brief was to be produced to guide the future development. Health was also reminded of its previous involvement in the site evaluation/selection process. It was put to Health that <i>“it was always the intention to provide a buffer strip between the development and Le Perquage to protect its character and appearance”</i>. The letter went on to suggest that <i>“a strip could be designed and landscaped to reduce or control noise from Jersey Steel (e.g. from careful use of mounding and vegetation). No doubt, the arrangement of new buildings could also help in this respect”</i>.</p> <p>Health officers were asked for their advice as to how the impact of noise emissions from Jersey Steel could be reduced to acceptable levels.</p> <p><i>Response from Roger Corfield – unable to find this letter.</i></p>
1 August 2002	<p>Health acknowledged Dept.’s letter and asked for a plan showing the position of the proposed housing and the orientation in relation to Jersey Steel with details of proposed bunding, etc. They were advised that no plans existed at that time.</p> <p><i>Environmental Health asked for copy of any plans for the site. No plans existed at this time – see copy of letter 5</i></p>
September 2002	<p>Health outlined its concerns relating to the quality of life of those purchasing housing so close to Jersey Steel. They argued the development was likely to lead to complaints regarding noise and may result in them being forced to take legal action under the Statutory Nuisances (Jersey) Law 1999. Health offered the view that it is likely that such action would be contested and dismissed by the Royal Court because <i>“building housing next to such an inherently noisy operation represents poor planning”</i>. It went on to suggest that if the Committee was not swayed on that argument, then the following may be considered –</p> <ul style="list-style-type: none"> (a) a suitable bund/barrier which is as high as the eaves of the nearest property (i.e. 7-8m.) would need to be constructed between the housing and the Perquage; (b) as great as possible a distance should be provided between the nearest housing and Jersey Steel; (c) the housing and gardens could be orientated so as to face away from Jersey Steel. This would allow gardens, bedrooms and living rooms to be shielded from noise by the properties themselves. <p><i>Environmental Health wrote to Mr. Roger Corfield regarding our concerns regarding noise and the Statutory Nuisances (Jersey) Law 1999. See copy of letter 6</i></p>
	<p>There was no contact till 11th November 2004 as Health Protection was awaiting the first planning application and Planning were not liaising with Health Protection during this period.</p>
March 2003	<p>Draft Brief agreed by PEC as basis for consultation. The Health Dept.’s concerns were included in the draft brief as were the measures suggested in items (a) to (c) above. The draft brief also included the following requirement –</p> <p><i>“that a suitably designed buffer strip/barrier is created between the proposed new housing and Le Perquage, to reduce the impact of the new housing development, protect the character of Le Perquage and reduce the potential noise nuisance from Jersey Steel.”</i></p>
30 3rd December	<p>Public Exhibition for the Development Brief and Developer’s initial scheme (i.e. intended as an interpretation of the draft brief)</p>
January 2004	<p>Public Meeting</p>
May 2004	<p>Planning Sub-Committee considered the public consultation response, appraised the initial development proposal, approved an amended development brief and invited the submission of a formal application, subject to numerous provisos and on the understanding that there would first be a ‘technical seminar’ with local residents to try to resolve their outstanding concerns primarily relating to drainage, flooding and traffic. The concerns of Health Protection, its suggested mitigation measures and the related requirement referred to above were retained in the approved Development Brief.</p> <p>Interestingly, local residents did not raise the noise from Jersey Steel as an issue, but the Company did.</p>

	<p>On the specific issue of the buffer strip adjacent Le Perquage, the Sub-Committee agreed that –</p> <p><i>“Appropriate measures are introduced along the western boundary of the site to provide an adequate visual buffer to the Perquage Walk, to assist in baffling noise from the Steel Works and to prevent development on land susceptible to potential flooding.</i></p> <p><i>N.B. It is envisaged that this will involve:</i></p> <ul style="list-style-type: none"> ● <i>truncating the three proposed terraces which project towards the Perquage Walk;</i> ● <i>introducing planted banks/mounds along the western boundary of the proposed new housing.”</i>
October 2004	Technical Seminar with local residents
November 2004	Planning application submitted for <i>inter alia</i> 140 homes. It was registered a little later upon receipt of required supplementary information (even though some information remained outstanding).
November 2004	2nd Public Meeting
November 2004	Health Protection invited to comment (Request that reply within 2 weeks) <i>No further consultation by Planning until the Planning Application dated 2nd November was submitted on 11th November 2004. Letter sent on 17th November 2004 to Planning requesting more time than the allotted 14 days as a complex application See copy of comments dated 30th November 2004 (7)</i>
November 2004	Health Protection request more time.
November 2004	<i>Noise measurements carried out at the site on 19th November 2004. (see 9 below)</i>
November 2004	Initial comments from Health Protection were e-mailed to Dept. and predicated by the statement that “In the opinion of this department the area is not suitable for Category A housing for the following reasons..”. The problems of noise from Jersey Steel Noise were among the reasons cited. Health Protection indicated that even with noise mitigating measures noise complaints are almost inevitable; and suggesting that “ <i>in order to overcome the issue of noise it will be necessary for Jersey Steel to invest in a new building designed and constructed to minimise noise breakout and to minimise all working outside of the building</i> ”. Health Protection also called for the applicant to “ <i>employ a suitable noise consultant to assess the main sources of noise likely to affect the proposed development and determine suitable mitigating measures as far as they are achievable for reducing the impact of noise</i> ”. N.B. A formal letter from Health Protection was also sent by post.
December 2004	The Dept. responded by e-mail, agreeing that a meeting should be held between officers of the departments to address the issues raised and clarify the position. In order to put the matter in context, the e-mail included a history of the events to that date relating to the planning process, including site evaluation, Island Plan review process, the States decision to zone the site and the formulation of the development brief. <i>E-mail response from Planning – see copy attached 8</i>
December 2004	Dept. e-mailed architect about outstanding information required to process the application. This flags up the likelihood that the issue of noise impact from Jersey Steel is likely to feature among issues requiring additional information.
December 2004	Meeting held between officers from this Dept. and Health Protection. The stated aims were – <ul style="list-style-type: none"> ● to clarify Health Protection’s position; ● discuss the implications of its submitted comments; and ● to try to move to a move to a less confrontational position, by looking to see how the proposed development could be made acceptable through constructive measures. <p>The point was made that at that stage, after what had already been a long and protracted process, it was not helpful or reasonable to have a response from a main consultee, predicated by a statement that the site was not suitable for Category A housing. Each of the matters raised by Health was then addressed in turn.</p>

	<p>During the discussions on noise, it was revealed that Jersey Steel was not deemed to be a statutory nuisance by Health Protection, who had received complaints about noise in the past, but not since the activities at the premises had been confined to sociable hours.</p> <p>Health Protection stressed that there would be those in the new development who would be affected by noise throughout the day (e.g. elderly and shift workers).</p> <p>They indicated that background noise levels were currently around 40dB, but that noise at Jersey Steel could reach 82dB with the doors closed and 99dB with the door open or where work takes place outside.</p> <p>On the issue of noise, it was agreed that –</p> <ul style="list-style-type: none"> • the applicants need to produce noise survey data/measures to clarify the position, using noise consultants; • Health Protection would provide an outline specification of what is required for a noise impact study; • Health Protection would review its comments when it receives the above information. <p><i>Meeting held at Planning involving RC/KP/SDS/AI/SleC – see copy of the minutes (and noise measurements/photographs dated 19th Nov. 2004) attached dated 20th January 2005.</i></p> <p><i>RC to request more information on flooding, Noise and Health Protection to provide specification to the consultants. See Sarah Le Claire’s comments regarding requesting an EIA. Minutes were sent to Planning and amended/sent back to Health Protection on 20th January 2005. Delays were due to awaiting further information/holidays/courses. Item 9</i></p>
January 2005	<p>Dept. received Health Protection’s draft minutes of the meeting. (N.B. These were amended by the Dept and returned to Health Protection on 18th January 2005). Health Protection’s minutes include details of recent measured noise levels as follows –</p> <ul style="list-style-type: none"> (a) eastern boundary of site by glass houses: <ul style="list-style-type: none"> background 40-45 and L90 dB (A) impact noise up to 65 SPL dB (A) (b) 2-3m. from doors of Jersey Steel on eastern side approximately 20m. from prospective housing (N.B. as then proposed) <ul style="list-style-type: none"> (1) doors open: up to 99 dB (A) SPL (2) doors closed: 80-82 dB (A) SPL
January 2005	<p>Dept. letter to applicant which <i>inter alia</i> confirms outstanding information requirements necessary to process the application. On the issue of noise, the position of Health Protection was outlined along with the subsequent course of action agreed with Health protection. The letter confirmed –</p> <ul style="list-style-type: none"> • Health Protection’s recently measured noise levels at 2-3 metres from Jersey Steel; • The agreement that the applicant “needs to appoint qualified noise consultants to carry out a substantive piece of work to satisfy Health Protection and this Department that the noise issues can be dealt with. Work which would include a noise map of the area and consider all the options/costings to deal with noise”; • That Health Protection had agreed to provide a specification for the noise consultant’s work and would review its initial response to the application following submission of the Noise Impact Report. <p><i>Letter from RC to Dandara – Copy attached 10</i></p>
January 2005	<p>President suggests that the Committee be updated at a future meeting.</p>
January 2005	<p><i>Public Health Committee report and committee minute – Copy attached 10a</i></p>
March 2005	<p>Dept. receives e-mailed letter from Health Protection including <i>inter alia</i> a draft specification for the Noise Consultant, as follows –</p> <p>“A suitably qualified noise consultant should:</p> <ul style="list-style-type: none"> A. Determine the noise sources likely to affect the proposed development in order of impact.

	<p>B. <i>Assess the background noise levels L90 (A) (1 Hour) dB day 07.00-23.00 and night and compare PPG24 at the proposed development.</i></p> <p>C. <i>Provide suitable noise mitigation measures with anticipated noise reductions for not only the sources but also the receivers.</i></p> <p>D. <i>Provide a noise map for the area showing both the main sources of noise with Leq levels, but also the background levels in the form of contours e.g. background levels / points e.g. sources”.</i></p> <p><i>16th February & 4th March 2005: Health Protection emailed Noise Specification – Copy attached 11. Delay was due to holiday/course.</i></p>
March 2005	Dept. received copies of consultant’s reports from architect, addressing outstanding information requirements. This included Doc 3, ‘Acoustic Assessment’, Peter Brett Associates, 14th February 2005.
March 2005	<p>Dept. letter to architect (copied to Health Protection) forwarding the Health Protection’s Draft Specification. The letter explains that the submitted Acoustic Assessment does not square with the specification and expresses concern about the only proposed mitigation measures, involving the “<i>creation of a massive, alien and intrusive 5m. high bank feature (acoustic berm) on top of 1½m. of filled ground, extending at least 80m. alongside Le Perquage Stream and necessitating very large amounts of imported fill material</i>”.</p> <p><i>22nd February and 11th March 2005: Letter from RC to Health Protection enclosing the Peter Brett Reports PBA. Letter to Architect regarding the reports and that they did not provide the correct information re noise – Copies attached 12</i></p>
March 2005	Dept. letter to Health Protection enclosing consultant’s reports in support of application, including the Noise Assessment.
March 2005	<p>Reply letter from Health Protection with the following comment regarding the ‘Acoustic Assessment’:</p> <p><i>“There is a lack of information. I have already sent the specification we would like followed. A bund is just one option. We would also need the noise calculations to see how the consultants reached their conclusions.”</i></p> <p><i>Letter to RC requesting more information – Copy attached 13</i></p>
March 2005	<p>Environment and Public Services Committee received interim report on application. Without wishing to predetermine the application in advance of all the facts, it effectively decided to advise the applicant that the proposals to import large amounts of fill material and to create the ‘acoustic berm’ adjacent Le Perquage were wholly unacceptable. The Department’s letter to the applicant on the same day states:</p> <p><i>“On balance, subject to any other evidence which may be put before it in relation to the application, the Committee considers that there should be no massive ‘berm’ structure and that no new houses should be built on Field 853. Indeed, it would wish to see the field retained as a buffer strip alongside Le Perquage. Clearly, this would have a number of planning advantages in that it would:</i></p> <ul style="list-style-type: none"> <i>(i) considerably reduce the level of imported fill required on site (and all the associated implications locally);</i> <i>(ii) prevent the creation of a massive alien bank feature and reduce the impact of the development on the character of Le Perquage and the local area;</i> <i>(iii) significantly reduce the number of proposed units and, with it, many of the related concerns of local residents in relation to the scale of the proposed development; and</i> <i>(iv) increase the distance between the new homes and Jersey Steel.”</i>
March 2005	Dept. forwards Health Protection’s comments to applicant
April 2005	<p>Meeting of applicants, architects and Dept. to discuss Committee’s interim discussions and findings/requirements. The meeting addressed, among other things, why the proposed acoustic berm was unacceptable to the Committee; the outstanding requirement for a new ‘Noise Impact Assessment’ in accordance with Health Protection’s specification; and the way forward generally.</p> <p>The applicant indicated the intension to proceed with the current application (then held in abeyance) and that it would be submitting required outstanding information, including a revised ‘Acoustic Assessment’ so that the processing of</p>

	<p>the application could be completed. The aim was to allow all the issues fully aired prior to the submission of a revised application.</p> <p>However, at the meeting, the applicant produced a revised scheme for a smaller number of homes (130) and it was agreed that the Dept. would conduct a planning appraisal of it at officer level. It was recognised that this appraisal would be somewhat premature until outstanding issues such as those related to noise from Jersey Steel are properly resolved. Furthermore it could only be offered without prejudice to any decisions which the Committee might subsequently take.</p>
April 2005	Dept. letter to architect acknowledging outcomes of meeting and forwarding the promised planning appraisal of the revised scheme. The letter states <i>“without wishing to pre-empt the Committee’s decision, it seems likely that the application will be refused and/or there will be a decision to invite a revised application.”</i>
May 2005	Applicant’s noise consultants carry out acoustic survey.
June 2005	Noise consultants issue required Acoustic Assessment Report intended to comply with Health Protection’s specification (+ outstanding Transport Assessment). Both reports refer to a revised sketch scheme for 129 homes.
June 2005	<p>Dept. forwards reports to Health Protection and requesting a formal response so the matter could be put to Committee at the earliest opportunity.</p> <p><i>Letter and latest PBA report Document 3 Acoustic Assessment received. Comments sent back in a letter after discussion with SDS on 15th July 2005. This said the 3.5m. bund was unlikely to help, queried the measurements carried out as not representative, provision of a 3.5m. bund with close boarded fence on the west side of the perquage and no proposed gardens face east – Copy attached 14</i></p>
July 2005	<p>Dept. receives e-mailed letter from Health Protection (copied to noise consultants) who called into question the noise measures used (as not representative of the impulse noise experienced) and the mitigation measures (i.e. a 3.5m. bund). It claimed the likely difference between this noise and background noise was likely to be a Statutory Nuisance and result in complaints. Health Protection also suggested that a 3m. high bank with a 2m. high close boarded fence on top should be provided <i>“on the west side of the Perquage, if necessary in Jersey Steels land”</i>. The letter concludes by stating <i>“I strongly recommend the matter is not put before your Committee at this stage as further work/modelling is required to satisfy this Department.”</i></p>
July 2005	<p>Dept. e-mails Health Protection acknowledging its comments and confirming that the applicants will be invited with their noise consultants to liaise directly with them, to address the specific points of contention.</p> <p>Dept. also confirms it is still the intention to put the application to Committee on 4th August 2005 (given that the recommendation will be to invite revised plans, which would need to satisfactorily address the noise issue and numerous other detailed planning requirements). It was pointed out that although the Committee will be shown the developer’s revised sketch scheme for 129 homes, it will not be asked to approve it in any way. Health Protection was asked whether, in the light of this, it would still have problems with the intended course of action.</p> <p>Some general concerns were expressed in the e-mail about the whole noise issue. Among other things the expressed concerns pointed to the lack of complaints from existing residents; questioned the frequency of the impulse noises and the extent to which the noises could potentially affect the existing and proposed residents’ peaceful enjoyment of their gardens; asked why Health had not already acted to secure noise mitigation for the benefit of the nearby ‘noise sensitive’ nursing home and day care centre. Reassurance was subsequently sought.</p> <p><i>response from RC – Copy attached 15</i></p>
July 2005	Dept. e-mails applicant about Health Protection’s comments and urging applicant and their noise consultants to hold talks with Health Protection as a matter of urgency to try to reach some common ground.
July 2005	Letter from Health Protection confirming they had spoken to the noise consultants who were going to model a noise barrier close to Jersey Steel. They had advised that noise levels affecting the site must be reduced across the site to within 5dB of the background, which they said would require a reduction of about 15dB. In the

	<p>letter they state – <i>“The proposed 3.5m. bund won’t achieve this. The barrier should be as close to Jersey Steel as possible and this may mean the client having to consider buying some of Jersey Steel’s land”.</i></p> <p>In its letter, Health Protection also make the following points –</p> <ul style="list-style-type: none"> ● the impulse disturbing noise can occur up to and more than 20 times per day (depending on the job); ● there are no current complaints about noise because no one yet lives close enough; ● the proposed residents will be affected by noise when they are on holiday, at home during the day and retired; ● <i>“If we get complaints we are duty bound under the law to investigate and we may then be left to try to improve an often difficult situation. Also compliance with the law does not always satisfy complainants who want near silence. Enforcing management provisions such as keeping doors shut is very difficult due to the need to obtain sufficient evidence of failure of practice”;</i>
	<ul style="list-style-type: none"> ● <i>“As is often said prevention is better than cure. It will be cheaper in the long run to prevent the problem rather than to retrospectively try and require improvements/changes. We will also be criticised heavily plus it may be considered negligent if we allow a development to be built which is subject to unreasonable levels of noise”.</i> ● <i>“Clearly, I have no objection to your Committee being updated on the situation at this time, but I do consider that there are inadequate safeguards for your Committee to make a considered judgement on the application at this time”.</i> <p><i>E-mail and letter response to RC re frequency of loud noise – up to 20 times per day, duty to investigate and difficulties in keeping doors shut, and a lack of information for the Planning Committee to make a considered judgement. – Copy attached 16</i></p>
July 2005	<p>Applicants and their consultants meet with Health Protection in an attempt to resolve the noise issue. The applicants have inferred that agreement was reached on the acoustic study based on LAeq measurements.</p> <p><i>Applicants/Consultants and Health Protection meet to discuss way forward. Health Protection queried how representative the measurements were and asked for Lmax to be considered rather than Leq as the short term noises are averaged out over for, e.g. 5 mins and the barrier was too low and in the middle of the site– Copy attached 17</i></p>
August 2005	<p>Environment and Public Services Committee considered the application and had sight of the applicant’s revised sketch scheme for 129 homes. All the main issues were addressed including noise. In effect, if not in deed, the Committee refused the original application and decided to ask the applicants if they wished to withdraw the application, in the light of their revised scheme.</p>
August 2005	<p>Letter from President to the applicants. It outlined the Committee’s decision and advised that the Committee expected any new application to –</p> <ul style="list-style-type: none"> ● satisfactorily address the Committee’s previously expressed concerns about imported fill, the ‘acoustic berm’ and development in Field 853; ● meet the 50 or so recommendations set out in its ‘Planning Appraisal’ report; and ● resolve, to the satisfaction of the Committee, the outstanding environmental and traffic concerns which have been expressed by Health Protection among others.
August 2005	<p>Dept. receives e-mail from Health Protection confirming it had met with Mr. B. Halliwell of Jersey Steel, who was willing to consider a bund/barrier on the Company’s premises, subject to the width as they do not have a great deal of space. They suggest that the bund could be reinforced to reduce the area of land used and that Jersey Steel would (subject to cost) be willing to consider funding the fence as they will need to upgrade their fence anyway.</p>

	<i>Meeting with Health Protection and Jersey Steel: Emailed RC on the outcome of that meeting – Copy attached 18</i>
August 2005	Health Protection's e-mail forwarded to architects. The Dept. points out that it will need to know details of what the noise barrier at Jersey Steel would consist of and how it would impact on Le Perquage.
September 2005	<i>Addendum Noise barrier Assessment report provided by Axis Mason which modelled noise levels with a barrier at different distances from Jersey Steel: Copy attached 19</i>
September 2005	Current revised application submitted for <i>inter alia</i> 129 homes. The revised application included the earlier acoustic assessment report (June 2005) and a new report which assesses the effectiveness of 5 options for acoustic wall barriers outside Jersey Steel's doors, with and without a bund on the application site (Doc 3B 'Noise Barrier Assessment Report with addendum attached, September 2005).
& 28th October 5:	<i>Concern expressed by Jersey Steel that the measurements by Dandara's consultants were not representative on day of measurement and the lack of contact by Dandara with Jersey Steel re barriers, i.e. 19th May 2005 – Copy attached 20</i>
October 2005	3rd Public Meeting on proposed development of the site. To give Parishioners a presentation of the revised application proposals and an opportunity to ask questions and voice any outstanding concerns. <i>Parish Meeting – Copy of minutes attached 21</i>
October 2005	Architects submit revised sketch layout for Dept.'s initial comment showing garage blocks along the western boundary of the housing intended to assist with noise mitigation. The aim was to obtain a planning comment and associated noise modelling prior to the applicants meeting again with Health Protection in an attempt to reach agreement on noise mitigation.
November 2005	Dept. confirms to architect that the proposed layout amendments with garages and reshaped acoustic bunds appear generally okay in principle. It also makes it clear that a judgement will have to be made on whether this is a reasonable compromise, taking all things into consideration. The hope is expressed that the applicant's meeting with Health Protection will arrive at a satisfactory conclusion on the noise issue.
November 2005	Applicants have a 2nd meeting with Health Protection who request that a new Maximum Noise Level Assessment report is produced based on LA max levels and not the Leq levels previously referred to in Health Protection's specification and allegedly previous discussions between the two parties. <i>Meeting at Le Bas with Sarah Radcliffe- PBA Adrian Huckson Dandara and Mat Le Mière Axis Mason re latest modelling involving the garages and Lmax. Copy of minutes attached 22</i>
November 2005	In a lengthy "initial" response dated 27 th October 2005 to the revised application, Health Protection among other things – <ol style="list-style-type: none"> 1. questioned the length of the proposed noise wall on the Jersey Steel site (Doc 3b), called for it to be positioned 1415m. from Jersey Steel's doors (to allow for access) and recommended that the earth bund on the application site be provided in addition to help reduce noise levels; 2. sought confirmation that the day noise measurements which were carried out were on a day that is representative of the noise produced by Jersey Steel; suggested that the noise parameter 5min Leq is unsuitable for the measurement of impulse noise such as steel being dropped; called for the LAMax parameter to be used in any noise modelling to indicate whether the proposed noise barriers are sufficient and where double glazing is required; and requested plans showing the elevation of the proposed barrier in relation to the housing; 3. recommended that the gardens of the housing block nearest Jersey Steel (Block 18) are handed so that the houses act as a noise barrier. <i>Comments made by Health Protection on second set of plans P/2004/2247 (129 houses) Concerns re the barrier length being too short, requesting information from Dandara's consultants on the measurements, i.e. if representative, use of Lmax for modelling, acoustic double glazing in the nearest</i>

November 2005	<p><i>houses, gardens face east at location 18 and provision of garages. – Copy attached 23</i></p> <p>The Dept. e-mailed its response to Health Protection's initial comments. It notes that Health Protection will offer updated comments in due course in response to the applicant's latest proposed layout changes (i.e. including the garage blocks) and the associated noise modelling that had yet to be formally submitted.</p> <p>In response to the detailed issues raised by Health Protection the letter among other things –</p>
	<ul style="list-style-type: none"> • questioned the prospect of the developers successfully negotiating with Jersey Steel or the landowners (The Tenants of Le Marais de St. Pierre) regarding the erection of a noise barrier on the Jersey Steel site (given the objections raised from these sources to the application); • suggested that in any event, it seems inconceivable that permission would be granted for a 6m (2 storey equivalent) high wall along the boundary of Le Perquage; • inferred that the only way the applicant can guarantee noise mitigation in connection with the proposals is to deal with it within the application site boundary; • expressed some confusion because the applicants had clearly set out to comply with Health Protection's specification which refers to PPG24 and Leq levels, whereas Health Protection seemed to have moved the goalposts by now requiring use of the much more onerous LAMax parameter. It was suggested that the reasonable question to ask was whether the applicants have complied with the specification they were given. • Confirmed the understanding that the applicants would be seeking to further address noise issues by the introduction of garage blocks and revised ground modelling. <p><i>RC sent e-mail response to Health Protection's comments mentioned above commenting on –</i></p> <ul style="list-style-type: none"> <i>a. Sound barrier- difficulties of getting barrier on Jersey Steels land and querying the height</i> <i>b. Noise modelling – changing goal posts</i> <i>c. Gardens facing east/garages – Copy attached 24</i>
November 2005	<p>Dept. asks applicants to advise on their plans with regard to –</p> <ul style="list-style-type: none"> • Health Protection's latest comments; and • The submission of amended layout plans and an updated noise assessment.
November 2005	<p>Dept. receives letter from applicant's noise consultants (dated 23rd November 2005) regarding their meeting with Health Protection on 11th November 2005, together with representatives from the applicants and architects and the previous history of negotiations relating to the noise issue. The letter sets out their efforts to comply with Health Protection's requirements for an acoustic study. They infer that the work has been carried out to satisfy these requirements.</p> <p>They refer to their meeting with Health Protection on 29th July 2005 (after the Noise Report of June 2005 was issued) to discuss the noise work undertaken. They say that at that meeting agreement was then reached with Health Protection –</p> <ul style="list-style-type: none"> • On the assessment method that had been used; • That, as the noise from Jersey Steel is intermittent, it was appropriate to add 5dB to the measured noise levels for the assessment, as recommended in BS4142:1997, which is the standard to be used when assessing industrial noise in accordance with PPG24. <p>The applicants say that these agreements were then taken into account in all subsequent work.</p>

	<p>The letter then refers to the meeting on 11th November 2005 when they suggest Health Protection stated they would prefer the Noise Assessment “<i>to be undertaken using the maximum noise level (LAMax) from the factory rather than the average noise level (LAeq)</i>”. They argue that this is not in accordance with BS4142:1997; is not therefore following the advice in PPG24; is a clear change from what was agreed in the meeting on 29th July 2005; and has “<i>significantly shifted the goalposts from the work that we were originally requested to undertake</i>”.</p>
	<p>The noise consultants state that the latest Noise Study (using garage blocks etc) demonstrates that the proposed scheme “<i>can comply with the guidance in BS4142:1997 for all properties on the site other than one where no habitable rooms would be exposed to high noise levels</i>”.</p> <p>In conclusion, they state “<i>we therefore believe that we have undertaken the Noise Study as instructed in your letter dated 11th March 2005 (N.B. Dept.’s letter including Health protection’s specification) and that the noise climate across the site would be acceptable to future occupants of the development</i>”.</p>
December 2005	<p>Architects submit amended drawings, including <i>inter alia</i> the introduction of 5m. high garages and car ports along the western edge of the proposed development and re-shaped acoustic bunding.</p>
December 2005	<p>Architects submit revised and new technical reports in support of the application, including –</p> <ul style="list-style-type: none"> ● DOC 3. Acoustic Assessment Report; and ● Doc 3.5. Acoustic Assessment– Maximum Noise Level (LAMax)..... (New)
December 2005	<p>Health Protection seek additional information from applicants noise consultants seeking confirmation –</p> <ul style="list-style-type: none"> ● Of wind speed on day of noise measurements; ● that Jersey Steel was carrying out work on that day; ● of background noise measurements; ● that the noise rating level was increased by 5dB due to the impulsive nature of the noise; ● how reflected noise from hard surfaces will be minimised; ● level of accuracy / margin of error expected from modelling; ● that certain LAMax levels at the eastern part of the site (Figure 3) are correct. <p>Health Protection also asked if the consultants could provide a $\frac{1}{3}$ octave band frequency analysis of the noise measured, on the grounds that the mitigating effect of the garages and the housing will depend on the frequencies of the source noise. <i>Comments made on the latest noise modelling PBA document – E-mailed PBA with comments, and request for additional information – Fax provided from PBA answering queries – Copy attached 25</i></p> <p><i>Health Protection were concerned by PBA’s modelling and instructed Industrial Noise and Vibration Consultants (INVC) to carry out an assessment of the PBA document 3 Acoustic assessment report LA Max Dec 2005 – see e-mail to INVC – Copy attached 26</i></p>
January 2006	<p>Dept. e-mails Health Protection acknowledging request for information, looking forward to its finalised response and expressing a keenness to complete the officer report on the application so that it can be presented to the Application Panel. <i>Emailed RC re update – Copy attached 27</i></p> <p><i>Reply received by e-mail from INVC which says “LAeq,T should be used to measure continuing sounds, such as road traffic noise or types of more-or-less continuous industrial noises. However, when there are distinct events to the noise, as with aircraft or railway noise, measures of individual events such as the</i></p>

	<i>maximum noise level (L_{Amax}), or the weighted sound exposure level (SEL), should also be obtained in addition to LA_{eq,T}.” – Copy attached 28</i>
January 2006	Response to Health Protection from noise consultants confirming – <ul style="list-style-type: none"> ● was slight wind on day of noise measurements; ● work was being undertaken at the Jersey Steel site on that day; ● measured background noise levels; ● that the noise assessment in the L_{Amax} report does not have an additional 5dB on the measured L_{Amax} levels to avoid double correcting; ● that compliance with guidance found in BS4142 and PPG24 means noise across the proposed development should be considered as free-field (i.e. no reflections); ● level of accuracy of noise modelling; ● figure 3 is correct; and ● why it is reasonable to assume that if a 1/3 octave band frequency analysis is used in the model the results would be less accurate.
January 2006	<i>E-mail from RC pushing for a response from Health Protection – Copy attached 29 (no number 30)</i>
January 2006	<i>E-mail to RC saying the Head of Health Protection Steve Smith needed updating and will be in contact shortly.</i>
January 2006	<i>Request for information from Deputy J Le Fondré – Copy attached 31</i>
January 2006	Noise consultants e-mail Health Protection saying they have had no feedback and therefore assuming Health Protection is happy with their response.
January 2006	Health Protect confirm they are awaiting comments of their Assistant Director
January 2006	Architects e-mail Health Protection seeking a clear indication of when it intends to respond to the Dept and outlining the extensive process of dialogue, amendments and re-design undertaken by their clients. <i>Request by Axis Mason for a response and showing time line – copy attached 32</i>
January 2006	Dept. received e-mailed letter from Health Protection (dated 16th January 2006) with comments about the amended revised application and Doc 3.5 Acoustic Assessment – Maximum Noise Level, Dec. 2005. It talks of a number of concerns about the application (including noise); explains how it must satisfy itself that the proposed noise mitigation measures will prevent noise complaints and not diminish the quality of life of future residents; and argues that it may have to take action against Jersey Steel if complaints are received, which it suggests could result in legal action against the States. It confirms that, in order to safeguard its position, it has referred the noise reports to an independent UK firm of Noise Consultants. It goes on to – <ul style="list-style-type: none"> ● question the effectiveness of the proposed garage blocks for noise mitigation; ● reiterate why it has requested modelling using L_{Amax} (i.e. because there are distinct noise events); ● draw attention to the figures in the L_{Amax} study which show areas of the proposed development between 5 and 10dB above the background which are likely to result in complaints; ● suggest other mitigation measures it would expect to see (e.g. changing the layout of houses so that all habitable rooms and gardens are facing away from the main noise source as far as possible; and a glazing and ventilation specification for habitable rooms). <p>Health Protection said they would contact the Dept again when their consultants have reported back. <i>Comments made to RC and his response on the PBA document 3 Acoustic assessment report LA Max Dec 2005 – Copy attached 33 (no number 34)</i></p> <i>Further information and noise data sent to INVC</i>

January 2006	<p>Dept. e-mail to Health Protection asking to be advised on –</p> <ul style="list-style-type: none"> • name of independent firm of noise consultants being used; • when they are required to complete their review; • the brief they have been given.
January 2006	<p>Dept. receives e-mailed letter from Health Protection confirming –</p> <ul style="list-style-type: none"> • their consultant's name; and • the terms of their brief. <p><i>Details of INVC sent to RC at Planning and the brief. Copy Attached 35</i></p>
& 15th February 5	<p><i>E-mail from INVC explaining there will be slight delay and requesting location plan re Health Protection's measurement sites.</i></p>
March 2006	<p><i>Report received from INVC – recommending high speed roller shutter doors – Copy attached 37</i></p>
March 2006	<p>Dept. receives the report of Health Protection's noise consultants. Rather than spending more time considering all the previous correspondence and assessing the accuracy of the PBA noise predictions, they concentrate on how the noise problem might be effectively attenuated. They suggest a possible solution whereby the applicant approaches Jersey Steel and offers to fund the installation of automatic roller shutter doors for the two door openings at the premises which face east.</p> <p><i>Copy of INVC report and e-mail sent to RC – Copy attached 38</i></p>
March 2006	<p><i>E-mail response from RC regarding the INVC report querying parts of it but saying this offers a solution. He also refers to the Solicitor General – Copy attached 39</i></p>
March 2006	<p>Dept. seeks clarification of Health Protection's position on the noise issue and the suggested mitigation.</p> <p><i>Health Protection ask for a copy of the Solicitor General's advice. The Solicitor General e-mailed to clarify why a resident would take action against Jersey Steel but would not disclose her advice given to Planning as Health Protection would be acting against Planning. Copy attached 40</i></p> <p><i>9th March 2006 – RC emailed Health Protection regarding H.M. S.G.'s comments and a number of requests for information/clarification, i.e. Copy attached: Health Protection's comments in Red 41</i></p> <p>(i) <i>you consider that Peter Brett Associates are suitably qualified and competent to assess the noise issue and able to offer independent and objective advice, knowing the reliance that would be placed on it?</i></p> <p><i>I have no reason to doubt the abilities of Peter Brett Associates who are members of the Institute of Acoustics, however, they are employed to look after the interests of their client and to secure the discharge of the States conditions at the cheapest option. That is a different remit to that required of the States in ensuring a lasting resolution to issues of noise. Their brief does not appear to have included options at Jersey Steel, i.e. dealing with the source and in addition they didn't model Max level against L90 initially as we requested.</i></p> <p>(ii) <i>you agree that the Acoustic Assessment Report prepared by noise consultants PBA dated November 2005 (using Laeq levels) complies with the planning guidelines detailed in PPG24, and BS4142 and BS 8233; and has been carried out in accordance with the specification that Health Protection supplied?</i></p>
	<p><i>I agree that they have considered the points that you mention, however, PPG 24 is poor in its determination of impact type noises as is the case here. The interpretation of PBA's reports clearly indicate to us and our consultants that there will continue to be an issue with impact type noise from Jersey Steel for prospective residents. Again PBA are constrained in their remit as they have not looked at Jersey Steel, i.e. dealing with the source. Their proposal may achieve BS etc</i></p>

but due to the nature of the noise impact and the intermittency, this will result in complaints as shown by the difference between the Lmax and L90 (L90 40 -45 to Lmax 60+)

(iii) *you agree that the preference expressed by Health Protection to the applicants in November 2005 for a noise assessment using maximum noise levels (Lamax) as opposed to average noise levels (Laeq) for noise modelling was in fact a departure from your specification for the applicants (or as they have argued "moving the goal posts")?*

The report from PBA provides maximum levels but following our perusal of the report we additionally asked for it to be modelled against L90 – which I do not find unreasonable given this was asked for on the basis of the interpretation of the reports findings.

(iv) *you have received complaints from existing residents about noise nuisance from Jersey Steel since they changed their working hours to exclude Sundays and late Saturday afternoons and evenings? This would be contrary to earlier indications, but if so, what has Health Protection done about them and wouldn't it be bound to act?*

The department has not received complaints since they (Jersey Steel) changed their hours of work, but the new premises are closer to the business than existing properties and we would anticipate renewed complaints on the basis of the noise levels.

(v) *you agree with the logic and facts underpinning your consultant's recommended solution for mitigation (i.e. that it is highly likely new residents at properties exposed to noise levels above 60dB Lamax will complain, because you have confirmed that existing residents have complained when impact levels are in the region of 60-65dB Lamax)?*

Yes we agree with our consultants, under BS 4142 complaints may be expected over 5dBA above L90. In this case complaints are likely as levels are up to 15 dBA above the L90.

(vi) *you remain of the opinion that the proposed development will result in unacceptable noise nuisance without appropriate additional safeguards beyond those mitigation measures already proposed, and why?*

To be effective noise barriers need to be as close to the source/receptor as possible and allow for flanking noise. The bunds proposed will give no improvement nor will garages which are insufficient in size and extent to effectively screen the receptor from the source. In the opinion of ourselves and our consultants the acoustic barrier needs to be at the source i.e. barrier/roller shutters on the building.

(vii) *you agree with the mitigation measures (roller shutter doors) proposed by Industrial Noise & Vibration Centre Ltd. would be an acceptable and reasonable solution to the noise issue?*

The provision of the suggested mitigation aligned with filling holes in the structural facade nearest the development will we believe provide the necessary additional acoustic reassurance to overcome the outstanding concerns of noise nuisance. What has not been considered is any occupational problem within the Jersey steel's premises from noise and potential heat build up in summer.

March 2006	<i>E-mail comment from Deputy J.A.N. Le Fondré regarding build-up of heat in Jersey Steels factory as doors kept closed.</i>
March 2006	Health Protection provides the requested clarification. Among other things Health

protection confirm that “the provision of the suggested mitigation aligned with filling holes in the structural façade nearest to the development will we believe provide the necessary additional acoustic reassurance to overcome the outstanding concerns of noise nuisance”. However, they also state “what has not been considered is any occupational problem within the Jersey Steel’s premises from noise and potential heat build-up in Summer”.

E-mail response to RC regarding queries in No. 41 above: see Comments in Red above. See below for SDS general concerns 43

Roger

Thanks for your email and my apologies for the delay in responding. I have formulated comments under the headings you gave below. I agree with your comments regarding the release of information. However, it is/was not our intention to release this information willingly only to point out that we expect to be put in an invidious position of being required to release that advice in the event of being pulled into a legal action. I have little doubt that you will be required to release this document should Dandara follow through their threat. Should we be put in the position of having to secure the Abatement of a Nuisance aligned to this case then clearly we will be seeking legal advice first.

Unfortunately this case has all the hallmarks of another Waterfront which case has left a lasting bitter taste in the mouth of the Port Users, who at the last meeting I had with them feel “shafted” if you pardon the expression by having housing imposed upon them severely impacting on their business. The States should not be seen to be riding roughshod over the interests of Jersey Steel in the same way and "we" need to be seen to be acting without favour.

I apologise if this sounds like I'm lecturing, but I am expressing my sincere opinion in this matter.

Regards

Steve

April 2006	<i>Query from resident on Route de St. Aubin re the proposed pumping station at Bel Royal car park and response from RC which mentions Jersey Steel willingness to install automatic roller shutter doors – copy attached 44</i>
July 2006	<i>Request from Stuart Syvret for an update as the matter was going to the states to discuss as wishing to limit the number of units – copy attached 45</i>
July 2006	<i>E-mail from Jersey Steel saying they were concerned as Planning had not contacted them and they wished a copy of the INVC report. – copy attached 46</i>
August 2006	<i>Decision by the Planning Minister to refuse the Planning Application. – Copy attached 47</i>
August 2006	<i>RC e-mailed to say – “It is not clear at this time what the position is. The site remains zoned for Category A housing and, presumably, will be developed as such. The options for the developer are to prepare a revised scheme or to appeal the decision. As I understand it, the Minister and the developer have discussed possible ways forward and the developer is considering the implications of a revised scheme for a lesser number of units, which addresses the reasons for refusal. The developer is meeting the Minister again today to discuss design issues”. Copy attached 48</i>
December 2006	<i>Letter to Planning from Jersey Steel saying they do not consider the noise survey or the modelling to be acceptable and that the application in its current form represents a real risk to the ongoing operation of our business on Goose Green Marsh site. They also query that the noise measurements originally carried out by PBA on 19th May 2005 were not representative. They have employed WS Atkins to review the INVC and Atkins reports. – Copy attached 49</i>

December 2006	RC e-mailed to ask Health Protection to take account of the WS Atkins information when providing the latest response.
December 2006	Comments by Health Protection on the latest application Plan P/2006/2489 which mentions again roller shutter doors, noise barrier and insulation and layout of premises – Copy attached 51 (no number 50)
January 2007	E-mail from RC summarising the latest position and asking a number of further questions. Copy attached 52
January 2007	E-mail from Jersey Steel regarding meeting with Dandara and request for information re Statutory Nuisances (Jersey) Law 1999 and how we apply it – Copy attached 53
January 2007	<p>Reply to RC re queries mentioned in 52 above, i.e. –</p> <p>A. Do Jersey Steel presently meet the current noise parameters agreed with HP?</p> <p><i>There are no noise parameters as such only hours of work as there have been no complaints as there is no housing close by. The previous complaints related to Sat. p.m./Sun. working, which were resolved.</i></p> <p>B. 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?</p> <p><i>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 vents in lieu 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.</i></p> <hr/> <p><i>The above suggestions may help resolve noise within the properties but there may still be complaints from residents using there gardens. The properties and gardens are likely to be higher than the existing land to deal with the flooding issues and so noise transmission will be worse as there will be greater number of properties in the line of site. I can't see a situation which would guarantee no complaints. 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.</i></p> <p>C. 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”.</p> <p><i>Following discussions with Jersey Steel these doors are likely to remain open for times due to Health and Safety issues re heat and ventilation in the shed and moving steel in and out. This would negate their effectiveness and if a complaint was received we are still duty bound to investigate and take action if deemed to be a nuisance. I have also taken your Minister's comments on board and understand</i></p>

that this is not accepted as a workable solution by your Department.

D. 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?

No as this would not negate the provisions in the 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).

*Is there an opportunity for Dandara or the States to offer a land swap with Jersey Steel? One option is for the States to pay for Jersey Steel to achieve best practice, i.e. insulate the building, provide suitable extraction ventilation and electric roller shutter doors. Jersey Steel would have to provide and show they are following a noise management plan. **Copy attached 54***

<i>February 2007</i>	<i>Letter to Senator Cohen from health Protection saying the section cannot design a scheme for the client as this would prejudice any action we wished to take – Copy attached 55</i>
<i>February 2007</i>	<i>Meeting at Planning with Planning, Axis Mason Architects and Dandara to discuss the two possible noise mitigation options. Copy attached 56</i>
<i>February 2007</i>	<i>E-mail from Jersey Steel discussing the options mentioned in 55 above saying Option B is not practical and a lean to building may also assist. Copy attached 57</i>
<i>February 2007</i>	<i>E-mail response from RC to Jersey Steel re the option of a lean to shed, etc. – Copy attached 58</i>
<i>February 2007</i>	<p><i>E-mail from Dandara regarding the use of Lmax limit of 60 dB(A) as discussed in the INVC letter report dated 28/02/06. Can this be confirmed by Health protection as being the correct criteria.</i></p> <p><i>(a) – existing situation – no roller shutter with the new masterplan but no fencing or increased berm;</i></p> <p><i>(b) – Acoustic roller shutter door (22db) – new masterplan/new increased berm/fencing, etc. as per spec below:</i></p> <p><i>Increase the proposed height of the acoustic berm by a further 0.5m., taking this to an approximate maximum height above the general ground level adjacent to Jersey Steel of 5.0m.</i></p> <p><i>Add a 1.8m. high close boarded timber fence to the top of the acoustic berm, this to be appropriately screened with trees/planting.</i></p> <p><i>Add a 1.8m. high close boarded timber fence to Jersey Steel's site boundary.</i></p> <p><i>Add an acoustic roller shutter door to the doorway at Jersey Steel's east façade that when opened, will result in a maximum opening height of 4.0m. (tested open).</i></p> <p><i>(c) – New L2 shed on gable insulated with acoustic roller shutter (22db) behind (as per Jersey steels drawing)/ – with new increased berm/fencing, etc. (as above) Copy attached 59</i></p>
<i>March 2007</i>	<i>E-mail from Jersey Steel to Dandara re inclusion of extra premises in the modelling – Copy attached 60</i>
<i>March 2007</i>	<i>E-mail from Dandara re acoustic double glazing etc for the premises – Copy attached 61</i>
<i>March 2007</i>	<i>E-mail from Jersey Steel regarding the email from PBA which shows 9 different options – Jersey Steel are concerned as the original data has been used for the modelling which is flawed. Copy attached 62</i>
<i>March 2007</i>	<i>E-mail from Axis Mason Architects to Jersey Steel regarding meeting held on Monday 26th February 2007 at Planning.</i>

*i.e. the proposed mitigation measures should provide the level of 'acoustic reassurance' required by Health Protection as identified in the report prepared on their behalf by Industrial Noise and Vibration Centre Limited in February 2006 and on the basis of La max noise levels. As discussed on Monday, the only issue with the original acoustic roller shutter proposed was the fact that you would require this to remain open at times due to operational requirements or to potential health and safety issues such as ventilation etc. What we agreed then was to look at the various additional/alternative mitigation measures required to enable you to operate unhindered with the roller shutter door remaining open (i.e. increased berm, possible fence to Jersey Steel boundary, lean-to structure etc.). Our clear understanding from the meeting on Monday was that if the acoustic modelling demonstrated that the required La max levels could be achieved then Health Protection would be satisfied and in turn, if HP were satisfied, Jersey Steel would have the degree of comfort they required. **Copy attached 63***

March 2007	<i>PBA consultants e-mail the modelled results for options A–H Copy attached 64</i>
March 2007	<i>E-mail from Health Protection to RC at Planning saying we need to agree on a baseline measurement. Therefore Health Protection is to re measure noise levels. Copy attached 65</i>
March 2007	<i>E-mail from Dandara to PBA and stakeholders regarding options A&B and explaining the matter is URGENT – Copy attached 66</i>
March 2007	<i>E-mail from Health Protection regarding further measurements see below to establish base line figure</i>
	<i>I monitored this morning as the weather was perfect. Bruce Halliwell knew I was on site and I asked for the worst case scenario. The highest Lmax was 70 dB(A) approx 100m. from Jersey steel in the middle of the site. I do a more detailed report but they need to achieve a 25dB reduction. The only way this can be achieved is via the roller shutter doors (22dB) when closed. The other measures will have limited reduction in my view. We need to tell PBA to model/use 70 dB(A) as the starting point 100m. into the site or use the Lmax of 104 dB(A) – 2m. from doors. I suspect the modelling doesn't reflect the true figures. Copy attached 67</i>
March 2007	<i>PBA provide final report modelling the noise from Jersey Steel – using 60 dB(A) Lmax recommending a 5m. bund and 1.8m. close boarded fence on Jersey Steel's land, lean-to constructed and rapid roller door and insulation to 14 properties (first floor level). 2 properties exceeding 60 at ground floor – Copy attached 68</i>
March 2007	<i>E-mail from Dandara regarding the delays – Copy attached 69</i>
March 2007	<i>Dandara produce a draft letter to go to Minister of Health and Social Services regarding the delays and making a complaint about Jersey Steel as owner/occupier of the site requesting Health Protection take legal action – Copy attached 70</i>
March 2007	<i>E-mail from RC (See copy attached 71) to Health Protection asking whether –</i> <p>(a) <i>you are now able to confirm that the proposed/preferred mitigation measures put forward in the PBA report will provide the necessary additional acoustic reassurance to overcome your concerns about noise nuisance (i.e. as you did for the previous application, based on your own consultant's advice on the effectiveness of high speed roller shutter doors in ensuring that noise levels at proposed properties do not exceed 60dBLAmax); or if not</i></p> <p>(b) <i>you would agree that the proposed / preferred mitigation measures (with or without modification) are highly likely, likely, or not likely to provide the necessary acoustic reassurance.</i></p> <p><i>If your response to (b) is positive, I could then add a planning condition (and obligation), which relates to the need to satisfy the Minister, in consultation with Health Protection, that noise mitigation measures will be put in place that will ensure noise levels at the proposed properties do not exceed 60dBLAmax etc.</i></p>
March 2007	<i>E-mail from RC to Health Protection, Jersey Steel and Dandara regarding a draft condition, i.e. See copy attached 72</i>

	<p>Noise Exposure <i>"Exact details of the proposals for noise mitigation on and off the site (including details of noise calculations confirming the effectiveness of the measures and proposals for implementing them) to ensure that the gardens and interiors of the approved properties are not exposed to daytime noise levels from the operations of Jersey Steel greater than 60dBLAmax? and ?dBLAmax respectively, shall be submitted to and approved by the Minister for Planning and Environment, in consultation with Health Protection, prior to the commencement of the development hereby approved".</i></p> <p>Reason: <i>to protect the amenities of future occupants of the approved properties.</i></p> <p><i>This would be complemented by a Planning Obligation Agreement requiring the developer to fund the off-site mitigation works.</i></p> <p><i>I would currently anticipate that the mitigation measures would include –</i></p> <ul style="list-style-type: none"> • <i>a new close-boarded boundary fence to Jersey Steel's premises along the boundary with Le Perquage;</i> • <i>the installation of a high speed roller shutter door at the eastern entrance of the Jersey Steel factory;</i>
	<ul style="list-style-type: none"> • <i>a new lean-to structure over the main entrance door at the eastern end of the Jersey Steel factory;</i> • <i>a 5m high planted acoustic berm on the application site between Le Perquage and the approved housing;</i> <p><i>other measures which may be deemed necessary as a result of on-going work in this area.</i></p>
March 2007	<p><i>Response by Health Protection to Planning regarding latest position and monitoring –</i></p> <p><i>If development does take place on the proposed site, the following measure constitute the minimum works needed:</i></p> <ol style="list-style-type: none"> 1. <i>Automatic roller shutter doors (default closed) – Jersey Steel.</i> 2. <i>Lean-to Building – Jersey Steel.</i> 3. <i>3m. high close boarded fence – Jersey Steel's boundary.</i> 4. <i>3m high berm with trees (close planting to screen) to screen.</i> 5. <i>All generally eastward facing facades to have acoustic glazing and affected properties to have whole house ventilation.</i> 6. <i>All generally eastward facing boundary walls / fences to be a minimum 1.8m. high close board or solid construction.</i> <p><i>All additional measures stated by the Applicant in their PBA report dated, paragraph 5.1.2 page 11 (written confirmation required by Health Protection– Copy attached 73</i></p>
March 2007	<i>E-mail from RC regarding the measures mentioned in 73 above. Copy attached 74</i>
March 2007	<i>Copy of Planning letter sent to PBA consultants who are to consider the measures in 73 above. Copy attached 75</i>
March 2007	<i>E-mails from RC and PBA and Dandara regarding the noise criteria to be achieved, i.e. Lmax 60 or 50 dB(A) Copy attached 76</i>
March 2007	<i>E-mail from Health Protection to RC suggesting we vary the Lmax figure of 50 to 55dB(A) and also use the 40dB Leq over 16 hours – Copy attached 77</i>
May 2007	<p><i>E-mail from RC to all parties attaching the notice of approval granting permission. This report includes all the issues of concern including noise and flooding and specifies –</i></p> <ul style="list-style-type: none"> • <i>Automatic roller shutter doors (default closed) at Jersey Steel;</i> • <i>lean-to building at entrance to Jersey Steel;</i> • <i>3m. high close-boarded boundary fence at Jersey Steel;</i> • <i>3m. high berm with trees (close planted) on the site;</i>

- *all eastward facing facades to have acoustic glazing and noise affected properties to have whole house ventilation;*
- *all eastward facing boundary walls and fences to be a minimum height of 1.8m. (close-boarded or solid construction);*
- *all sound insulation measures stated in the latest 'Maximum Noise Level Assessment Report' to be implemented.*

*Gardens of the nearest proposed homes are not exposed to daytime noise levels from the operations of Jersey Steel greater than 55dBLAmax and 40dBLeq over 16 hours during daytime. In addition, they have provided suggested maximum interior average daytime noise levels for bedrooms, living rooms, dining rooms, kitchens, bathrooms and utility rooms. **Copy attached 78***

-May 2007

Work Commences on site (i.e. tree removal and hard standings provided).

RAC 30/3/06

REPORT TO THE ENVIRONMENT AND PUBLIC SERVICES COMMITTEE

8/37/1

13 February 2004
(amended 16th March 2004)

Category A Housing Site Fields 848, 851, 853 & 854, Bel Royal, St. Lawrence

Introduction

Plans for 150 first-time buyer and social rented homes together with a Public Amenity Area and a Community Centre were the subject of a public exhibition at St. Lawrence Parish Hall from 1st to 3rd December 2003.

The plans were drawn up by architects Axis Mason on behalf of Bel Royal Jersey Ltd. (following discussions with this Department) and represent the architects' interpretation of the Committee's draft development brief.

The plans have generated considerable interest among residents immediately neighbouring the site.

This report makes recommendations in relation to the scheme, based on an analysis of the representations submitted by local residents (see Appendix 1) and a detailed planning appraisal (see Appendix 2).

Background

The site was rezoned for Category A housing purposes as part of the Jersey Island Plan in July 2002. The States decision was made on the basis that any future development must be in accordance with a development brief to be approved by the Committee.

A draft development brief was prepared by the former Environment and Public Services Committee in March 2003. This was intended to guide and inform the design process undertaken by the developer's architect whose drawings would form the basis for a consultation with local residents. The Committee's stated aim was to carefully consider the opinions and concerns raised during the public consultation exercise, before finalising its development brief and inviting revised proposals as the basis of a formal planning application.

A detailed report was prepared for the former Committee's Policy Agenda on 19th February 2004, before it left office. That Committee deferred detailed consideration of the proposals, but did address the process they wished to be followed for progressing the scheme, in the light of a recent public meeting and on-going concerns of the Constable and local residents. They decided that a 'technical/information exchange seminar' should be held with local residents prior to the submission/determination of a formal application. The aims would be to address, in detail, outstanding concerns in relation to drainage and flooding, traffic/transport impact etc and to give the public confidence that these issues are properly understood and are being effectively dealt with. It was agreed that the details of the proposed drainage scheme and the requisite drainage report would need to be finalised, submitted and appraised first, before the seminar can take place. The architect has been informed accordingly.

Consultation Response

The public exhibition was widely advertised through public notices and an article in the Jersey Evening Post and by a letter drop to approximately 400 households living in the residential areas around the site. There was a good level of attendance at the times when officers were present.

The deadline for representations was Thursday 18 December 2003, although some flexibility was allowed, and 43 completed comments forms and letters of representation were submitted by local residents, including 3 from representatives of Jersey Steel Co (1935) Ltd. All letters and completed forms are available to members for viewing, on request.

It can be seen from Appendix 1 that the residents' main concerns related to drainage and flooding issues and the implications of the proposed development for road traffic in the area. The density of the proposed development was the most significant of the other concerns expressed.

Two letters of representation were also received in February 2004, although these cover issues previously raised by respondents to the consultation.

The representations on behalf of the Jersey Steel Co. were on the grounds that:

- The proposed housing is too dense and too close to the company's workshop and will provoke complaints about noise nuisance;
- The proposals do not allow for / provide an alternative road access for the company;
- The children's play area is too close to Jersey Steel and might encourage children to climb its perimeter fence.

Public Meeting

A public meeting was held in the Parish Hall on 19th January 2004. This was called by the Parish Constable following representations from local residents, primarily in relation to the flooding issue and concerns about how this might be worsened by the proposed development. There were fears that the proposed drainage scheme would not be sufficient to prevent flooding, and residents were clearly looking for reassurance. A PSD drainage engineer was in attendance to explain that:

- Large water storage tanks are to be built on the housing site to delay run-off and maintain the 'status quo' as regards the volume of water in the Perquage brook;
- A surface water pumping station, funded by the developer, will be put in place to prevent uncontrolled flooding.

Other concerns raised at the meeting, reflected those expressed by consultation respondents and related to the siting of the pumping station, the number of proposed homes, the implications for traffic and the pressure on Bel Royal School.

One question which remained unanswered was "who will be liable in the event that existing properties are flooded following the completion of the development?" The Department is presently seeking legal advice from the Law Officers in this regard.

Parish of St. Lawrence

In April 2003, the Parish Constable responded on behalf of his Honorary Police and Roads Committee to the draft brief (see Appendix 3). He emphasised their concerns about the dangers of flooding in the marshy area to the south of the proposed housing and makes it clear that "*it is essential that.....there is the greatest of certainty that no flooding will occur*". Other matters raised can be summarised as follows:-

-
- i) concerns about the large increase in traffic movements on a relatively narrow and heavily used road;
 - ii) support for the emphasis on tree retention and the provision of footways and refuges along Vallée de St. Pierre, given that this is a particularly dangerous stretch of road for pedestrians;
 - iii) support for the 55% of first-time buyer homes and sheltered units;
 - iv) concern about the prospect of a new access for Jersey Steel crossing the Perquage Walk.

At the Public Meeting, the Constable was handed a letter from the residents of Rosedale Avenue (see Appendix 4) expressing concerns about the flooding in the area and asking "*where the water is going to be pumped after the development*". The Constable has asked that a reply is given on the technical issues involved, and PSD drainage engineers have duly obliged in a letter dated 27th February 2004 (see Appendix 5).

Furthermore, the Constable, in response to receiving letters of concern principally in relation to the flooding issue, has taken specialist advice on the nature of the research / studies required in relation to the drainage for developments near wetlands. He subsequently sought some comfort that these types of studies are being undertaken and a letter was consequently sent to the developer seeking such comfort (Appendix 6). There followed a detailed response from the PSD drainage engineers, which was forwarded to the Constable (see Appendix 7). This sets out what the engineers would expect the detailed drainage scheme and its supporting technical report to include, to enable them to make a proper assessment.

Recommended Changes

There are numerous case officer recommendations which emerge from the analysis of the representations submitted by local residents and the detailed planning appraisal of the proposed scheme, as set out in Appendices 1 and 2. These are supplemented by other comments of the development control section (see Appendix 8). As one would expect, there is considerable degree of overlap in the points raised.

The most significant officer recommendations can be summarised as follows:-

- i) that a report from the consultant drainage engineers is made available, at the earliest opportunity, to demonstrate how the drainage issue will be addressed / resolved;
- ii) that details of the proposed pumping station (including siting and design) and other drainage infrastructure (including attenuation measures) are made available as part of the planning application and are supported by a suitably detailed drainage report;
- iii) that any future planning application and associated drainage plan includes details of existing and proposed ground levels;
- iv) that appropriate measures are introduced along the western boundary of the site to provide an adequate visual buffer to the Perquage Walk, to assist in baffling noise from the Steel Works and to prevent development on land susceptible to potential flooding;
- v) that the design and layout of the northern end of the site is modified to avoid any undue overlooking prejudice of, and overbearing impact on, the Le Perquage Flats property;
- vi) that the size / phasing of the scheme is altered, or other measures are agreed, to ensure there is sufficient primary school capacity;
- vii) that it will be necessary to reach agreement with PSD traffic engineers regarding the detail of the vehicular access arrangements and associated road works and measures for improved pedestrian safety;
- viii) that the nature of the proposed 'sheltered homes' is clarified;
- ix) that any future application is accompanied by a fully detailed landscaping scheme, which covers the treatment of external surfaces (including paving of footpaths, parking areas,

-
- roads, courtyards etc.), planting schedules, tree retention, future management and maintenance etc.;
- x) That a detailed ecological report is included with the landscaping scheme for any future planning application;
 - xi) that the architect provides an indication of how the parking arrangements will work in practice;
 - xii) that amendments are made to ensure the parking provision is adequate in all parts of the development;
 - xiii) that the courtyard parking areas are divided into smaller bays by more strategically placed tree and shrub planting to improve the quality of the environment;
 - xiv) that all private rear gardens comply with minimum standards requirements;
 - xv) that an approach is made to the Crime Reduction Officer re. compliance with 'Secure by Design' principles, prior to submitting the planning application;
 - xvi) that the unbroken length of the larger straight terraces is reduced to no more than 5 (or 6?) homes, to provide visual relief and improve their visual appearance. This could, in part, serve to reduce the hard edge of the rear of the unbroken terraces fronting the Amenity Area. However, the impact of these particular buildings could also be reduced and softened to good effect, by more new tree planting than is currently proposed and, perhaps, more articulation of the buildings;
 - xvii) that the elevational treatment of the larger terraces is modified to introduce variations in roofline / roof height, to add visual vitality and interest;
 - xviii) that consideration is given to improving the roofscape. Perhaps, by turning the roofs of some housing units through 90 degrees. This will add visual interest, not only by breaking up the roof lines, but also by presenting more gable end features onto public areas;
 - xix) that, as part of the application, it is demonstrated that each home meets minimum storage requirements;
 - xx) that purpose designed storage sheds are provided for all family homes without garages;
 - xxi) that any future application includes detailed designs for the children's play area and makes provision for the play needs of older children;
 - xxii) that the application includes details of the proposed community building, its design, how it will be managed and maintained and how it will meet the requirements of future users;
 - xxiii) that the planning application demonstrates how the proposed pedestrian routes accommodate the needs of those with reduced mobility;
 - xxiv) that provision is made for communal satellite dishes, to prevent the unnecessary proliferation / visual clutter of individual dishes throughout the development;
 - xxv) that, in the interest of child safety, consideration is given to making the proposed pond in the village green area into a natural looking bog garden, echoing the proposed planting in the wetland area to the south.

It is anticipated that required amendments to the scheme, referred to above, will involve some reduction in the yield of homes (e.g. through the need for: adequate garden areas; adequate and suitably laid out parking provision; an effective buffer strip along the Perquage Walk; the avoidance of potentially floodable land; and avoiding overlooking prejudice to Le Perquage Flats).

Committee Steer

The following issues might be construed as more political in nature requiring a Committee steer, before any application is invited:

- Is the Committee happy to deal with the proposed drainage scheme and remedial flood relief measures as part of the normal application process?

- What is the maximum number of new homes / density that the Committee would expect the application scheme to yield? Is it happy to confirm that the yield will be determined by an acceptable design, which satisfies the requirements of the brief?
- Does the Committee support the loss of existing roadside oak trees to achieve vehicular access requirements and provide safer conditions for pedestrians?
- What is the Committee's view on the proposed levels of parking provision?
- Is the Committee comfortable with the fact that the developer has been unable to acquire one of the fields (Field 862) required for the public amenity area?
- Is there any Committee support for the proposal of Jersey Steel for a new access through the proposed housing site via a new crossing of the Perquage Walk?
- Is the Committee minded to accept that the proposed housing development extends slightly further south than the arbitrary line which determines the boundary of the zoned area (i.e. the approximate southerly encroachment ranges between 5m and 10m)?

Conclusions

The proposed scheme complies with many of the principles set out in the draft development brief and has much to commend it. However, modifications are necessary and further work is required if the scheme is to be favourably considered following receipt of a formal application.

Local residents have taken the opportunity to comment on the draft brief and the proposed scheme as part of the consultation exercise and have raised some legitimate concerns, which have prompted certain of the changes recommended in this report. However, few alterations are necessary for the development brief. The principal required change to the brief being a reference to the capacity of Bel Royal School.

Recommendations

That the Committee:-

- i) approves the development brief, subject to the inclusion of a reference to the capacity of Bel Royal School, any changes arising from the Committee's deliberations and other minor textual modifications to correct/clarify the contents;*
- ii) agrees the officer recommendations included in this report, the 'Consultation Response Report' and the 'Planning Appraisal Report' and advises the developer and architect accordingly;*
- iii) invites the submission of a formal planning application, having regard to the matters raised in items (i) and (ii);*
- iv) confirms that outstanding technical and planning issues are addressed as part of the formal application process;*
- v) re-affirms the intention to hold a further meeting with local residents to address the technical issues in relation to drainage, traffic etc, following receipt of a formal application;*
- vi) issues a press release on the progress made to date, to be agreed with the President;*
- vii) informs the Parish Constable and Deputy of the Committee's decision prior to issuing the press release.*

Report prepared by:

Endorsed by:

Roger Corfield
Principal Planner

1013/7(87)



PLANNING SUB-COMMITTEE

21st May 2004

**Confidential:
exemption
3.2 (a)(xiv)**
Field Nos. 848,
851,853 &
854, Bel
Royal, St
Lawrence:
Category A
Housing
Development:
Draft
Development
Brief.
1013/7(87) ✓
8/37/1

B1. The Sub-Committee, with reference to its Minute No. B1 of 11th May 2004, received a report, dated 14th May 2004, prepared by Mr. R. Corfield, Principal Planner, in connexion with the proposed Category A housing site at Field Nos. 848, 851,853 & 854, Bel Royal, St Lawrence.

The Sub-Committee recalled that on 11th May 2004, following a meeting between the Chairman and Deputy M.F. Dubras it had decided to amend its earlier decision and agreed to hold a meeting / technical seminar with local residents to address the technical issues in relation to drainage, traffic etc prior to the receipt of a formal application; and to defer and review its earlier decisions from 4th May 2004, following the meeting / technical seminar with local residents. It was recalled that the Director of Public Services had been asked to make the necessary arrangements for the seminar.

The Committee was apprised that having discussed the matter with his officers, the Director of Public Services had grave misgivings concerning the convening of a meeting with local residents prior to the assessment of detailed drainage proposals. In this regard it was noted that Deputy Dubras had been invited to attend a meeting with the Chairman, the Directors of Planning and Public Services and other senior officers on 13th May 2004.

The Sub-Committee was advised that the said parties had reached the following agreement -

- (a) the Sub-Committee would give qualified approval to the brief, which required, inter alia, drainage and transport issues to be satisfactorily resolved;
- (b) the brief would be modified in accordance with the Sub-Committee's decisions of 4th May 2004 and would also include reference to the possibility of a new road, should it be required, through the south of the site;
- (c) a 'technical seminar' would be held with local residents and interested parties, before the application was formally submitted to resolve all outstanding concerns in relation to drainage and traffic;
- (d) the seminar would be led by the developer, with support from Public Service Drainage (PSD) engineers. It was agreed to hold the event as soon as the necessary technical information was available and had been properly assessed by PSD engineers;
- (e) the applicant would be invited to prepare an application, on the understanding that -
 - (i) a technical seminar would be held before the application was submitted;
 - (ii) the application must have regard to the requirements set out in the Principal Planner's reports on the 'Consultation Response'

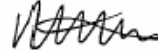
PLANNING SUB-COMMITTEE
24 MAY 2004
FORWARDED

and the 'Planning Appraisal', the requirements approved by the Sub-Committee on 4th May and the requirements as stipulated herein; and

- (f) the political representatives and the previous objectors would be informed of the said agreement.

Following careful consideration, the Sub-Committee accordingly endorsed the said agreement as stipulated in points (a) – (f) above.

The Director of Public Services was directed to take the necessary action.



Greffier of the States

The Planning Process

Appendix – Constitution of Successive Planning Committees

The Island Plan 2002 was approved by the States on 11th July 2002. Members of the then Planning and Environment Committee at that time were –

Senator	N.L. Quérée - President
Connétable	P.F. Ozouf of St. Saviour
Deputies	A.J. Layzell of St. Breilade A.S. Crowcroft of St. Helier J.B. Fox of St. Helier J-A. Bridge of St. Helier T.J. Le Main of St. Helier

Members of the Environment and Public Services Committee as appointed by Act of the States, dated 12th December 2002 –

Deputy	M.F. Dubras of St. Lawrence - President
Connétables	P.F. Ozouf of St. Saviour A.S. Crowcroft of St. Helier
Deputies	R.C. Duhamel of St. Saviour J.B. Fox of St. Helier M.A. Taylor of St. Clement J.A. Hilton of St. Helier

Nominations

Deputy T.J. Le Main on 29th April 2003
The Connétable of Grouville on 7th October 2003

Resignations

Deputy J.B. Fox of St. Helier resigned on 19th April 2003
A.S. Crowcroft of St. Helier resigned on 9th September 2003

The Planning Process

Members of the Environment and Public Services Committee as appointed by Act of the States, dated 2nd March 2004 –

Senators	P.F.C. Ozouf – President E.P. Vibert
Connétables	P.F.C. Ozouf of St. Saviour
Deputies	J.A. Hilton of St. Helier – Vice-President M.A. Taylor of St. Clement J.J. Huet of St. Helier G.W.J. de Faye of St. Helier

Members of the Environment and Public Services Committee as appointed by Act of the States, dated 28th September 2004 –

Senators	P.F.C. Ozouf – President
Connétables	R.E.N. Dupré of St. John
Deputies	J.A. Hilton of St. Helier J.L. Dorey of St Helier – Vice President M.A. Taylor of St. Clement J.J. Huet of St. Helier G.W.J. de Faye of St. Helier

Resignations

Deputy J.A. Hilton of St. Helier resigned on 12th October 2004

The Committee was reconstituted as a Committee of six on 23rd November 2004.

The Committee fell at the introduction of Ministerial Government on 5th December 2005.

APPENDIX 12

BEL ROYAL DEVELOPMENT REVIEW

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

**Report of
The Minister
For
Planning and Environment**

Senator Freddie Cohen

May 2007

flooding would be reduced in this area. They have also pointed out that the modelling work carried out by Peter Brett Associates confirms:

- the capacity of the watercourse at the southern end of the Perquage is sufficient to accept the flows that are able to be passed forward from the Sandybook area;
- the proposed pumping station would be able to deal with this satisfactorily during tidelocked conditions;
- any lost floodwater storage as a consequence of the proposed development could be catered for by the proposed pumping station pumps (N.B. the required rate of pumping would be about 0.18 cumecs, whereas each proposed pump would have a capacity of approximately 0.5 cumecs).

3.59 In the circumstances, I do not believe the concerns raised above offer any grounds for refusing the current application. However, I do believe that a satisfactory drainage scheme must be put in place to cover the construction phase of the development, which ensures that the peak discharge rate of surface water from the housing site to the Perquage stream does not exceed that of the existing run-off from the fields. This can be addressed by planning condition.

Potential Noise Nuisance

3.60 The objectors argue that the issue relating to noise impact from Jersey Steel has not been satisfactorily resolved and point to the views expressed in correspondence from Health Protection in this regard. They say that the proposed homes would be exposed to unacceptable noise from the company's activities and this is likely to result in complaints from future occupiers requiring prohibitive action against the company under the Statutory Nuisances Law.

3.61 It is clear that this issue has proved one of the most difficult to resolve throughout the whole planning process. At the time of the previous application, not content with the methodology of the applicant's noise consultants, Health Protection employed their own... 'Industrial Noise and Vibration Centre' (INVC). They recommended the installation of automatic high speed roller shutter doors on the eastern entrance of the Jersey Steel factory to resolve the noise issue. Health Protection subsequently confirmed that this, together with filling the holes in the structural façade would *"provide the necessary acoustic reassurance to overcome the outstanding concerns of noise nuisance"*.

3.62 In determining that application, I was particularly concerned about the potential plight of Jersey Steel, the fact that it had not then been party to discussions on noise mitigation, and the possible operational and occupational problems that might arise as a consequence of installing roller shutter doors. This led me to conclude 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"*. Consequently, this was one of my reasons for refusing the previous application.

3.63 There has been a lot of activity in this area over the intervening period and I feel it is necessary to summarise this, in order to provide the background for my decision on this matter.

3.64 The original plans for the current application were once again supported by two noise assessment reports based on average noise levels (LAeq) and maximum noise levels (LAm_{ax}) and the only proposed mitigation was an on-site acoustic berm. Furthermore, the applicants argue that the first of these reports demonstrates their proposals comply with UK Planning Guidance on Noise (PPG24, BS4142 and BS8233) and with Health Protection's original specification. It is Health Protection, who are the body which advises the Planning

Department on noise issues, that has requested the second acoustic assessment based maximum noise levels.

3.65 In drawing up its response to the noise issue, the applicants consulted directly with Jersey Steel, which, in turn, appointed its own noise consultants, Atkins, to review the reports. Atkins was of the view that the modelling was defective, that the noise bund would not offer sufficient mitigation and the proposals would not prevent future noise complaints. They concluded that Jersey Steel has every justification to resist the application in its current form, because of the risk to its on-going operation. Health Protection's initial response was to confirm that it had not agreed with the noise assessment methodology and that its views were broadly in line with those of Atkins. They argued that the applicants had failed to address the noise issue satisfactorily and that the proposals would be unlikely to negate future noise complaints, making the site unsuitable for domestic dwellings.

3.66 In the light of this impasse, a meeting was arranged with all the relevant parties, including the applicants, Jersey Steel, Health Protection and the Planning Department, in order to agree the way forward. At that meeting, various potential noise mitigation options were generated and it was agreed that the applicant's noise consultants should be appointed to study their effectiveness so that a package of measures could be put forward which offered a reasonable and proportionate response to the problem. The subsequent revised 'Maximum Noise Level Assessment Report' models nine mitigation options and puts forward a preferred package of measures, which includes:

- roller shutter doors on the east-facing entrance of the Jersey Steel Factory;
- a lean-to structure over the entrance;
- a 1.8m high close-boarded fence boundary fence to Jersey Steel; and
- the 5m high berm proposed for the housing site.

3.67 The report concludes that:

- none of the proposed homes would be exposed to exterior noise levels over 60dB(A)max when the roller shutter doors are closed;
- with the doors open, only two of the proposed homes would be exposed to exterior noise levels in excess of 60dB(A)max at ground level and 14 of the proposed homes at first-floor height;
- the 14 homes in question could be provided with various specific sound insulation measures to reduce interior noise to acceptable levels.

3.68 Having up-dated its noise monitoring at Jersey Steel, Health Protection then reiterated its concerns about the potential risks of future house occupants being exposed to Statutory Noise Nuisance. However, it does put forward a series of noise mitigation measures, which it considers to be the basic minimum required, should I be predisposed to approve the application, including:

- automatic roller shutter doors (default closed) at Jersey Steel;
- lean-to building at entrance to Jersey Steel;
- 3m high close-boarded boundary fence at Jersey Steel;
- 3m high berm with trees (close planted) on the site;
- all eastward facing facades to have acoustic glazing and noise affected properties to have whole house ventilation;
- all eastward facing boundary walls and fences to be a minimum height of 1.8m (close-boarded or solid construction);
- all sound insulation measure stated in the latest 'Maximum Noise Level Assessment Report' to be implemented.

3.69 Interestingly, it also points out that, in the event of Statutory Noise Nuisance occurring in the future, it could not take action against Jersey Steel if the company can show a 'Best

Practice Means' defence. It suggests, also, that the company might be able to do this by completion of the noise mitigation measures set out above.

3.70 Subsequent to this, Health Protection have provided advice on appropriate standards for acceptable noise levels to be achieved at the proposed new homes both externally and internally, which could be used in a planning condition, in the event that I am minded to approve the application. They are currently suggesting that the gardens of the nearest proposed homes are not exposed to daytime noise levels from the operations of Jersey Steel greater than 55dB LAmax and 40dB LAeq over 16 hours during daytime. In addition, they have provided suggested maximum interior average daytime noise levels for bedrooms, living rooms, dining rooms, kitchens, bathrooms and utility rooms.

3.71 I am advised by Health Protection, that the recommended noise parameters are based on World Health Organisation information in relation to community noise. I note that the exterior noise measures appear more onerous than those set out in Planning Policy Guidance 24, which remains the latest current UK planning guidance on the issue. That document recommends, for example, that where new housing development is exposed to daytime noise levels from mixed sources (i.e. combination of road, rail, air and industrial noise sources) of less than 55dB LAeq, noise need not be considered as a determining factor in granting planning permission. Indeed, in such circumstances, it recommends noise should only be taken into account and, where appropriate, conditions imposed (to ensure an adequate level of protection against noise), if the daytime noise is between 55 and 63dB LAeq. I also note that Planning Policy Guidance 24 indicates that planning permission for new dwellings should not normally be granted where they might be exposed to night-time noise levels from individual noise events that regularly exceed 82dB LAmax. This is far higher than Health Protection's recommended daytime parameter of 55dB LAmax.

3.72 As Minister for Planning and Environment, I am conscious of my responsibility to ensure that any proposed development is not subject to an unacceptable degree of noise disturbance. However, I am also aware of the need to ensure that I do not place unjustifiable and unreasonable obstacles in the way of developments and, particularly, developments of much needed affordable homes on land zoned for the purpose. Clearly, I should be aiming to ensure that there is a reasonable and proportionate response to the noise issue and, given the complexity of the issue, I recognise the need to take account of advice from Health Protection, as the Department's expert advisers on noise issues. This matter could be addressed by imposing a planning condition, which sets out a requirement to comply with Department of Environment Planning Policy Guidance 24, 'Planning and Noise' and the World Health Organisation publication 'Guidelines for Community Noise', 1999. The condition could require details of the proposed 'noise scheme' and set out the noise mitigation measures that should be provided as a basic minimum, having regard to the recommendations of Health Protection. This could be backed up by a Planning Obligation Agreement requiring the developer to fund the off-site noise mitigation measures.

Other Potential Points of Detail

3.73 There are a number of other points of detail, many of which were raised at the recent Public Hearing which I feel warrant some response.

Open Space Provision

3.74 The objectors argue that the application fails to make adequate provision for public open space, as required by the development brief. Under current published standards, a scheme of this size would normally require approximately 1.5 acres (3.4 verges) of public open space. In view of the requirement / proposal to create an extremely large public amenity area to the south (approx 11 acres), the development brief only requires that *"at least one area of public open space measuring no less than 0.25 acres is included within the developable residential*

In the Royal Court of Jersey

Samedi Division

In the year two thousand and eight, the twenty-second day of April.

Before the Judicial Greffier.

Upon the application of Her Majesty's Solicitor General, IT IS ORDERED that the Planning Obligation Agreement between the Minister for Planning and Environment and Bel Royal (Jersey) Limited, Jersey Steel Company (1935) Limited, Dandara Holdings Limited, Barclays Private Clients International Limited and Michael Blair Sarre in relation to land at Fields 848, 851, 854, 861, 862A and 863A, Bel Royal, St Lawrence and the Jersey Steel Site, Goose Green, St Peter, be registered in the Public Registry of this Island.



Greffier Substitute

LOD

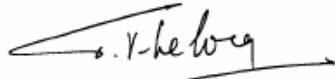
Reg. Pub. ✓

L1235-291--



**In the Royal Court of Jersey
(Samedi Division)**

Her Majesty's Solicitor General has the honour to request the Court to order the registration in the Public Registry of this Island of a Planning Obligation Agreement entered into between the Minister for Planning and Environment dated 11th April 2008, Bel Royal (Jersey) Limited, Jersey Steel Company (1935) Limited, Dandara Holdings Limited, Barclays Private Clients International Limited and Michael Blair Sarre relating to the land at Fields 848, 851, 854, 861, 862A and 863A Bel Royal St Lawrence and the Jersey Steel Site, Goose Green, St Peter attached hereto.



**H.M. Solicitor General
22nd April, 2008**

**Law Officers of the Crown
H.M. Solicitor General**

L1235-292--



**Planning Obligation Agreement under Article
25 of the Planning and Building (Jersey) Law
2002**

relating to the development of Fields 848, 851, 854,
861, 862A & 863A Bel Royal St Lawrence

W.A. 01
Dated: 2008

The Minister for Planning and Environment (1)

Bel Royal (Jersey) Limited (2)

Jersey Steel Company (1935) Limited (3)

Dandara Holdings Limited(4)

Barclays Private Clients International Limited

Michael Blair Sarre

L1235-293--



L1366608.7

DATE 11/4/2008

PARTIES

- (1) The Minister for Planning and Environment of c/o the Greffier of the States of Jersey Mourier House Halkett Place St Helier Jersey ("the Minister")
- (2) Bel Royal (Jersey) Limited of 1 Le Marchant Street St Peter Port Guernsey ("the Owner")
- (3) Jersey Steel Company (1935) Ltd of Goose Green Marsh St Peter JE3 7BU ("Jersey Steel")
- (4) Dandara Holdings Limited of Dandara Group Head Office Isle Of Man Business Park Cooil Road Braddan Isle of Man ("the Guarantor")
- (5) Barclays Private Clients International Limited of c/o H A Pim Appleby 13-14 Esplanade St Helier Jersey JE1 1BD ("the First Hypothecator")
- (6) Michael Blair Sarre of c/o P W Luce Le Gallais & Luce 6 Hill Street St Helier Jersey JE4 8YX ("the Second Hypothecator")

RECITALS

1 The Minister is the Minister of the States charged with the administration of the Law by whom the obligations in this Agreement are enforceable in accordance with the provisions of the Law

The Owner submitted the Application to the Minister.

Having regard to the purposes of the Law the Island Plan 2002 and all other material considerations the Minister decided on 21 March 2007 to grant planning permission for the Development subject to the completion of this Agreement in accordance with Condition 2 of the said Planning Permit.

The Owner warrants that it is the owner of the Site to which it has right in perpetuity (*à fin d'héritage*) thereto by virtue of the hereditary contracts of acquisition referred to in the First Schedule.

Jersey Steel has an interest in the Jersey Steel Site by virtue of the hereditary contracts of acquisition referred to in the Second Schedule and has agreed to be a party to this Agreement only to the extent to give effect to the obligation on the part of the Owner concerning Noise Mitigation Measures

6 The First Hypothecator has an interest in the Site by virtue of three judicial hypothecs (*hypothèques judiciaires*) dated 25th May 2007 (as to part of the Site) and 29th June 2007 and 14th December 2007 (as to the remainder)

7 The Second Hypothecator has an interest in the Site by virtue of five simple conventional hypothecs (*hypothèques conventionnelles simples*) forming part of the contract of purchase dated 2nd May 2003 of a part of the Site by the Owner (under its former name of Nestor Limited)

The Owner and the Guarantor both acknowledge that this Agreement is legally binding

9 The parties have agreed to enter into this Agreement in order to secure the planning obligations contained in the Planning Permit.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

OPERATIVE PART

L1235-294--

L1366608.7



DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"AHS"	the approved housing site being that part of the Site on which that part of the Development consisting of housing is to be built which said area is shown for the purposes of identification only coloured grey on Plan 1
"AHS Infrastructure"	means the landscaping or planting, footpaths, cycle ways, roads, parking areas, village square, lighting and buffer zones (including the buffer strip along Le Perquage (Field 853)), within the AHS
"AHS Infrastructure Works"	works to be carried out under paragraph 4.2 of the Fourth Schedule in accordance with the AHS Infrastructure Specification
"AHS Infrastructure Specification"	a specification for the carrying out of the AHS Infrastructure Works on the AHS and the maintenance thereof in perpetuity to be agreed in writing between the Owner and the Minister
"Application"	the application for planning permission dated 8 November 2006 (as amended by plans submitted on 9 March 2007) submitted to the Minister for the Development and allocated reference number P/2006/2489
"Appropriate Body"	shall mean in respect of the Public Amenity Areas a body such as the Société Jersiaise or the Jersey Heritage Trust or the National Trust for Jersey or such other person body or institution (be it charitable non-profit making or otherwise) that the Minister considers as being fit proper suitable and appropriate for the purposes of meeting the underlying planning objectives of this Agreement in respect of the Public Amenity Areas; and shall mean in respect of the Community Facilities such person body or institution that the Minister considers as being fit proper suitable and appropriate for the purposes of meeting the underlying planning objectives of this Agreement in respect of the Community Facilities
"Bus Services Contribution"	means the contribution of one hundred and twenty thousand pounds (£120,000) (to be paid to the Treasurer of the States) in order to provide such additional bus services or to improve extant bus services from the west of the Island which the Minister in his discretion consider are required as a consequence of the Development
"Bus Shelter Contribution"	means a financial contribution of twelve thousand pounds (£12,000) (to be paid to the Treasurer of the States) to provide the Bus Shelter Facilities
"Bus Shelter Facilities"	means the erection of two bus shelters by TTS near the entrance of the Development comprising one shelter on the northern side of St Peters Valley Road on the in bound route to the town of St Helier and one shelter on the Site catering for outbound travel

L1235-295--



- "Commencement of Development" the date on which any operation forming part of the Development begins to be carried out other than those matters specifically authorised and referred to in Condition 3 of the Planning Permit and "Commence Development" shall be construed accordingly.
- "Community Facilities Land" means the site of the Community Facilities shown for identification purposes only with wide black hatching on Plan 1
- "Community Facilities" means the provision of a facility for Community Uses together with 25 car parking spaces as provided in paragraph 3.2 of the Fourth Schedule
- "Community Uses" suitable education or health or welfare or social services or community activities or retail activities to meet local community needs which contribute to meeting the needs of the residents of the Dwelling Units and the wider public
- "Comuted Sum" a reasonable contribution towards the cost of maintaining the Public Amenity Area or the Community Facilities (as the case maybe) to be calculated and certified (in consultation with the Minister for Treasury and Resources) by the Minister (whose certificate shall be final and binding as to the costs therein) in circumstances where the Minister for Treasury and Resources has agreed and has authorised or the States have authorised that the Public are to take ownership of (or otherwise assume the obligation for the maintenance and control) of the Public Amenity Area or the Community Facilities (as the case may be)
- "Development" the Development of the Site for Category A housing to provide three and four bed Dwelling Units together with Five Dwelling Units of Elderly Persons Accommodation including road widening, access improvements, drainage infrastructure, public amenity space and community building as set out in the Application
- "Dwelling Unit" a dwelling house forming part of the Development to be constructed pursuant to the Planning Permit
- "Elderly Persons Accommodation" suitable accommodation to the satisfaction of the Minister for occupation by those solely over the age of fifty five years
- "First Time Buyer" any person who:
Either:
(1) (i) Does not own, and has not previously owned, whether as sole owner or jointly or in common with any other person or 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

L1235-296-

L1366608.7



(ii) Is neither married to, nor buying as co-owner with, any person who does not fall within (i) above

or

(2) Has been approved by the Housing Minister as being a person who would be in need of assistance in order to acquire property and 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 any refusal by the Housing Minister to approve a person as being in need of assistance to acquire or occupy property being subject to review by the Minister, who shall have power to overrule the decision of the Housing Minister

"Foul Drainage Works"	works to be carried out under paragraph 10.2 of the Fourth Schedule for means of disposal of foul drainage from the Site in accordance with the Foul Drainage Works Specification
"Foul Drainage Works Specification"	a specification for the carrying out of the Foul Drainage Works and the maintenance thereof in perpetuity to be agreed in writing between the Owner and the Minister
"Grassed Play Area"	the area of land forming part of the Public Amenity Area to be available for use as an informal play area as shown for the purposes of identification cross hatched black on Plan 1
"Housing Minister"	the Minister for Housing charged with the administration of the Housing (Jersey) Law 1949
"Index"	All Items Index of Retail Prices for Jersey as issued by the Statistics Unit to the States of Jersey.
"Interest"	interest at three per cent above the base lending rate of the HSBC Bank Plc from time to time.
"Jersey Steel Site"	the land of Jersey Steel against which this Agreement may be enforced as shown edged with a broken black line on Plan 2.
"Jersey Steel Noise Mitigation Measures"	Installation of the following Automatic Roller Shutter Door An automatic roller shutter door with rapid action, default closing. The door should be supplied as a single package comprising of the door leaf, framework and integral seals.

Lean-to Building

L1235-297--



A lean-to building is to be constructed on the eastern façade of the factory on the Jersey Steel Site, to the dimensions and of the materials specified in Dandara Jersey Limited's drawings JY35.01-DA-000, Rev P1, JY35.01-DA-001, Rev P5,

JY35.01-DA-002, Rev P7, JY35.01-DA-003, Rev P8, JY35.01-DA-004, Rev P7, JY35.01-DA-005, Rev P3, with two large openings (10m x 5m), one in north façade and one in the south. These openings will allow vehicular access to the automatic roller shutter door towards the east of the factory on the Jersey Steel Site

The lean-to is to be constructed of Kingspan insulated KS1000RW material, or equivalent, and it should be of gap-free construction. Any gaps should be filled with a flexible silicon-based sealant.

Close Boarded Fence

A 1.8m high close boarded fence is to be established near to the eastern boundary of the Jersey Steel site, parallel to the 'Perquage Walk', as shown in Dandara Jersey Limited drawing No JY35.01-DA-001 Rev P5.

- "Law" the Planning and Building (Jersey) Law 2002
- "Lay Out" in the context of the Public Amenity Area means to prepare cultivate and plant and install seating fencing paths and apparatus in accordance with the Public Amenity Area Specification
- "Noise Mitigation Measures" the measures that are to be incorporated in the scheme for protecting the Dwelling Units from unreasonable noise arising from plant and machinery and other activity associated with the existing adjacent industrial and commercial use of the Jersey Steel Site approved by the Minister being the combination of The Owner Noise Mitigation Measures and Jersey Steel Noise Mitigation Measures and any other measures reasonably required by the Minister to enable compliance with Department of Environment Planning Policy Guidance 24, 'Planning and Noise' and World Health Organisation publication 'Guidelines for Community Noise', 1999 as part of any application to him in respect of the Owner Noise Mitigation Measures;
- "Occupation" and "Occupied" occupation for the purposes permitted by the Planning Permit but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.
- "Offsite Drainage Specification" a design specification to be prepared by the Owner and submitted to the TTS Director, Waste Management and approved by him for the carrying out of works by the Owner for the disposal of surface water by means of the SWPS
- "Offsite Drainage Works" those works (including the SWPS Works) to be carried out by the Owner outside of the AHS in accordance with the Offsite Drainage Specification

L1235-298--



- “Offsite Drainage Works Bond” a bond from a financial institution approved by the Minister in favour of the Treasurer of the States in the amount of the Offsite Drainage Works Costs should the TTS Director, Waste Management need to carry out the Offsite Drainage Works following an unremedied default (for whatever reason or circumstance) by the Owner to carry out the same
- “Offsite Drainage Works Costs” such costs (including supervision technical administrative and procedural costs arising after 1st September 2007) for carrying out the Offsite Drainage Works as are estimated by the TTS Director, Waste Management (acting reasonably) for the carrying out by the Owner of the Offsite Drainage Works which for the avoidance of doubt shall include (but not be limited to the following:
- a) the cost of construction
 - b) the cost of acquisition of land or other interest in land or consent to access land required for the provision of the said works
 - c) compensation (including any payable under Article 38 of the Drainage (Jersey) Law 2005) reinstatement and accommodation works
 - d) design approval fees the costs of site investigation and the construction of all sewers pumping stations and machinery and other works and expenses incidental thereto including administrative on costs legal costs and financing charges during construction of the SWPS Works
 - e) compensation to the Public of the Island of Jersey for the loss (including any temporary loss during construction) of any car parking spaces to accommodate the SWPS
- “Offsite Highways Specification” a design specification (including any matters arising by reason of the additional drawing required under planning condition No. 8 of the Planning Permit) to be prepared by the Owner and submitted to the Minister and approved by him for the carrying out by the Owner of road widening works to St Peters Valley Road, together with the associated arrangements for access to the Site, new public footways and pedestrian refuge and the installation of two speed activated traffic signs in a location and to a design agreed by the TTS Director of Transport
- “Offsite Highways Works” those works to be carried out in accordance with the Offsite Highways Specification
- “Offsite Highways Works Bond” a bond from a financial institution approved by the Minister in favour of the Treasurer of the States in the amount of the Offsite Highways Works Costs should the TTS Director of Transport need to carry out the Offsite Highway Works following unremedied default (for whatever reason or circumstance) by the Owner to carry out the same

L1235-299--

L1366608.7



"Offsite Highways Works Costs" such costs (including supervision technical administrative and procedural costs arising after 1st September 2007) for carrying out the Offsite Highways Works as are certified by the TTS Director of Transport (acting reasonably)

"Owner Jersey Steel Payment" such sum approved by the Minister (acting reasonably) which shall be paid by the Owner into an escrow account to be maintained on terms approved by the Minister sufficient fully to reimburse to Jersey Steel the costs incurred by Jersey Steel in carrying out the Jersey Steel Noise Mitigation Measures

"Owner Noise Mitigation Measures"

The following will be undertaken

Eastern Facing acoustic fences

All generally eastward facing boundaries to private gardens will have close boarded fence to a height of 1.8 metres with solid panels.

Earth Berm

A large earth bank, or berm, is to be constructed near to the western boundary of the Site in the area known as Field 853 as shown Dandara Jersey Limited drawing JY35.01-DA-001 Rev P5.

Ventilation Measures

The Dwelling Units to be constructed as part of the Development shall be fitted with double glazed units that have a minimum weighted sound reduction index of $R_w = 30$ dB.

Background ventilation will be provided by trickle vents that have a weighted sound insulation measured in accordance with BS EN 20140-10:1992

Additional mitigation for the most exposed dwellings shall be by double glazing units that have a minimum weighted sound reduction index of $R_w = 31$ dB.

and any other measures reasonably required by the Minister to enable compliance with Department of Environment Planning Policy Guidance 24, 'Planning and Noise' and World Health Organisation publication 'Guidelines for Community Noise', 1999 as part of any application to him in respect of the Owner Noise Mitigation Measures

"Plan 1" the plan attached to this Agreement and marked Plan 1

"Plan 2" the plan attached to this Agreement and marked Plan 2

L1235-300-



"Planning Permit"	planning permission P/2006/2489 issued on 8 th May 2007 subject to conditions as set out in the Third Schedule.
"Public Amenity Area"	means the land space or facility (including landscaping and planting) to the South of the Site shown for identification purposes with narrow black hatching on Plan 1 provided for the active or passive recreation of and use by the occupants of the Dwelling Units and the wider public but shall not include use for horse grazing or horse riding
"Public Amenity Area Works"	works to be carried out under paragraph 2.2 of the Fourth Schedule in accordance with the Public Amenity Area Specification
"Public Amenity Area Specification"	a specification for the carrying out of the Public Amenity Area Works on the Public Amenity Area and the maintenance thereof in perpetuity to be agreed in writing between the Owner and the Minister within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court
"Public Art"	a work or works of art visible to the general public whether as part of a building or free standing including where appropriate sculpture street furniture lighting effects paving railing and signs landscaping and/or architectural detailing
"Public Art Contribution"	a financial contribution of fifty seven thousand pounds (£57,000) towards Public Art within the Site as agreed by the Owner and the Minister
"Shared Ownership"	such scheme or arrangement as may from time to time be approved by the States in order to make ownership of a residential property accessible to those persons or person who are First Time Buyers and who qualify in accordance with such scheme or arrangement approved by the States and who are unable to acquire property in the general or First Time Buyers housing market
"Site"	the land against which this Agreement may be enforced as shown edged with a thick broken black line on Plan 1.
"Social Rental Accommodation"	shall mean accommodation which is let for rental by a Social Rental Landlord approved for that purpose by the Housing Minister to a person or persons who satisfy the Housing Minister's criteria and qualifications.
"Social Rental Landlord"	shall mean: (a) the Public (b) a Parish (c) a Housing Trust when discharging their function of providing housing for those persons whom the Social Rental Landlord considers, having regard to the criteria set out from time to time by the States or by the Housing Minister as the case may be, to be in need of

L1235-301-

L1366608.7



	financial and/or social assistance for obtaining accommodation suitable for their needs.
"States"	the Assembly of the States of Jersey.
"SWPS"	a surface water pumping station to be constructed in the car park to the south of Le Perquage on the seaward-side of La Route de la Haute.
"SWPS Commuted Sum"	a sum to be calculated and certified by the Minister (acting reasonably and in consultation with the TTS Minister) (whose certificate shall be final and binding as to the amount therein) for the maintenance of the SWPS for a period of twenty years from the date of its commissioning and the replacement of the pumps and the control panel serving the same in the SWPS in twenty years from the date of commissioning.
"SWPS Works"	those works carried out by the Owner (including design approval, construction and commissioning) for the provision of the SWPS
"TTS"	Transport and Technical Services.
"TTS Director"	the relevant Director of Transport and Technical Services or his/her appointed representative for the time being to the States of Jersey.
"Treasurer of the States"	the person appointed as such for the time being in accordance with Part 5 of the Public Finances (Jersey) Law 2005
"Watercourse Works"	those works to be carried out by the Owner in accordance with the Watercourse Works Specification
"Watercourse Works Specification"	a specification prepared by the Owner following design work carried out by it to be submitted to the TTS Director, Waste Management and approved by him for the restoration of the watercourses at the Site (including where appropriate rebuilding sections of bank of the watercourse forming part of the Site) in order to prevent or reduce the incidence of uncontrolled flooding and to ensure that most of the water in the Le Perquage watercourse is directly channelled to its outfall

2 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

L1235-302--

L1366608.7



- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to a law of the States of Jersey shall include any modification, extension or re-enactment of that law for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Law or deriving validity from it.
- 2.6 References to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the Minister the successors to his statutory functions.
- 2.7 This Agreement shall be construed so as to give effect to the purpose of the Law
- 3 LEGAL BASIS
- 3.1 This Agreement is made pursuant to Article 25 of the Law.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner and Jersey Steel under this Agreement create planning obligations pursuant to Article 25 of the Law and are enforceable by the Minister against the Owner and Jersey Steel.
- 4 CONDITIONALITY
- This Agreement shall come into effect immediately upon the date upon which it is registered in the Royal Court as evidenced by an Act of the said Court save for the provisions of Clauses 8.1 and 17 (legal costs clause and jurisdiction clause) which shall come into effect immediately upon completion of this Agreement.
- 5 THE OWNER'S COVENANTS AND JERSEY STEEL'S COVENANTS
- 5.1 The Owner covenants and agrees with the Minister as set out in the Fourth Schedule to the intent that this Agreement shall be enforceable without limit of time against the Owner and any person claiming or deriving title through or under the Owner to the Site or any part or parts thereof.
- 5.2 Jersey Steel covenants and agrees with the Minister as set out in the Fourth Schedule to the intent that this Agreement shall be enforceable without limit of time against the Jersey Steel and any person claiming or deriving title through or under Jersey Steel to the Jersey Steel Site or any part or parts thereof.
- 6 THE MINISTER'S COVENANTS
- The Minister covenants with the Owner as set out in the Fifth Schedule.
- 7 PUBLIC REGISTRY OF CONTRACTS
- 7.1 The Minister shall as soon as practicable following the completion of this Agreement apply to the Royal Court for an order that this Agreement be registered in the Public Registry of Contracts.
- 7.2 The Minister agrees if so requested by the Owner upon the full discharge by the Owner of an obligation under this Agreement formally to acknowledge such discharge and to register in the Public Registry of Contracts evidence of such full discharge the whole without prejudice to all and any continuing obligations of the Owner at that time still undischarged.

L1235-303-



L1366608.7

8 MISCELLANEOUS

- 8.1 The Owner shall pay to the Minister on completion and registration of this Agreement the reasonable legal costs of the Minister incurred in the negotiation, preparation and completion of this Agreement.
- 8.2 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Minister or any other person or any estimation of cost is to be given by the Minister or any other party under the terms of this Agreement such agreement, approval or consent or expression of satisfaction or estimate shall not be unreasonably withheld or delayed and any such agreement, consent, approval, expression of satisfaction or estimate may be given on behalf of the Minister by the Director of Planning or any other person nominated by this Agreement and notice or communication to the Minister pursuant to the provisions of this Agreement shall be addressed to the Director at Planning and Building Services South Hill St Helier Jersey JE2 4US or as otherwise notified for the purpose by notice in writing
- 8.3 Any notices on the Owner and the Guarantor shall be deemed to have been properly served if sent by recorded delivery to and addressed to either party marked for the attention of Martin Clancy Managing Director at Dandara Jersey Limited Spectrum House Gloucester Street St Helier Jersey JE2 3DG or such other address in the Island of Jersey as otherwise notified to the Minister by the Owner or the Guarantor for the purpose by notice in writing
- 8.4 Insofar as any clause or clauses of this Agreement are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
- 8.5 This Agreement shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permit shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 8.6 No person shall be liable for any breach of any of the planning obligations or other provisions of this Agreement after it shall have parted with its entire interest in the whole of Site or the Jersey Steel Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest and for the avoidance of any doubt the Owner is subject to all obligations in this Agreement in respect of the Site until completion of the Development to the satisfaction of the Minister.
- 8.7 If the Owner transfers the Site or any part thereof ("the transferred land") to a third party and enters into an arrangement with that third party for the development of the transferred land by the Owner the Owner will continue to be bound by the terms of this Agreement until completion of the Development and the discharge by the Owner of all and any liability which may have accrued under this Agreement
- 8.8 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permit) granted (whether or not on appeal) after the date of this Agreement.
- 8.9 Except in so far as legally or equitably permitted this Agreement shall not prejudice or fetter or affect any statutory power discretion or duty of the Minister and without prejudice to the generality of the foregoing it is agreed between the parties hereto that any benefit or power conferred on the Minister by any of the obligations or covenants by the Owner in favour of the Minister under this Agreement are in addition to any of the Ministers' statutory powers under the Law

L1235-304--

L1366608.7



- 8.10 Nothing contained herein shall be construed as obviating the need for the Owner to obtain or acquire from the Public (whether in its public or private capacity) or the Parish of St Lawrence (whether in its public or private capacity) or any third party with respect to the Development or its use any consents permits authorisations rights interests in land or servitudes
- 8.11 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty of care upon the Minister as a result of the Minister agreeing to accept the covenants agreements and undertakings on the part of the Owner as contained herein
- 8.12 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty or oblige the Public to accept or take a transfer of land
- 8.13 Nothing in this Agreement shall be construed or interpreted in such a way or inference to be drawn so as to place or create a duty or oblige TTS to take over vest or adopt (as the case may be) (save as specifically provided herein) any apparatus drains conduits services highways or other thing capable of being taken over vested in or adopted by TTS and to that end the certificate in writing (such certificate to be accompanied by or make reference to as built drawings) of the TTS Director, Waste Management or TTS Director of Transport (as the case may be) as to the nature and/or extent of such taking over vesting or adoption shall be final
- 8.14 The Minister and/or TTS shall have no liability to the Owner for any costs or delays occasioned by the terms of or failure to obtain or receive timely consents, permissions, orders and approvals or the timeliness of the design, construction or commissioning of any works carried out by TTS
- 8.15 The Guarantor has agreed to join in to this Agreement for the purposes of guaranteeing the obligations of the Owner under this Agreement
- 8.16 Jersey Steel has only joined into this agreement to the extent as is necessary to give effect to and enable the Owner to observe and perform the obligations concerning noise mitigation set out in paragraphs 8.1-8.6 in the Fourth Schedule
- 8.17 The Owner shall not be entitled to any costs or compensation as a result of the making of this Agreement and the obligations contained herein
- 8.18 All communications and notices served or made under this Agreement shall be in writing
- 8.19 The form of the Offsite Drainage Works Bond and the Offsite Highway Works Bond shall be substantially in such forms as are attached as the Sixth Schedule or in such other forms as agreed between the Minister and the Owner.
- 8.20 The Owner hereby agrees to pay (within 30 days of written demand for the same) the TTS Minister's reasonable procedural and technical fees and costs properly and reasonably incurred by him or his department in respect of supervision technical administration and inspection in respect of the Offsite Drainage Specification the Offsite Drainage Work the Offsite Highways Specification and the Offsite Highways Works incurred as from the 1st September 2007.

9 WAIVER

No waiver (whether expressed or implied) by the Minister of any breach or default in performing or observing any of the covenants terms or conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Minister from

L1235-305-

L1366608.7



enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 CHANGE IN OWNERSHIP

The Owner agrees with the Minister to give the Minister written notice of any change in ownership of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged as soon as shall be practical following any such change in ownership such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site or unit of occupation purchased by reference to a plan.

11 INDEXATION

Any sum referred to in the Fourth Schedule shall be increased by an amount equivalent to the increase in the Index from the date on which this Agreement is registered in the Public Registry of Contracts until the date on which such sum is payable.

12 INTEREST

If any payment due under this Agreement is paid late, Interest will be payable from the date payment is due to the date of payment.

13 MINISTER'S ADDITIONAL DEFAULT POWERS

13.1 In the event that the Owner neglects, omits, refuses or otherwise fails to fulfil any of the obligations hereof:

13.1.1 the Minister shall (without prejudice to his enforcement powers under Article 25(10) of the 2002 Law) be authorised:

13.1.1.1 to apportion costs, to require payment thereof, and to appoint an agent if the Owner does not include in the conveyances to the purchasers of the Dwelling Units the provisions required by clause 4.2 of the Fourth Schedule, and to

13.1.1.2 enter the Site and carry out, or cause to be carried, such works as he considers to be reasonably required in the circumstances and the Owner shall allow the Minister access to the Site and shall otherwise provide all such assistance as may be required by the Minister in connection therewith.

13.1.1.3 enter the Jersey Steel Site and carry out, or cause to be carried, such works as he considers to be reasonably required in the circumstances and Jersey Steel shall allow the Minister access to the Jersey Steel Site and shall otherwise provide all such assistance as may be required by the Minister in connection therewith.

13.1.2 the Minister shall be entitled to recover from the Owner and on its default the Guarantor (the Guarantor hereby agreeing to waive any right pursuant to the *droit de discussion* which might arise) the costs, fees and other expenses of and incidental to the works undertaken or any other action taken by him pursuant to this Clause 13.1.

L1235-306--



L1366608.7

14 GUARANTOR'S COVENANTS

14.1 The Guarantor hereby covenants with the Minister in the terms set out in the Seventh Schedule (the Guarantor hereby agreeing to waive any right pursuant to the *droit de discussion* which might arise)

15 HYPOTHECATORS CONSENT

15.1 The First Hypothecator acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the First Hypothecator over the Site shall take effect subject to this Agreement PROVIDED THAT the First Hypothecator shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as a person deriving title from the Owner.

15.2 The Second Hypothecator acknowledges and declares that this Agreement has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Agreement and that the security of the Second Hypothecator over the Site shall take effect subject to this Agreement PROVIDED THAT the Second Hypothecator shall otherwise have no liability under this Agreement unless it takes possession of the Site in which case it too will be bound by the obligations as a person deriving title from the Owner.

16. DISPUTE RESOLUTION

In the event that any dispute shall arise in respect of any provision of this Agreement it shall be referred if not resolved within seven working days to the arbitration of an independent arbitrator under the provisions of the Arbitration (Jersey) Law 1998 such arbitrator to be named by the agreement of the parties to the dispute or in default of agreement by the President for the time being of the Royal Institution of Arbitrators upon the application of any party to the dispute

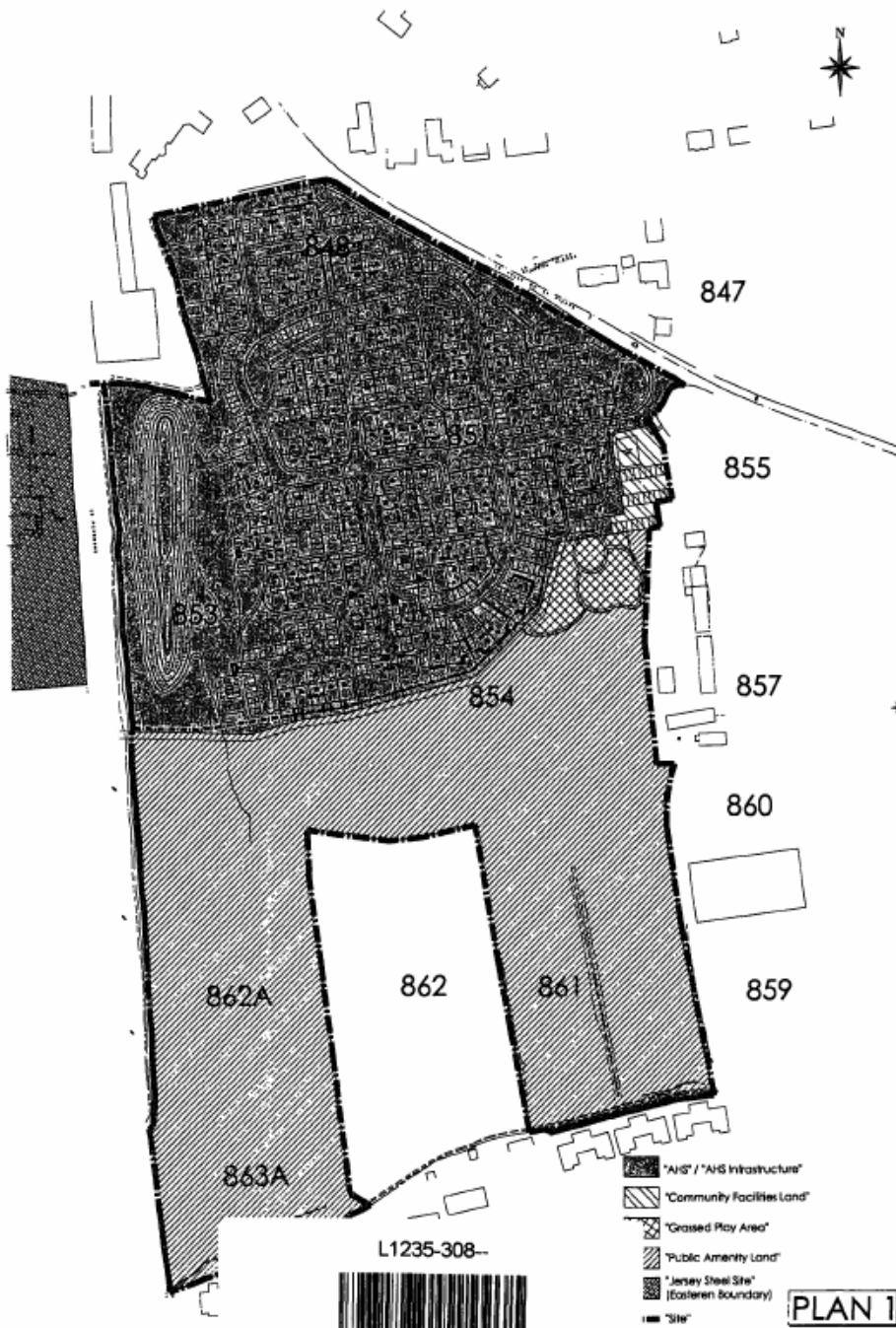
17 JURISDICTION

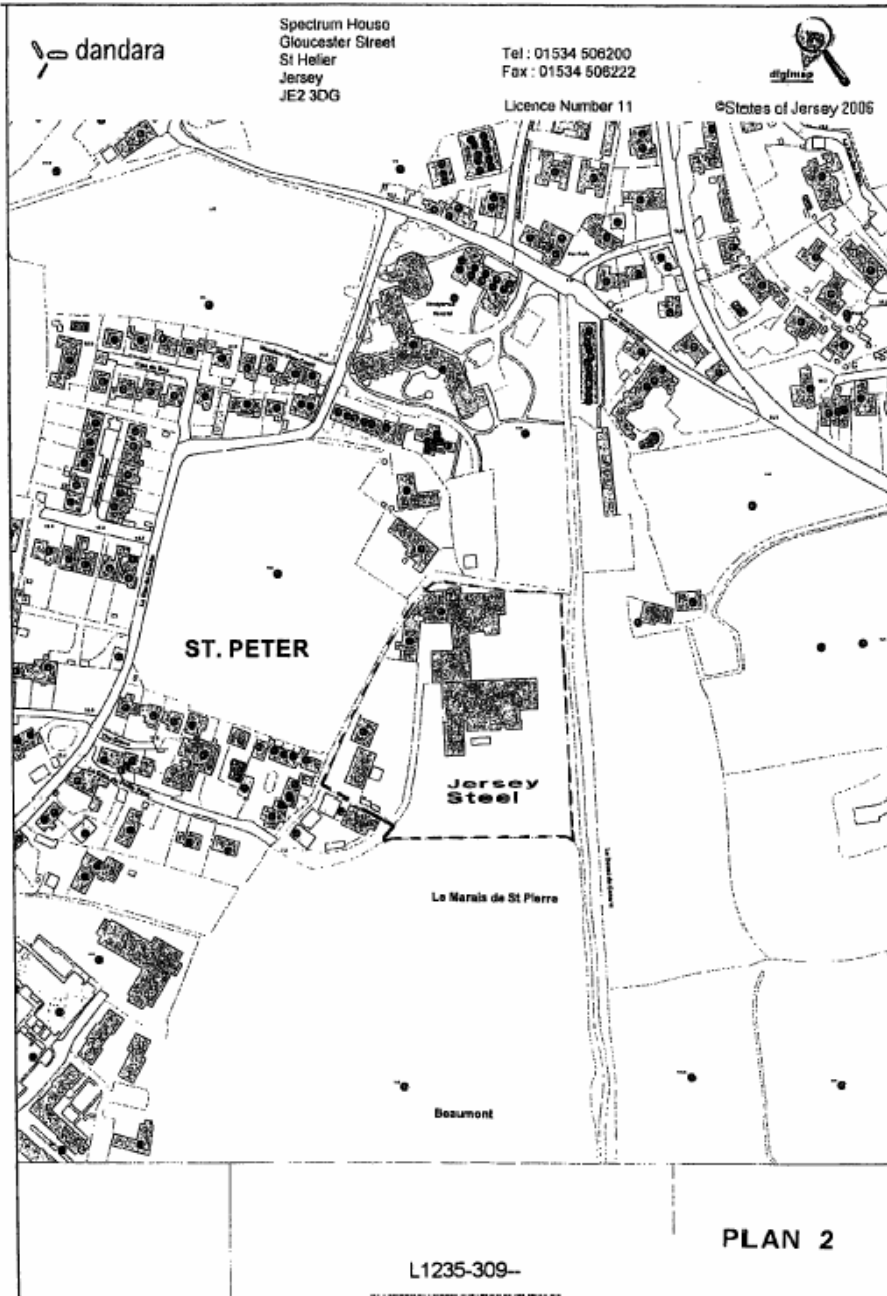
This Agreement is governed by and interpreted in accordance with the law of the Island of Jersey.

L1235-307--



L1366608.7





FIRST SCHEDULE
OWNERS TITLE

The Owner has an interest in the Site as follows:

- 1 By hereditary purchase (under its original name of Nestor Limited) by contract passed before the Royal Court of Jersey on the 2 May 2003 from Michael Blair Sarre
- 2 By hereditary purchase from by contract passed before the Royal Court of Jersey on the 1 August 2003 from Roger Paul Le Miere
- 3 By hereditary purchase from by contract passed before the Royal Court of Jersey on the 25 May 2007 from Sandybrook Orchard Limited

L1235-310-



L1366608.7

SECOND SCHEDULE
JERSEY STEEL TITLE

Jersey Steel has an interest in the Jersey Steel Site as follows

- 1 By lease by contract passed before the Royal Court of Jersey on the 1 September 1967 (under its original name of Jersey Steel Company Limited from the Tenants of St Peter's Marsh

L1235-311--



L1366608.7

THIRD SCHEDULE
FORM OF NOTICE OF PLANNING PERMISSION

L1235-312-



L1366608.7

**Planning and Environment Department
Planning and Building Services**

South Hill
St Helier, Jersey, JE2 4US
Tel: +44 (0)1534 445508
Fax: +44 (0)1534 445528

8 May 2007

Mr I McDonald
AXIS MASON LTD
3 Mulcaster Street
St Helier
JE2 3NJ

Planning Application Number P/2006/2489

Dear Sir/Madam

Application Address:	Fields 848, 851, 853, 854, 861, 862A and 863A, Bel Royal, St. Lawrence.
Description of 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. AMENDED PLANS: Amendment to layout and parking arrangement.

Please find enclosed notice of The Minister for Planning & Environment's decision regarding the above application.

Yours faithfully

A Allen (Mrs)
Applications Officer
direct dial : +44 (0) 1534 448446
email: a.allen@gov.je
www.gov.je

Encl.

L1235-313--



P1

**Planning and Environment Department
Planning and Building Services**

South Hill
St Helier, Jersey, JE2 4US
Tel: +44 (0)1534 445508
Fax: +44 (0)1534 445528

Bel Royal Jersey Ltd
C/O Dandara Jersey Ltd
Spectrum House
Gloucester Street
JE2 3DG

Planning Application Number P/2006/2489

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

IMPORTANT NOTICE

This notice gives permission under Article 19 of the Planning and Building (Jersey) Law 2002, as amended. The development stated below may also require Building consent under Article 34, for which a separate application will need to be made. If you are in any doubt as to whether building permission is required please telephone the Building Applications Team on 448407 who will be pleased to help.

The Minister for Planning & Environment, having considered your application hereby GRANTS PERMISSION TO DEVELOP LAND¹ under Article 19 of the Planning and Building (Jersey) Law 2002.

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. AMENDED PLANS: Amendment to layout and parking arrangement.

To be carried out at:

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

Subject to compliance with the following conditions and approved plan(s):

Standard Condition

- A. If the development hereby permitted has not commenced within five years of the decision date, this permission shall cease to be valid.
Reason: The Minister for Planning & Environment reserves the right to reconsider this proposal consequent on any future change of circumstances or policy.

¹ CAUTION

This decision is purely permissive and in no way overrules any other permission that may be required in respect of private property rights, nor does it absolve an applicant from any other obligations or liabilities.

L1235-314--



APPROVED

(page 1)

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

1. Planning permission for three years

If the development hereby permitted has not commenced within 3 years of the date of the decision by the Minister for Planning and Environment to 'resolve to grant planning permission' (21 March 2007) the permission shall cease to be valid.

2. Requirement to enter into a Planning Obligation Agreement

The developer shall, within 6 months of the date of this permission, enter into a formal contract with the Minister for Planning and Environment under Article 25 of the Planning and Building (Jersey) Law 2002. Unless otherwise agreed by the Minister, the obligation shall guarantee the provision of the following:

- (i) The 102 Category A dwelling units hereby permitted shall either be:
 - developed and retained in the proportion of 55% for sale to first-time buyers, as defined in the obligation, and 45% for social rent tenants (to be transferred to a social housing landlord approved by the Minister for Housing), in accordance with the Island Plan 2002, Policy H1 'Provision of Homes'; or
 - developed and retained in accordance with any approved amendment to the tenure requirements decided by the Minister for Planning and Environment where he has satisfied himself that there is sufficient justification (e.g. allowing for a proportional split between conventional first-time buyer homes and shared equity homes);
- (ii) the implementation of the road widening works to St. Peter's Valley Road, together with the associated site access arrangements, public footways and pedestrian refuge in accordance with the approved drawing no.1689 L(0-) 183 P2, as amended by the detailed drawings required under condition no.8;
- (iii) a financial contribution for the erection of two bus shelters near the entrance to the proposed development. One on the northern side of St. Peter's Valley Road on the inbound route to town and one on-site catering for outward-bound travel;
- (iv) the provision of "kick-start" funding for 2 additional buses in the morning and evening peak periods over 5 years (total contribution of £120,000);
- (v) the provision of a public amenity area to the south of the approved

DEVELOPMENT
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CAUTION

This decision is purely permissive :
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S/2489; Page 2)
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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

housing development (Part Fields 851, 853 and 854 and Fields 861, 862A and 863A) and a buffer strip along Le Perquage (Part Field 853), with restrictions on future use;

(vi) the provision of funds to meet the cost of off-site noise mitigation measures, involving:

- the installation of a high speed roller shutter door at the eastern end of the Jersey Steel factory;
- the erection of a lean-to structure over the main entrance door at the eastern end of the Jersey Steel factory;
- the erection of a close-boarded boundary fence to Jersey Steel's premises along the boundary with Le Perquage;
- and any other measures deemed appropriate and reasonable by the Minister for Planning and Environment, in consultation with Health Protection, following submission of the required 'noise scheme'.

(vii) A mechanism to effect the future maintenance of public areas and facilities. This will address the arrangements to be put in place for the long-term management and maintenance of planting and soft landscaping, paved areas (including footpaths, cycleways, roads and courtyards / parking areas), open spaces (including the Public Amenity Area, village square, buffer zones and other communal open green spaces), community facilities (including the community building and the children's and teenager's play areas) and external lighting;

(viii) the provision, transfer and maintenance of surface water drainage / flood amelioration works and infrastructure for foul drainage;

(ix) the restoration and maintenance of watercourses adjoining the site;

(x) the provision of a 12 month defect liability period for the Public for the road works, drainage infrastructure and any other relevant works.

3. Commencement of Development

Until the Planning Obligation Agreement required by Condition No 2 is signed and registered in the Royal Court, and all financial contributions required under the agreement are paid, work at the site shall be limited to;

- (a) Site preparation, including the creation of the site access, the establishment of the builder's compound, ground works and earth-moving in accordance with the approved plans;
- (b) The construction of the houses on plots 69 - 72 and 97 - 102 provided that under no circumstances shall they be occupied until the Planning Obligation Agreement has been signed and registered; and

CAUTION

This decision is purely permissive and in no way overrules, any other permission that may be required to exercise private property rights, nor does it absolve an applicant of the need to obtain any other necessary permissions.

L1235-316--



(P1; P/2006/2489; Page 3)

is not to be construed as a permission, nor does it overrule, any other permission that may be required to exercise private property rights, nor does it absolve an applicant of the need to obtain any other necessary permissions.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

(c) Such other works that may be agreed in writing by, or on behalf of, the Minister
Provided that the works under (a) must include the installation of a temporary land drainage system, constructed to the satisfaction of the TTS drainage engineer, which shall incorporate attenuation or run-off to the watercourse.

4. **Development to comply with Island Plan Policy H1 or any subsequent amendment to Tenure Requirements**

The 102 Category A dwelling units hereby permitted shall either be:
(i) developed and retained in the proportion of 55% for sale to first-time buyers, as defined below, and 45% for social rent tenants (to be transferred to a social housing landlord approved by the Minister for Housing), in accordance with the Island Plan 2002, Policy H1 'Provision of Homes'; or
(ii) developed and retained in accordance with any amendment to the tenure requirements agreed by the Minister for Planning and Environment where he has satisfied himself that there is sufficient justification allowing for a proportional split between conventional first-time buyer homes and shared equity homes;

Drawings showing the proposed tenure mix shall be submitted to and approved by the Minister for Planning and Environment within 6 months of commencement of works.

5. **First - time buyer / rental condition**

A. The Category A dwellings to which this permission relates shall not, without the consent of the Minister for Planning and Environment, be transferred by sale, cession, gift, exchange or other form of transfer to any person who does not satisfy the criteria specified in the schedule hereto.

B. The Category A dwellings to which this permission relates shall not, without the consent of the Minister for Planning and Environment, be occupied by any person who does not satisfy the criteria specified in the schedule hereto and who does not occupy the accommodation as his sole or principal place of residence.

APPROVED

L1235-317--

CAUTION

This decision is pure
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permission of the owner

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

Schedule

Persons to whom (the residential accommodation) may be transferred in accordance with condition 'A' above, or who may occupy (the residential accommodation) in accordance with condition 'B' above.

1) any person who -

i) does not own, and has not previously owned, whether as a sole owner or jointly in common with any other 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) is neither married to, nor buying as co-owner with, any person who does not fall within (i) above

2) 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.

6. **Comprehensive Development**

The development hereby permitted shall be developed in its entirety. Prior to commencement, except as provided for by condition 3, the applicant shall provide evidence to the Minister for Planning and Environment that the site approved for housing purposes is in its ownership, or that the area not currently in its ownership will be acquired, or will otherwise be developed in tandem by a separate party which will be afforded access to the roadways and services hereby permitted on the applicant's site.

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L1235-318--

CAUTION

This decision is not to be used to overrule, any other private property right of the land to which



(P1; P/2006/2489; Page 5)
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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

7. Chicane barriers for Pedestrian / Cycle Path

A safety / "chicane" barrier shall be installed within the site where the proposed footpaths merge at a junction with the top of Le Perquage Flats' driveway and pose an increased risk for pedestrian and cyclist safety (i.e. in accordance with the applicant's letter of 20th September 2005). Details of the design and siting shall be submitted to and approved by the Minister for Planning and Environment, in consultation with the Transport and Technical Services Department, prior to the first occupation of the development hereby permitted.

8. Road widening and access arrangements - Design and layout

Within 6 months of the commencement of the development hereby approved, detailed and suitably revised drawings of the proposed road widening / improvement works to St. Peter's Valley Road (including the road realignment, new footways, pedestrian refuge and vehicular access to the site) shall be prepared and agreed with the Transport and Technical Services Department and shall be submitted to and approved by the Minister for Planning and Environment. The drawings shall be based on an accurate survey, shall show accurate spot levels and shall:

- i) demonstrate an acceptable vertical and horizontal road alignment;
- ii) include plans of the required bus shelters and stops in safe positions for east- and west-bound bus travellers;
- iii) relocate the pedestrian refuge a little further southeast towards the vehicular access point;

9. Road Widening and Access Arrangements - Completion

The proposed road widening / improvement works to St. Peter's Valley Road, including the realignment / reinstatement of the roadside wall, banque and trees, the construction of new footways and a pedestrian refuge and the formation of the vehicular access point, shall be carried out at the expense of the developer and to the satisfaction of the Transport and Technical Services Department and the Minister for Planning and Environment, prior to the first home being occupied.

10. Visibility Splay

Prior to the first use/occupation of the development hereby permitted, 50m visibility lines must be provided in accordance with the approved drawings (dwg no 1698 L(0-) 183 P2). Everything within the visibility sight

APPROVED

CAUTION

This decision is purely permissive, and does not overrule, any other permit or private property rights, or any other rights of the land to which a permit is issued.

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*1: P/2006/2489; Page 6)
This decision is purely permissive, and does not overrule any other permit or private property rights, or any other rights of the land to which a permit is issued.

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

lines, including gates, walls, railings and plant growth is to be permanently restricted in height to 900mm above road level.

- 11. **Path link to Le Perquage - Design**
The path link to Le Perquage from the play areas and the site access road beyond, as shown on the site development plan (dwg no 1698 L(0-) 101 P4), shall be designed and constructed as a 3m wide shared cycle route/footpath in accordance with the requirements of the Transport and Technical Services Department.
- 12. **Completion of roads and paved areas**
No dwelling hereby permitted shall be occupied until all related road, footpath / cycle path infrastructure and paved public areas have been completed in accordance with the approved plans (as amended by other conditions attached to this consent), to the satisfaction of the Minister for Planning and Environment, unless otherwise agreed by the Minister. (N.B. It is accepted that the final wearing course for the road will not be laid until approximately 6 months after the major construction work is completed, to allow the sub-layers to fully settle).
- 13. **Parking- provision in accordance with designations**
Parking spaces for residents' and visitors' vehicles shall be provided and allocated in accordance with the approved parking provisions (dwg 1698 L(0-) 191 P3), or with any modified arrangement which might subsequently be approved by the Minister for Planning and Environment. The occupation of homes in each parking zone hereby permitted shall not take place until the relevant parking spaces and structures have been completed and made available.
- 14. **Security of rear access paths**
Prior to the first occupation of the development hereby permitted, details of the secure resident gates on access routes from 'public areas' to rear gardens and courtyards, as shown on drawing no. 1698 L(0-) 192 P2, shall be submitted to and approved by the Minister for Planning and Environment.
- 15. **External Lighting**
Within 6 months of the commencement of the development hereby permitted, an amended detailed scheme for lighting the 'public areas' shall

APPROVED

CAUTION

This decision is purely permissive and in no way at overrule, any other permission that may be require private property rights, nor does it absolve an appli of the land to which a permission relates.

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(P1; P/2006/2489; Page 7)

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

be submitted to and approved by the Minister for Planning and Environment. As previously indicated, the design should be modified to address the matters raised by the Senior Electrical Engineer at PSD in his letter dated 1st August 2005 (see attached) regarding the height of the columns, the use of the 1m high bollard lights and the potential use / adaptation of the existing road lighting in association with the development hereby approved.

16. Landscaping scheme - Details

Within 6 months of the commencement of the development hereby permitted, a detailed landscaping scheme / plan shall be submitted to and approved by the Minister for Planning and Environment. The scheme shall be based on the framework suggested for soft landscaping (dwg no 1701 L(0-) 101 P2) and hard landscaping (dwg no 1701 L(0-) 102 P2) and shall include:

- i) a specification for new planting, including the identification of the number, type, size and position of all new trees and shrubs and the means to be used to support and protect them;
- ii) other landscape treatments to be carried out, including the proposed amended re-contouring in Field 853 (i.e. to create bunding) and the proposed pathways and scrapes to be introduced into the Public Amenity Area;
- iii) the programme of implementation; and
- iv) an updated landscape management plan covering long-term objectives, management responsibilities and maintenance schedules for all communal landscaped areas.

The programme of implementation shall provide for the planting to commence at the earliest opportunity along boundaries and in other areas where practicable.

17. Landscaping - Buffer area planting

The planting in the buffer areas associated with the realigned roadside wall and banque feature along St. Peter's Valley Road and with the re-contouring in Field 853 adjacent Le Perquage, where this is not affected by the development, shall be completed in the first planting season following commencement of the development, to the satisfaction of the Minister for Planning and Environment.

CAUTION

This decision is purely permissive and in no way absolves the applicant from the need to obtain a separate permission to carry out any work which may be required under any other permission that may be required under any private property rights, nor does it absolve an applicant from the need to obtain a separate permission to carry out any work which may be required under any other permission that may be required under any private property rights.

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APPROVED

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

18. Landscaping scheme - Commencement and completion

All planting and other operations comprised in the approved landscaping scheme, which are not implemented earlier in accordance with conditions 16 and 17 above and/or an approved programme of implementation, shall be carried out and completed to the satisfaction of the Minister for Planning and Environment in the first planting season following the first occupation of the development or within such period as may otherwise be agreed.

19. Landscaping Scheme - Replacement planting

Any trees or plants planted in accordance with the approved landscaping scheme, which within a period of 3 years from their planting, die, become damaged or diseased, or are removed, shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed by the Minister for Planning and Environment.

20. Tree Protection during Site Works

Tree protection measures during site works shall be carried out in accordance with approved proposals in drawing no. 1701 L(0-) 104 P1, so that all the trees to be retained shall be protected for the duration of the development hereby permitted. In addition and for the avoidance of doubt:

- (i) no demolition, site clearance or building operations shall commence until suitable fencing has been erected around each tree or group of trees to be retained, at a radius from the trunk of 5 metres or around the crownsread, whichever is the greater. Such fencing shall be maintained until development is complete;
- (ii) no trenches, including any trench for services or drains shall encroach within the crownsread of any trees to be retained;
- (iii) the burning of materials, including any obtained by site clearance or demolition, shall not take place within 6 metres of the furthest extent of a canopy of any tree or group of trees to be retained;
- (iv) no topsoil or other spoil from excavations shall be disposed within the crownsread of trees to be retained within the site;
- (v) no tree shall be felled, lopped, topped, or in any way destroyed or removed, unless the prior written consent of the Minister for Planning and Environment is received.

APPROVED

L1235-322--

CAUTION

This decision is purely permissive and in no overrule, any other permission that may be private property rights, nor does it absolve of the land to which a permission relates.



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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

21. Changes in levels on site

Accurate and detailed figures and drawings of the 'cut and fill' earthworks shall be produced by the applicant, including accurate site cross sections, to determine required levels and demonstrate how equal ratios of cut and fill materials (excluding materials required specifically for engineering purposes) may be achieved. These shall be submitted to and approved by the Minister for Planning and Environment prior to the commencement of works on site. The proposed new contours above existing ground levels shall be formed using excavated materials from elsewhere on the site, with the exception of materials required for engineering purposes.

22. Waste Management

The scheme hereby approved shall be developed in compliance with the terms of the approved 'Waste Management Report' (i.e. submitted in the 'Reports and Information File') as amended by condition no. 23; notably in relation to the 'cut and fill' approach, transport issues and environmental controls; to the satisfaction of the Minister for Planning and Environment.

23. Importation of Fill

The importation of fill material in connection with the development hereby approved shall be restricted to clean, inert materials (free from contamination and pollution), which are necessary for engineering purposes. Any import of material over and above this shall require the submission of details and the prior approval of the Minister for Planning and Environment.

24. Storage of Excavated Material

Any material excavated during construction, including top soil, shall be stored / relocated only within the boundary of the site, prior to reuse. Stored top soil should be in bunds no more than 1.8m high to prevent anaerobic deterioration. No material shall be removed from the site without the prior consent of the Minister for Planning and Environment.

25. Children's play area - Provision

The developer shall be responsible for the provision of the children's play area and play equipment, in accordance with the approved play area layout, design and specification / standards, as indicated on drawing no. 1701 L(0-) 103 P1. Unless otherwise agreed by the Minister for Planning and Environment, it shall be completed and made available for use, to the

APPROVED

CAUTION

This decision is purely permissive and in no way absolve, overrule, any other permission that may be required under private property rights, nor does it absolve an applicant of the land to which a permission relates.

L1235-323-



P/2006/2489; Page 10) obtaining, nor does it does not overrule any permission of the owner

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

satisfaction of the Minister, within twelve months of the first occupation of the development hereby permitted.

26. Children's play area - Security

Prior to the first occupation of the development hereby approved, details of the proposed security fencing and/or railings and gates to be erected around the perimeter of the proposed children's play area shall be submitted to and approved by the Minister for Planning and Environment.

27. Teenager Recreational Facility - Provision

The approved teenager recreational facility, including "sports wall" and kick-about area, as shown on drawing no. 1701 L(0-) 103 P1, shall be completed in accordance with the specified layout design and standards. Unless otherwise agreed by the Minister for Planning and Environment, it shall be completed and made available for use, to the satisfaction of the Minister, within twelve months of the first occupation of the development hereby permitted.

28. Community Hall - Completion

The community hall hereby approved shall be completed and the facilities it provides made available for community use once 75% of the development hereby permitted is occupied.

29. Refuse Stations - Design

Prior to the first occupation of the development hereby permitted, full design and ventilation details of the proposed communal refuse / recycling stations indicated on drawing no. 1698 L(0-) 194 P2 shall be submitted to and approved by the Minister for Planning and Environment. Dwellings shall not be occupied until the relevant refuse station has been installed.

30. Gable-End Fenestration

Windows shall be introduced at first floor levels to the gable ends of properties adjacent to public access routes, where these are not open to surveillance from other properties. Revised drawings showing satisfactory design solutions for the elevations of the gables in question shall be submitted to and approved by the Minister for Planning and Environment prior to the commencement of the development hereby permitted.

APPROVED

L1235-324--

CAUTION

This decision is purely advisory and does not overrule any other private property rights of the land to which it applies.



(P1; P/2006/2489; Page 11)
This decision is purely advisory and does not overrule any private property rights of the owner.

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

31. Noise Exposure

A noise scheme for protecting the proposed housing from noise from Jersey Steel, in compliance with Department of Environment Planning Policy Guidance 24, 'Planning and Noise' and World Health Organisation publication 'Guidelines for Community Noise', 1999 shall be submitted to and approved by the Minister for Planning and Environment, in consultation with the Health Protection Department, within 6 months of commencement of the development and prior to the first occupation.

The scheme shall include details of the proposed noise mitigation measures, details of the noise calculations confirming the effectiveness of proposed noise mitigation measures and details of the proposals for implementing them.

As a basic minimum, the noise scheme shall include the following on- and off-site noise mitigation measures:

- (i) automatic roller shutter doors (default closed) at the eastern entrance of the Jersey Steel factory;
- (ii) a lean-to building over the eastern entrance to the Jersey Steel factory;
- (iii) a new close-boarded boundary fence at Jersey Steel parallel to the Perquage Walk;
- (iv) a 5m high acoustic berm with close planting on Field 853, between Le Perquage and the approved housing;
- (v) all generally eastward facing boundary walls / fences to private gardens to be a minimum of 1.8m high close-boarded or solid construction;
- (vi) acoustic glazing and whole house ventilation or other satisfactory means of ventilation, as appropriate;
- (vii) the additional noise mitigation measures included in paragraph 5.2.1 of the 'Maximum Noise Level Assessment Report', PBA, March 2007.

Any approved noise scheme shall be implemented to the satisfaction of the Minister for Planning and Environment, in consultation with the Health Protection Department, prior to the first occupation.

APPROVED

L1235-325--

CAUTION

This decision is purely permissive and does not overrule, any other permissions, private property rights, nor any other rights of the land to which a permit is granted.



(P/2006/2489; Page 12)
This decision is purely permissive and does not overrule any other permissions, private property rights, nor any other rights of the owner.

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

32. Floor levels for the new homes

The floor levels for the new housing development hereby permitted shall comply with those recommended in the 'Flood Risk and Drainage Issues' Report (October 2006) and be set above 9.01m aOD at the upstream end of the housing site and 8.37m aOD at the downstream end.

33. Design of Door Hoods

The design of the door hoods on the front elevations of unit types A1, A2, B, D1 and D2 is not approved. Revised drawings showing details for the design of door hoods / canopies, which reflect the style and materials of the house designs, shall be submitted to and approved by the Minister for Planning and Environment, within 6 months of the commencement of the development.

34. Elevational Treatment of Plot 52 - Unit Type A2

The external design for the front elevation of house no.52 (unit type A2) as shown on drawing number 1698 L(2-) 119 P1 is not approved. Consideration should be given to employing other traditional building forms which will present a more balanced and resolved appearance and which will better reflect the key location of the plot and enhance the contribution of the building to the street scene (e.g. as an effective 'visual stop' terminating the view along the street from the east).

Revised drawings showing modifications to the external elevations and / or an alternative house design shall be submitted to and approved by the Minister for Planning and Environment, prior to the commencement of the development on the terrace comprising units 51 to 53.

35. Elevational Treatment of Unit Types C1 and C2

The designs of the front elevations to unit types C1 and C2 are not approved. Revisions should be made to the proposed window arrangements to present a more resolved appearance and revised drawings shall be submitted to and approved by the Minister for Planning and Environment prior to the commencement of the development hereby approved, except as provided for by condition 3.

36. Size of Unit Types C1 and C2

Unit types C1 and C2, which are designed as 5-person houses, shall be recognised as such, as opposed to their description as 6-person houses in

CAUTION

This decision is purely permissive and in no way overrules any other permission that may be required. It does not affect private property rights, nor does it absolve an applicant of the land to which a permission relates.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

drawing nos. 1698 L(2-) 112 P2 and 113 P2. A revised drawing shall be submitted accordingly.

- 37. **Elderly Persons Accommodation**
 Within a period of 4 months from the date of this permit, the Minister for Planning and Environment will specify the number, tenure, design, size and specification of the elderly / sheltered homes. In the event that the Minister has not done so within the 4 months period, then 5 units of such accommodation will be provided. Detailed plans should be submitted to the Minister within a further 2 months.

- 38. **External Roof Designs**
 The external roof designs for the following terrace blocks and individual houses hereby approved shall be amended to incorporate additional working chimneys, cement coping and other suitable features to break up unrelieved roof lines, create a vertical contrast to the horizontal roof form and to achieve a better visual balance:
 Courtyard 2 - block 36-38
 Courtyard 2 - block 17-20
 Courtyard 3 - unit 24
 Courtyard 5 - block 76-89
 Courtyard 5 - unit 55
 Courtyard 6 - block 81-85
 Courtyard 8 - block 90-94.
 Revised drawings showing the modifications to the external designs shall be submitted to and approved by the Minister for Planning and Environment prior to the commencement of the development hereby permitted, except as provided for by condition 3.

- 39. **Size, Design and Internal Storage Provision - Unit Types A1 and A2**
 The design of unit types A1 and A2 are not approved. They shall be increased in size from 5% to 7.5% above minimum internal floorspace standards and the floor layouts shall ensure adequate internal storage space provision, in accordance with the minimum storage space requirements. Revised drawings, including floor plan, sections and elevations, showing the modifications shall be submitted to and approved by the Minister for Planning and Environment, prior to the commencement of the development hereby permitted, except as provided for by condition 3.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

40. Storage Sheds

Each of the homes hereby permitted which do not have a garage shall be provided with a storage shed in the private garden area, which shall provide a minimum of 4.0m² of floorspace, as indicated on drawing no. 1698 L(0-) 195 P2. The sheds shall be purpose-designed and of blockwork construction and supplied with light, to provide adequate and robust storage facilities. Details of the design and materials of the storage facilities shall be submitted to and approved by the Minister for Planning and Environment within 6 months of the commencement of the development hereby permitted.

41. Design of Special Features

Satisfactory detailed designs for the proposed feature in the public square, the footbridge over the Perquage brook and the entrance pillars to the development, shall be submitted to and approved by the Minister for Planning and Environment, prior to the commencement of the development hereby approved, except as provided for by condition 3.

42. Solar Heating

Appropriately designed hot water units (with appropriate pipe work / connectors) shall be located in the roof spaces of the new homes, to allow for the easy installation of solar water heating panels by future occupants, in accordance with the applicant's letter dated 20th September 2005. Details shall be submitted with the application for Building Consent.

43. Water Saving Measures

All the approved homes shall be provided with water butts, together with an automatic bypass valve from the rainwater down pipes and shall be fitted, as standard, with dual flush toilets and flow restrictors on taps. Final details of the design of the water butts shall be submitted to and approved by the Minister for Planning and Environment prior to the commencement of the development hereby permitted, except as provided for by condition 3.

44. Enclosures for property boundaries - Design

Garden enclosures and other boundary treatments shall comply with the design types and locations set out in drawing no. 1701 L(0-) 102 P2, subject to the following exceptions:

- (i) all timber fences proposed in combination with a low wall shall be vertical

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This decision is purely permissive and in no way abrogate, any other permission that may be required private property rights, nor does it absolve an applicant of the land to which a permission relates.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

close-boarded fencing;

(ii) the low roadside wall extending into the site to the south of the road entrance shall be faced in granite and topped with a suitable coping;

(iii) the retaining walls forming the garden boundary of house no. 49 and the northern boundary of parking courtyard no. 4 shall be 1.8m high with a granite face presented towards the buffer area of low planting adjacent to St. Peter's Valley Road.

(iv) the private garden boundary / retaining walls to house nos. 10 and 11 are granite faced where they give onto the buffer area;

(v) the front garden enclosures to house nos. 90-94 and 97-102 giving onto the public amenity area take the form of 0.9m high blockwork walls finished in a suitable coloured render and topped with a suitable coping.

Drawings showing details of all the proposed enclosure types shall be submitted to and approved by the Minister for Planning and Environment prior to the commencement of the development hereby permitted, except as provided for by condition 3.

45. **Completion of property boundary enclosures**

All approved walls, fences and other forms of enclosure around the gardens of individual homes shall be erected prior to the first occupation of the homes in question.

46. **Pergola Design for Parking Areas**

Pergolas shall be reinstated over car parking spaces R12-R15 and R66-R84 and detailed drawings showing the design of the proposed pergolas shall be submitted to and approved by the Minister for Planning and Environment, within 12 months of the commencement of the development hereby permitted.

47. **Roof materials**

The roofs of all the house types with the exception of types C1 and C2 shall be finished in natural slate.

48. **Samples of external materials**

Within 12 months of the commencement of the development hereby permitted, samples of the proposed roofing materials (including slates and pantiles) and proposed paving blocks, shall be submitted to and approved

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

by the Minister for Planning and Environment.

49. Colour scheme

Notwithstanding the indications on the approved plans and prior to the commencement of the development hereby permitted, except as provided for by condition 3, full details of the colour scheme to be used on the external elevations of the buildings shall be submitted to and approved by the Minister for Planning and Environment. (N.B. The indicative colours shown on the submitted elevations are generally acceptable but, in any event, the development brief calls for exterior walls to generally employ earth colours and it will be especially important to have darker earth-coloured walls for the elevations facing south onto the wetland amenity area).

50. Surface water drainage

Exact details of drainage proposals for the controlled disposal of surface water from the development to the watercourse, including detailed site layouts and calculations for sizing of sewers, as well as details of the two surface water attenuation tanks now proposed at the south western corner of the housing site and any associated works to the stream (e.g. headwall or gabion matting) shall be submitted to and approved by the Minister for Planning and Environment in consultation with the Principle Drainage Engineer, Transport and Technical Services, within 6 months of the commencement of the development hereby permitted. For the avoidance of doubt, the proposals for the disposal of surface water shall meet the requirements set out in the comments sheet from PSD (Drainage) dated 13th October 2005 and the additional comments set out in the letter from TTS (Drainage) dated 5th December 2006 (see attached).

51. Petrol / Oil Interceptors

Petrol / oil interceptors shall be provided as part of the final detailed proposals for surface water disposal from the approved housing development, to the satisfaction of the Transport and Technical Services Department and the Minister for Planning and Environment.

52. Level of water in the Marsh

The minimum level of water to be maintained in the Marsh to maintain its ecological character and status quo in times of flood shall be agreed with the States Ecologist at the Environment Department and the agreed level

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

shall be used to inform the final design of the surface water pumping station and, in particular, the weir plate level. (N.B. It is anticipated that the minimum level will be in the region of 6.0m aOD, as indicated in the submitted 'Flood Risk and Drainage Issues' report, October 2006).

53. Construction Phase Flood mitigation measures

Prior to the commencement of the development hereby approved, details of the construction phase drainage scheme shall be submitted to and approved by the Minister for Planning and Environment in consultation with Transport and Technical Services (Drainage). The scheme shall ensure that during construction, the peak discharge rate of surface water from the housing site to the Perquage stream does not exceed that of the existing run-off from the fields.

54. Completion of flood mitigation measures

The proposed permanent flood mitigation measures, including the surface water attenuation proposals for the housing site and the surface water pumping station, as approved and, in part, designed by Transport and Technical Services (Drainage) and associated improvements to watercourses, shall be put in place and operational prior to the completion of the housing development hereby permitted, to the satisfaction of the Minister for Planning and Environment in consultation with Transport and Technical Services.

55. Foul drainage

None of the homes hereby approved shall be occupied until the foul drainage works to serve the development have been designed and completed to the satisfaction of the Minister for Planning and Environment, in consultation with Transport and Technical Services (Drainage). To this end, the foul pumping station shall be designed and constructed to the specification of Transport and Technical Services (Drainage), constructed by one of that department's approved contractors and connected to the 277 foul sewer adjacent to the sea wall. The southern end of the proposed pumped foul rising main connection to the foul sewer shall be routed / laid along Le Perquage Walk and not through the private garden of 'Brookside'. For the avoidance of doubt, the foul water disposal shall meet the requirements set out in the comments sheet from PSD (Drainage) dated 13th October 2005 and the additional

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L1235-331--

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

comments set out in the letter from TTS (Drainage) dated 5th December 2006 (see attached).

- 56. **Communal satellite dishes**
Prior to the completion of the development hereby approved, provision shall be made for the installation of a communal satellite and TV Communal Distribution System, in accordance with the details set out in drawing number JY35-DME-1001(P2), to the satisfaction of the Minister for Planning and Environment.
- 57. **JEC Substation - Design**
Within 6 months of the commencement of the development hereby permitted, the siting and full design details of any required JEC substation shall be submitted to and approved by the Minister for Planning and Environment.
- 58. **Prevention of debris on roads during construction**
The St. Peter's Valley Road shall be kept clean of all mud and debris that may be dropped from vehicles entering or leaving the site during the construction of the development hereby permitted. To this end, the contractor shall put in place an effective means of wheel washing, which shall be used prior to vehicles leaving the site during the construction period
- 59. **Construction Traffic**
Construction vehicles accessing and exiting the site shall do so via the approved new access point along St. Peter's Valley Road and shall avoid the use of nearby Rue du Craslin and Rue de Haut. (N.B. Rue du Craslin is subject to a 6?6? vehicle width restriction).
- 60. **Road Surfaces**
The proposed bitumen Macadam surface treatment for the estate roads is not approved. Prior to the first occupation of the development hereby permitted, revised drawings showing a more aesthetically pleasing alternative surface treatment shall be submitted to and approved by the Minister for Planning and Environment.
- 61. **Percentage for Art**
Prior to the commencement of the development hereby approved, except

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This decision is purely permissive and in no way overrules, any other permission that may be required in respect of private property rights, nor does it absolve an a

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

as provided for by condition 3, sufficient details of the proposals for the provision of public art and how it will be procured through the Percentage for Art mechanism shall be submitted to and approved by the Minister for Planning and Environment. The art should be visible to the general public, whether part of a building or free-standing and should form an integral part of the proposed housing development and/or the public amenity area.

62. Replacement of Roadside Wall, Banque and Trees

The roadside granite wall, banque and tree feature along St. Peter's Valley Road shall be reinstated on the new road alignment in the same materials and style, to the satisfaction of the Minister for Planning and Environment, within 12 months of the commencement of the development, unless otherwise agreed in writing by, or on behalf of, the Minister. The trees to be felled shall be replaced on a one-to-one basis with semi-mature specimens of the same species. (N.B. It is accepted that this feature will be stopped short of the access road entrance so as to maintain the required visibility splay and afford level access to the traffic refuge for pedestrians).

INFORMATIVES

The Housing Department has advised that, in the event of the creation of any units of dwelling accommodation upon the land, such accommodation shall be occupied by persons qualifying under Regulations 1(1)(a)-(h) who are bone-fide first-time buyers.

The Health Protection Department, under the terms of the 'Statutory Nuisances Law, 1999':

- i) requires a 'construction site management plan' detailing the measures proposed to minimise noise, dust and vibration during site preparation and construction phases of the development, including vehicle movements on site and from HGV's accessing the site. It requires that de-watering pumps etc. should be enclosed and insulated properly to minimise noise to neighbouring property and that they be sited as far a practicable from residential property.
- ii) requires that a dedicated wheel wash facility should be provided to minimise mud on the highway and associated dust. It recommends that the highway in close proximity to the site should be cleaned daily to minimise mud and dust and that vehicles bringing materials to the site

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

from other construction sites should be covered on the highway to prevent dust affecting the highway and premises en route.

(iii) recommends vehicle movement restrictions.

(iv) recommends that the contractors and sub-contractors involved in the development should follow its guidance in relation to minimising noise, dust and vibration.

(v) recommends that the contractors should liaise with local residents regarding the planned work, time scales, compensation measures (such as cleaning cars etc) plus any pre and post assessments of properties for vibration damage.

The Surface Water Pumping Station in the car park to the south of Route de la Haule will be designed by Transport and Technical Services (Drainage) who will contract out the work. The contract will address issues relating to noise, dust, vibration, lorry movements, hours of work etc. in common with usual practice. Guidance will be taken from the Health Protection Department, as necessary, in drawing up the contract.

Reason(s):

1. In the interests of meeting the Island's housing requirements, the Minister for Planning and the Environment reserves the right to review the provision and delivery of homes.
2. To effect compliance with the Island Plan and to ensure that the appropriate infrastructure, which is related to the development, is provided and maintained.
3. To enable certain works to begin in advance of the registration of the Planning Obligation Agreement
4. In the interests of meeting the Island's housing requirements.
5. To ensure that the land and property the subject of the application remains in the use for which it was designated by the States, in the best interests of the community.
6. To ensure that the land zoned by the States specifically for Category A housing to meet the current and future needs of the community is

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CAUTION

This decision is purely permissive and in no way overrides, any other permission that may be required, nor does it absolve an applicant from obtaining, nor does it

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

developed comprehensively and in its entirety, in accordance with the requirements of Island Plan Policy H2 and all the terms of the approval.

7. To allow for effective and safe use of the footpath / cycle route and in the interests of highway safety generally.
8. In the interests of highway safety and to encourage safe pedestrian crossing of the Valley Road.
9. To provide safe access to and egress from the site and to ensure necessary highway improvement works are undertaken for the safety of all road users.
10. In the interests of highway safety.
11. To allow for effective and safe use by pedestrians and cyclists in the interests of improved accessibility and promoting safe and sustainable movement.
12. To help ensure that necessary services and facilities required by the existing and proposed residents are provided before the dwellings are occupied.
13. To ensure that adequate provision is made for the parking of vehicles for residents and visitors, both now and in the future, in accordance with the Minister for Planning and Environment's parking requirements and in the interests of highway safety and the general amenities of the area.
14. To ensure secure controlled access to private rear gardens and courtyards, and to avoid creating unnecessary potential escape routes for criminals, in the interests of crime prevention.
15. To provide for the safety of users of the development hereby approved, avoid light pollution, avoid light intrusion into first-floor rooms, reduce the potential for vandalism, avoid potential glare to road users, reduce future problems associated with the disposal of lamps with a high mercury content, protect the character and amenity of the area and serve the interest of energy efficiency.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

- 16. To ensure that provision is made for a landscaping regime that will enhance the appearance of the development and help assimilate it into the landscape from the outset.
- 17. So that these features might be established early in order to maximise their benefit in helping to soften the impact of the approved development, improve the amenities of the area and maintain landscape quality.
- 18. To ensure that the benefits of the approved landscaping scheme are not delayed and that they make a timely contribution to the amenity of the development in the interests of sustaining and enhancing landscape quality.
- 19. To mitigate the potential failure of trees and plants and the extent to which that failure might threaten the success of the landscaping scheme.
- 20. To protect important trees from damage during the whole of the construction period and to help ensure their long-term contribution to the character and amenity of the approved development and the surrounding area.
- 21. To ensure that the site is properly contoured from the outset. Thus avoiding unnecessary importation of fill material (contrary to IP Policy WM5), or unnecessary production of excavated material that would need to be exported from the site (contrary to IP Policy WM1).
- 22. To minimise the potential environmental implications of waste management associated with the approved earthworks and other operations during the construction period.
- 23. To minimise the potential environmental implications associated with the importation of fill material and avoid undue harm to the amenities of the occupiers of neighbouring properties.
- 24. To minimise the production of construction waste, make more efficient use of waste material and reduce the extent to which this material is disposed of in landfill, in accordance with Island Plan Policies WM1 and

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This decision is purely permissive and does not overrule, any other permission that may affect private property rights, nor does it absolve the landowner of any obligations relating to the land.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

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25. This scheme has been approved on the basis that it complies with the requirements of the former Environment & Public Services Committee as set out in its development brief and this facility must be provided and made available for the safe use of the occupiers of any approved dwelling at the earliest opportunity.
26. In the interests of safety and security, to ensure a satisfactory visual appearance and to exclude dogs and deter unauthorised access.
27. To comply with the requirements of the Minister for Planning and Environment for suitable provision for the needs of older children, as set in the Development Brief.
28. The site has been zoned on the basis that its development inter alia complies with the requirements of the Minister for Planning and Environment and this facility must be provided and made available to help meet the social needs of the new and existing residents of the area (e.g. as a base for the activities of social welfare providers, or for other small-scale community activity).
29. To ensure that waste and refuse is stored and disposed of practically, efficiently and in an environmentally sensitive manner, without harming the amenities of the occupiers of the dwellings hereby permitted.
30. To ensure adequate surveillance of publicly accessible areas, in the interests of safety and security.
31. To protect the amenities of future occupants of the approved properties.
32. To comply with the current guidance provided by the Association of British Insurers and help ensure that the risk of flooding to the new properties is above a 1 in 200 year event, including allowance for 'Climate Change'.
33. To present a satisfactory visual appearance to the front elevations in accordance with the published design objectives and principles of the Minister for Planning and the Environment and to offer some protection during inclement weather.

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This decision is purely permissive and in no way overrules, any other permission that may be required to exercise private property rights, nor does it absolve an applicant from any other obligations.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

- 34. To present a satisfactory visual appearance in a sensitive location within the development.
- 35. To present a satisfactory visual appearance more in keeping with the published design objectives and principles of the Minister for Planning and Environment.
- 36. To help ensure reasonable standards of accommodation for future occupants by compliance with minimum standards for internal floorspace and for combined living, dining and kitchen areas.
- 37. To enable the current review of elderly persons housing needs to be completed.
- 38. To present a more satisfactory visual appearance with more local relevance, where the designs have regard to local forms and more readily reflect (as far as is practicable in the circumstances) the published design objectives and principles of the Minister for Planning and Environment.
- 39. To help ensure adequate standards of housing provision which will meet the needs of future occupants and to ensure a correct balance between storage space at ground and first floor levels in compliance with published standards.
- 40. To ensure there is adequate provision for the storage for normal domestic paraphernalia, including bicycles, lawnmowers and tools, which are best stored outside the home.
- 41. To ensure they present a satisfactory visual appearance in keeping with the character of the approved development and in compliance with the published design objectives and principles of the Minister for Planning and Environment.
- 42. To provide the opportunity for future occupants to readily supplement conventional water heating with heat from a renewable energy source (passive solar gain), in the interest of energy efficiency and more sustainable living.
- 43. To allow for rainwater harvesting and reduce the use of treated 'white

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This decision is purely permissive and in no way overrules any other permission that may be granted. It does not affect private property rights, nor does it absolve the landowner of any obligations of the land in which a permission relates.

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Page 25)

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

water', in the interests of water conservation and more sustainable living.

- 44. To enhance the character and appearance of the development, present an attractive and tidy edge to the gardens and public spaces, prevent unsightly views across back gardens and ensure reasonable privacy and security for the occupiers of the homes in question.
- 45. To present an attractive and tidy edge to the gardens, prevent unsightly views across back gardens and ensure reasonable privacy and security for the occupiers of the homes.
- 46. To ensure the pergolas present a satisfactory visual appearance.
- 47. To present a more satisfactory appearance, create greater visual unity and achieve better visual integration with the surrounding area.
- 48. To ensure that the materials proposed are visually acceptable and will contribute to producing a high quality cohesive development, whilst providing a satisfactory visual relationship with the surrounding area.
- 49. To ensure a satisfactory appearance, reduce the development's impact on the wider landscape, increase its affinity with the surrounding landscape colours and generally safeguard the visual amenities of the area.
- 50. To help ensure that the rate of surface water discharge to the watercourse is no greater than the current rate from the present undeveloped area and to generally ensure that adequate provision is made for surface water drainage in a manner that does not have an undue impact on the risk of fluvial flooding of properties in the area.
- 51. To maintain the water quality entering the watercourse and reduce the risk of pollution.
- 52. To help ensure that there will be no detrimental impact on the existing wetland ecology and the character of the Marsh.
- 53. To reduce the risk of fluvial flooding to existing properties in the area during the construction period.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

- 54. To reduce the risk of fluvial flooding to existing properties in the area.
- 55. To ensure adequate provision for the disposal of foul water.
- 56. To avoid the visual clutter that would result from a proliferation of individual dishes and to safeguard the visual amenities of the new development.
- 57. To ensure a satisfactory appearance and avoid detractions from the visual amenities of the development.
- 58. To prevent carry over of material on the highway and avoid this detracting from the character and amenities of the area and presenting a hazard to road users.
- 59. In the interests of highway safety.
- 60. To present a satisfactory visual appearance more in keeping with the published design objectives and principles of the Minister for Planning and Environment.
- 61. In pursuance of Policy BE12 of the 2002 Island Plan and in accordance with the adopted Percentage for Art Supplementary Planning Guidance, December 2006.
- 62. To help reinstate an important feature which contributes to the character of the area, to reduce the visual impact of the approved development and to help the development to fit more successfully into the surrounding local landscape.

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Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

The following plan(s) has/have been approved:

- D: Existing Survey
- AQ: Proposed Community Hall Plans, Elevations and Sections
- AR: Proposed Storm Water Pumping Station and Context
- AS: Proposed Foul Water Pump Station and Context
- BH: Existing Vegetation and Tree Protection
- BI: Tree Survey
- BO: Proposed Surface Water Drainage Scheme
- BP: Proposed Foul Drainage Scheme
- BQ: Type A - 3 Bed - 2 Storey 5 Person
- BR: Type A2- 3 Bed - 2 Storey 5 Person
- BS: Type B - 4 Bed - 2 Storey 6 Person
- BT: Type C1 - Granite Front 3 Bed - 2 Storey 6 Person
- BU: Type C2 - Rendered Front 3 Bed - 2 Storey 6 Person
- BV: Type D - 4 bed - 2 Storey 6 Person
- BW: Type D2 4 Bed - 2 Storey 6 Person
- BX: Type E 2 Bed - 2 Storey Lifetime Home
- BY: Typical Garage
- BZ: Floor Plans for House Type A1 & A2
- CA: Floor Plans House Type B
- CB: Floor Plans House Type C1 & C2
- CC: Floor Plans House Type D1
- CD: Floor Plans House Type D2
- CE: Floor Plans House Type E Lifetime Homes
- CF: Location Map
- CG: Proposed Development Plan
- CH: Proposed Site Plan
- CI: Proposed Site Levels
- CJ: Courtyard 1 Plan
- CK: Courtyard 1 Elevations 1 and 5
- CL: Courtyard 1 Elevations 2, 4 and 6
- CM: Courtyard 1 Elevations 3 and 7
- CN: Courtyard 2 Plan
- CO: Courtyard 2 Elevations 1 and 3, 2 and 6
- CP: Courtyard 2 Elevations 4, 5 and 7
- CQ: Courtyard 3 Plan
- CR: Courtyard 3 Elevations 1, 5 and 2

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This decision is purely permissive and in no way absolute, overrule, any other permission that may be required and private property rights, nor does it absolve an applicant of the land to which a permission relates.



Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

- CS: Courtyard 3 Elevations 3 and 6
- CT: Courtyard 3 Elevations 4 and 7
- CU: Courtyard 4 Plan
- CV: Courtyard 4 Elevations 1 and 3
- CW: Courtyard 4 Elevations 2 and 4
- CX: Courtyard 5 Plan
- CY: Courtyard 5 Elevation 1, 3 and 5
- CZ: Courtyard 5 Elevation 2 and 6
- DA: Courtyard 5 Elevation 4 and 7
- DB: Courtyard 6 Plan
- DC: Courtyard 6 Elevations 1 and 5
- DD: Courtyard 6 Elevations 2 and 6
- DE: Courtyard 6 Elevations 4, 3 and 7
- DF: Cluster 7 Plan
- DG: Cluster 7 Elevations 1 and 3
- DH: Cluster 7 Elevations 2 and 4
- DI: Cluster 8 Plan
- DJ: Cluster 8 Elevations 1 and 5
- DK: Cluster 8 Elevations 2, 3, 4 and 6
- DL: Courtyard 9 Plan
- DM: Cluster 9 Elevations
- DN: Streetscape Elevations
- DO: Site Sectional Elevations
- DP: Road Access
- DQ: Development Density
- DR: Parking provisions
- DS: Secured By Design
- DT: Buffer Zones
- DU: Refuse and Recycling
- DV: Private Amenity and Storage
- DW: Softlandscape Proposals
- DX: Paving Finishes
- DY: Recreational Space Layout
- DZ: Proposed Satellite and Terrestrial Television Distribution System
- EA: Proposed External Site Lighting Scheme
- EB: Maximum Noise Level Assessment Report

APPROVED

L1235-342-

CAUTION

This decision is purely permissive and does not overrule, any other permit or private property rights, or the use of the land to which a permit is issued.



(This decision is purely permissive and does not overrule, any other permit or private property rights, or the use of the land to which a permit is issued.)
I: P/2006/2489; Page 29)
obtaining, nor does it
does not overrule any
permission of the owner

Planning Permit

PLANNING AND BUILDING (JERSEY) LAW 2002

Planning Application Number P/2006/2489

8 May 2007 Signed

for Director

APPROVED

L1235-343--



CAUTION

This decision is purely permissive and in no way absolves the parties concerned from obtaining, nor does it overrule, any other permission that may be required under any other law. In addition, it does not overrule any private property rights, nor does it absolve an applicant from the need to obtain the permission of the owner of the land to which a permission relates.

(P1; *P_Ref_no: Page 2)

FOURTH SCHEDULE

THE OWNER'S COVENANTS WITH THE MINISTER

The Owner covenants and agrees and undertakes:

1 (NOT USED)

Public Amenity Area

- 2.1 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit the Public Amenity Area Specification to the Minister for approval
- 2.2 that no Dwelling Unit shall be Occupied until a detailed scheme for ensuring that the future maintenance and the management (in good order and condition) in perpetuity of the Public Amenity Area is assured to the satisfaction of the Minister and that:
- 2.2.1 the Owner shall ensure that title to the Public Amenity Area shall be conveyed (subject to the prior approval of the Minister) to an Appropriate Body and the Owner shall pass contract before the Royal Court to this effect and shall pay all and any costs and fees of and incidental to such conveyance which have been agreed to be paid by the Owner as a condition of the agreement of the terms of such transaction
- 2.2.2 Provided that, in the event that the Minister has approved an Appropriate Body to take the transfer of the Public Amenity Area and the Appropriate Body has declined to take the transfer of the Public Amenity Area (and the Public also does not agree to take a transfer of the Public Amenity Area in accordance with paragraph 12 below) the Owner will ensure that the cost of the long term management of the Public Amenity Area shall remain the responsibility of the Owner until a conveyance is effected as provided in Clause 2.2.1
- 2.3 To complete the lay out of the Public Amenity Area Works to the satisfaction of the Minister not later than twelve months following the date that the first Dwelling Unit is Occupied
- 2.4 not to do any act or thing or suffer cause allow or permit the same except as is reasonably required to beneficially preserve, enhance or maintain the conservation value of the natural beauty and amenity of the flora fauna and geological or physiographical features of the Public Amenity Area
- 2.5 not to use nor permit to be used the Public Amenity Area other than as informal amenity areas for the use and enjoyment of the occupants of the Dwelling Units and the wider public or as an area for wildlife or floodplain.

Community Facilities

- 3.1 to provide and lay out (including construction of buildings to at least a shell state) the Community Facilities Land in accordance with a specification approved by the Minister and to the Minister's satisfaction for the purpose of accommodating the Community Facilities
- 3.2 to complete the works of provision and laying out on or before the date upon which 75% of the Dwelling Units are first Occupied
- 3.3 that no Dwelling Units shall be Occupied until such time as a detailed scheme for ensuring that the future maintenance and the management (in good order and condition) in

L1235-344-

L1366608.7



perpetuity of the Community Facilities Land is assured to the satisfaction of the Minister and that:

- 3.3.1 the Owner shall ensure that title to the Community Facilities Land shall be conveyed (subject to the prior approval of the Minister) to an Appropriate Body and the Owner shall pass contract before the Royal Court to this effect and pay all and any costs and fees of and incidental to such conveyance which have been agreed to be paid by the Owner as a condition of the agreement of the terms of such transaction
- 3.3.2 Provided that, in the event that the Minister has approved an Appropriate Body to take the transfer of the Community Facilities Land and the Appropriate Body has declined to take the transfer of the Community Facilities Land (and the Public also does not agree to take a transfer of the Community Facilities Land in accordance with paragraph 12 below) the Owner will ensure that the cost of the long term management of the Community Facilities Land shall remain the responsibility of the Owner until a conveyance is effected as provided in Clause 3.3.1.
- 3.4 Subject to the reasonable approval of the Minister ownership of the Community Facilities Land may be transferred to a management company formed by the Owner (in which the owners of the Dwelling Units will each have a share reflective of their ownership of a Dwelling Unit) to administer the Community Facilities Land for the purposes of the Community Uses
- 3.5 neither to use nor permit to be used the Community Facilities Land other than for one or more of the Community Uses
- 3.6 any person deriving title to a Dwelling Unit from the Owner will comply with any obligation contained in a contract of acquisition in accordance with the provisions of paragraph 3.3.2 above
- 3.7 that the car parking spaces for 25 cars which form part of the Community Facilities Land shall also be available on a non exclusive basis to the users of the Public Amenity Area

AHS Infrastructure

- 4.1 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit the AHS Infrastructure Specification to the Minister for his approval
- 4.2 that no Dwelling Unit shall be Occupied until such time as the lay out of the AHS Infrastructure Works has been constructed and completed to the satisfaction of the Minister to the extent necessary to permit the Occupation and enjoyment of that particular Dwelling Unit and a detailed scheme for ensuring that the future maintenance and the management (in good order and condition) in perpetuity of the AHS Infrastructure Works is assured to the satisfaction of the Minister and that:
- 4.2.1 that the cost of the long term management of the AHS Infrastructure Works is apportioned between the owners of the Dwelling Units within the Development pursuant to their respective contracts of acquisition, and
- 4.2.2 that owners of the Dwelling Units shall be bound to contribute the percentage payment set out in their respective contracts of acquisition towards the cost of maintaining the AHS Infrastructure Works and the fees of the agent or management company appointed pursuant to sub-paragraph 4.2.3 of this paragraph, and

L1235-345--

L1366608.7



- 4.2.3 that the owners of the Dwelling Units shall be obliged to appoint an agent or a management company who shall be responsible for ensuring that the AHS Infrastructure Works is properly maintained and upkept and all contributions required of the owners duly made
- 4.2.4 subject to the reasonable approval of the Minister ownership of the AHS Infrastructure may be transferred to a management company formed by the Owner (in which the owners of the Dwelling Units will each have a share reflective of their ownership of a Dwelling Unit) to administer the AHS Infrastructure

Bus Shelters and Bus Services Contribution

- 5.1 to pay to the Treasurer of the States the Bus Shelter Contribution on the date of this Agreement
- 5.2 to pay to the Treasurer of the States the Bus Services Contribution prior to the Occupation of 75% of the Development

Affordable Housing

- 6.1 that 55% of the Dwelling Units permitted by the Minister to be constructed on the Site shall be sold to First Time Buyers and 45% of the Dwelling Units shall be utilised to provide Social Rental Accommodation.
- 6.2 to give effect to the said tenure division by constructing 56 First Time Buyer Dwelling Units and 46 Social Rental Accommodation Dwelling Units on the Land.
- 6.3 that at or prior to the completion of the Development, which the Owner will carry out as expeditiously as reasonably possible, the Owner shall place the First Time Buyer Dwelling Units or the sites thereof as the case may be on the open market and shall take all reasonable steps to facilitate the sale of those units or sites to First Time Buyers.
- 6.4 that at or prior to the completion of the Development, which the Owner will carry out as expeditiously as reasonably possible, the Developer will sell, or otherwise transfer the Social Rental Accommodation or the sites thereof to a Social Rental Landlord approved as such by The Housing Minister
- 6.5 that the transfer of a site to a First Time Buyer or Social Rental Landlord as the case may be prior to the completion of the construction thereon of a First Time Buyer Dwelling Units or Social Rental Accommodation Dwelling Units respectively (save for paragraph 6.6 below) shall not operate to transfer to the purchaser any obligation to which the Owner is subject by this Agreement until final completion of the Development and sale or other alienation of all units of accommodation thereon.
- 6.6 that all subsequent transfers of First Time Buyer Dwelling Units shall be to First Time Buyers reasonably approved as such by the Housing Minister and all subsequent transfers of Social Rental Accommodation Dwelling Units shall be to Social Rental Landlords reasonably approved as such by the Housing Minister.
- 6.7 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit to the Minister for approval a scheme for the provision of Elderly Persons Accommodation such scheme to give details as to tenure design size and specification of those Dwelling Units
- 6.8 in the circumstances where the Minister is satisfied that there is a sufficient justification allowing for a proportional split between conventional First Time Buyer homes and Shared Ownership homes then the persons against whom this obligation (Affordable Housing) is

L1366608.7

L1235-346-



- 4.2.3 that the owners of the Dwelling Units shall be obliged to appoint an agent or a management company who shall be responsible for ensuring that the AHS Infrastructure Works is properly maintained and upkept and all contributions required of the owners duly made
- 4.2.4 subject to the reasonable approval of the Minister ownership of the AHS Infrastructure may be transferred to a management company formed by the Owner (in which the owners of the Dwelling Units will each have a share reflective of their ownership of a Dwelling Unit) to administer the AHS Infrastructure

Bus Shelters and Bus Services Contribution

- 5.1 to pay to the Treasurer of the States the Bus Shelter Contribution on the date of this Agreement
- 5.2 to pay to the Treasurer of the States the Bus Services Contribution prior to the Occupation of 75% of the Development

Affordable Housing

- 6.1 that 55% of the Dwelling Units permitted by the Minister to be constructed on the Site shall be sold to First Time Buyers and 45% of the Dwelling Units shall be utilised to provide Social Rental Accommodation.
- 6.2 to give effect to the said tenure division by constructing 56 First Time Buyer Dwelling Units and 46 Social Rental Accommodation Dwelling Units on the Land.
- 6.3 that at or prior to the completion of the Development, which the Owner will carry out as expeditiously as reasonably possible, the Owner shall place the First Time Buyer Dwelling Units or the sites thereof as the case may be on the open market and shall take all reasonable steps to facilitate the sale of those units or sites to First Time Buyers.
- 6.4 that at or prior to the completion of the Development, which the Owner will carry out as expeditiously as reasonably possible, the Developer will sell, or otherwise transfer the Social Rental Accommodation or the sites thereof to a Social Rental Landlord approved as such by The Housing Minister
- 6.5 that the transfer of a site to a First Time Buyer or Social Rental Landlord as the case may be prior to the completion of the construction thereon of a First Time Buyer Dwelling Units or Social Rental Accommodation Dwelling Units respectively (save for paragraph 6.6 below) shall not operate to transfer to the purchaser any obligation to which the Owner is subject by this Agreement until final completion of the Development and sale or other alienation of all units of accommodation thereon.
- 6.6 that all subsequent transfers of First Time Buyer Dwelling Units shall be to First Time Buyers reasonably approved as such by the Housing Minister and all subsequent transfers of Social Rental Accommodation Dwelling Units shall be to Social Rental Landlords reasonably approved as such by the Housing Minister.
- 6.7 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit to the Minister for approval a scheme for the provision of Elderly Persons Accommodation such scheme to give details as to tenure design size and specification of those Dwelling Units
- 6.8 in the circumstances where the Minister is satisfied that there is a sufficient justification allowing for a proportional split between conventional First Time Buyer homes and Shared Ownership homes then the persons against whom this obligation (Affordable Housing) is

L1366608.7

L1235-346-



enforceable shall enter into such agreement of modification of this Agreement prepared by or on behalf of the Minister under Article 25(12) as the Minister may direct so as to give effect to the proportional split

Highways Works

- 7.1 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit the Offsite Highways Works Specification to the Minister for his approval (in consultation with the TTS Minister)
- 7.2 not to Commence the Offsite Highway Works before the Offsite Highways Works Bond has been provided
- 7.3 to at its own expense undertake the Offsite Highways Works at St Peters Valley in the Parish of St Lawrence the whole in accordance with the approved Offsite Highways Works Specification and to expeditiously complete the same to the satisfaction of the TTS Director prior to Occupation of any Dwelling Unit
- 7.4 if the Owner has not carried out or caused to be carried out the Offsite Highways Works to the satisfaction of the TTS Director or (in the sole opinion of the TTS Director) is not proceeding to carry out the same expeditiously the Minister will be entitled to carry out or cause to be carried out the Offsite Highways Works and/or call on demand the Offsite Highways Bond and/or recover the cost thereof from the Owner
- 7.5 on completion of the Offsite Highways Works the relevant strips of land shall be ceded and transferred free of all charges and encumbrances by the Owner to the Public by contract to be passed before the Royal Court the Owner paying the proper and reasonable costs of and incidental to the said transfer (including all and any reasonable legal and professional costs)
- 7.6 on completion of the Offsite Highways Works the Owner shall provide to the Minister three sets of as built plans (in such media format as the Minister requires acting reasonably) and other information reasonably required by the Minister

Noise Mitigation

- 8.1 the Owner shall carry out the Owner Noise Mitigation Measures
- 8.2 Jersey Steel shall carry out the Jersey Steel Noise Mitigation Measures expeditiously and complete the same prior to the first Occupation of any Dwelling Unit or by the date six months following the date of the grant of a planning permit by the Minister for the Jersey Steel Noise Mitigation Measures under the Law if later
- 8.3 That Jersey Steel shall not be obliged to commence the Jersey Steel Noise Mitigation Measures until the payment by the Owner of the Owner Jersey Steel Payment
- 8.4 The Owner shall make the Owner Jersey Steel Payment expeditiously
- 8.5 that no Dwelling Unit shall be Occupied until such time as the Owner Noise Mitigation Measures have been put in place fully to the satisfaction of the Minister and the Owner shall have made the Owner Jersey Steel Payment
- 8.6 there shall be keep and retained on the Jersey Steel Site the Jersey Steel Noise Mitigation Measures for such time as Jersey Steel (or a successor in title to Jersey Steel) shall continue the business of a steel working factory from the Jersey Steel Site provided that Jersey Steel may from time to time make application under the Law to the Minister for any permission required under the Law in respect of the Jersey Steel Site (whether or not affecting the Jersey Steel Noise Mitigation Measures) and the Minister accordingly may require as a

L1235-347--

L1366608.7



condition to the approval of any such application any variation to the Jersey Steel Noise Mitigation Measures necessitated by such application.

Surface Water Drainage

- 9.1 within nine months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to prepare the Offsite Drainage Specification and submit the same to the TTS Director, Waste Management for approval
- 9.2 not to Commence the Offsite Drainage Works before the Offsite Drainage Work Bond has been provided
- 9.3 if the Owner has not carried out or caused to be carried out the Offsite Drainage Works to the satisfaction of the TTS Director, Waste Management or (in the sole opinion of the TTS Director acting reasonably) is not proceeding to carry out the same expeditiously the Minister will be entitled to carry out or cause to be carried out the Offsite Drainage Works and/or call on demand the Offsite Drainage Work Bond and/or recover the cost thereof from the Owner
- 9.4 to complete the Offsite Drainage Works and have them commissioned to the satisfaction of TTS and the Owner and to pay to the Treasurer of the States the SWPS Commuted Sum before the completion of the Development
- 9.5 to carry out the Development in accordance with the details approved by the Minister of the proposed means of disposal of surface water from the Development
- 9.6 that no Dwelling Unit shall be Occupied until the Minister is satisfied that there are in place appropriate arrangements for the long term maintenance and management by the Owner of the means of disposal of surface water (including surface water attenuation tanks and associated works to receiving watercourses) from the Development

Foul Drainage

- 10.1 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit to the Minister for his approval the Foul Drainage Works Specification
- 10.2 that no Dwelling Unit shall be Occupied until the Foul Drainage Works have been constructed and completed in accordance with the Foul Drainage Works Specification to the extent necessary to permit the Occupation and enjoyment of that particular Dwelling Unit
- 10.3 that no Dwelling Unit shall be Occupied until the Minister is satisfied that there are in place appropriate arrangements for the long term maintenance and management by the Owner of the means of disposal of foul drainage from the Development

Watercourse Maintenance/Restoration

- 11.1 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit to the TTS Director, Waste Management for his approval the Watercourse Specification
- 11.2 To complete the Watercourse Works to the satisfaction of the Minister not later than twelve months following the date that the first Dwelling Unit is Occupied and before the completion of the Development
- 11.3 that no Dwelling Unit shall be Occupied until such time as the Owner has made provision to the reasonable satisfaction of the Minister for the restoration and future maintenance of

L1235-348--

L1366608.7



the fabric of the watercourse to the south of Field 861 which runs to Le Marais Avenue and the ditches which feed it

Transfer to the Public

12.1 in the circumstances where the Minister for Treasury and Resources (in his absolute discretion) agrees that the Public will take ownership of the Public Amenity Area and/or the Community Facilities Land (as the case may be) and has authorised the Public to do so then the following shall apply:

12.1.1 the Owner shall ensure that title to the Public Amenity Area or the Community Facilities Land (as the case may be) shall be conveyed to the Public and the Owner shall pass contract before the Royal Court to this effect and pay all and any reasonable legal and professional costs and fees of and incidental to such conveyance which have been agreed to be paid by the Owner as a condition of the agreement of the terms of such conveyance

12.1.2 to pay to the Minister the Commuted Sum on the transfer of the Public Amenity Area and/or the Community Facilities (as the case may be)

For the avoidance of any doubt nothing in this paragraph 12 shall be construed or interpreted in any way so as to oblige the Public to take ownership of the Public Amenity Area or the Community Facilities Land (as the case may be)

Defects Period

13.1 to provide the Minister with a defect liability period and/or guarantee of twelve months from the main contractor of the Owner in respect of the works carried out in accordance with paragraphs 7 and 9 of this Schedule or such other works carried out under this Agreement as the Minister shall properly require

13.2 to assign novate or transfer (as the case may be) to the Minister to the extent reasonably possible the benefit of any contractual warranties or guarantees enjoyed by the Owner for or covering any part or parts of any works carried out in accordance with this Agreement that are to be taken over by or on behalf of the Public

Public Art

14.1 within six months of this Agreement being registered in the Royal Court as evidenced by an Act of the said Court to submit to the Minister for his approval the Owners proposals in respect of the Public Art

14.2 to include within the Development Public Art to the value of the Public Art Contribution

14.3 to complete the inclusion within the Development of the Public Art to the satisfaction of the Minister not later than twelve months following the date that the first Dwelling Unit is Occupied

L1235-349-



L1366608.7

FIFTH SCHEDULE

MINISTER'S COVENANTS

Repayment of contributions

- 1 The Minister hereby covenants with the Owner to use all sums received by the Treasurer of the States from the Owner under the terms of this Agreement (namely the Bus Services Contribution and the Bus Shelter Contribution) for the purposes specified in this Agreement for which they are to be paid or for such other planning purposes arising from the Development as the Minister shall consider to be reasonably appropriate in the circumstances.
- 2 The Minister covenants with the Owner that he will procure or arrange that the Treasurer of the States will pay to the Owner together with interest such amount of any payment made by the Owner to the Treasurer of the States under this Agreement which has not been expended in accordance with the provisions of this Agreement within five years of the date of receipt by the Treasurer of the States of such payment.

L1235-350-



L1366608.7

SIXTH SCHEDULE
FORM OF BONDS

DATE

BY THIS BOND (Company Registration Number) whose registered office is situate at ("the Owner") and [...insert name of surety...] (Company Registration Number) whose registered office is situate at [...insert address...] ("the Surety") and their respective successors in title and assigns are bound jointly and severally to the Minister for Transport and Technical Services [...insert address...] ("TTS Minister") for the payment to the TTS Minister of the sum of [one million two hundred thousand Pounds (£1,200,000)]

WHEREAS

- 1 By an agreement dated [...insert date...] relating to [...insert site name...] and made between [...insert parties...] and the Minister for Planning and Environment ("the Agreement") the Owner covenanted with the Minister for Planning and Environment to carry out the Offsite Drainage Works as defined and referred to in the Agreement to the reasonable satisfaction of the TTS Minister
- 2 It is intended that this Bond shall be construed in light of the Agreement
- 3 The Owner is to carry out the Offsite Drainage Works as detailed in the Agreement and this Bond is in respect of those Offsite Drainage Works only as approved under the Agreement
- 4 At the time of entering into this Bond and on the faith thereof the Surety has agreed to concur with the Owner in this Bond for the due performance and fulfilment of the Offsite Drainage Works by the Owner as defined and referred to in the Agreement

NOW THE CONDITION of the above written Bond is such that if the Owner his successors and assigns shall carry out the Offsite Drainage Works as defined and referred to in the Agreement or if on default by the Owner the Surety shall satisfy and discharge the sums due from and payable by the Owner to the TTS Minister under the Agreement up to the amount of [one million two hundred thousand pounds (£1,200,000)] Then the above written Bond shall be void OTHERWISE to continue in full force and the giving by the TTS Minister of any extension of time for the carrying out of the Offsite Drainage Works as defined and referred to in the Agreement or anything therein mentioned or contained and on the part of the Owner to be performed or fulfilled or any other forgiveness or forbearance on the part of the TTS Minister to the Owner or its successors or assigns shall not in any way release the Surety from the Surety's liability under the above written Bond

Signing provisions for the parties

L1235-351-



L1366608.7

DATE

BY THIS BOND (Company Registration Number) whose registered office is situate at ("the Owner") and [...insert name of surety...] (Company Registration Number) whose registered office is situate at [...insert address...] ("the Surety") and their respective successors in title and assigns are bound jointly and severally to the Minister for Transport and Technical Services [...insert address...] ("TTS Minister") for the payment to the TTS Minister of the sum of [seventy thousand] Pounds [(£70,000)]

WHEREAS

- 1 By an agreement dated [...insert date...] relating to [...insert site name...] [and highway works in the vicinity of insert site if this is appropriate] and made between [...insert parties...] ("the Agreement") the Owner covenanted to carry out the Offsite Highway Works as defined and referred to in the Agreement
- 2 It is intended that this Bond shall be construed in light of the Agreement
- 3 The Owner is to carry out the Offsite Highway Works as detailed in the Agreement and this Bond is in respect of those Offsite Highway Works only as approved under the Agreement
- 4 At the time of entering into this Bond and on the faith thereof the Surety has agreed to concur with the Owner in this Bond for the due performance and fulfilment of the Offsite Highway Works by the Owner as defined and referred to in the Agreement

NOW THE CONDITION of the above written Bond is such that if the Owner his successors and assigns shall carry out the Offsite Highway Works as defined and referred to in the Agreement or if on default by the Owner the Surety shall satisfy and discharge the sums due from and payable by the Owner to the TTS Minister under the Agreement up to the amount of xxxxxxxx pounds (£). Then the above written Bond shall be void OTHERWISE to continue in full force and the giving by the TTS Minister of any extension of time for the carrying out of the Offsite Highway Works as defined and referred to in the Agreement or anything therein mentioned or contained and on the part of the Owner to be performed or fulfilled or any other forgiveness or forbearance on the part of the TTS Minister to the Owner or its successors or assigns shall not in any way release the Surety from the Surety's liability under the above written Bond

Signing provisions for the parties

L1235-352--



L1366608.7

SEVENTH SCHEDULE

GUARANTOR PROVISIONS

1. Guarantee

- 1.1 The Guarantor **HEREBY** irrevocably **COVENANTS AND GUARANTEES** to the Minister the performance observance and compliance by the Owner of each and every of the terms provisions conditions obligations undertakings and agreements on the part of the Owner to be performed observed or carried out by the Owner as contained or referred to in this Agreement (hereinafter called "the Obligations")

2. Obligations

- 2.1 If at any time any default is made by the Owner in the performance of any of the Obligations the Guarantor will well and truly perform or cause to be so performed each and every one of the Obligations and/or will pay any sum or sums that may be payable in consequence of any default made by the Owner in the performance of any of the Obligations and will indemnify the Minister on demand against all losses damages costs and expenses arising out of any default by the Owner

3. Liability as if Sole Principal Obligor

- 3.1 As between the Guarantor and the Minister (but without affecting the Obligations) the Guarantor shall remain liable under this Agreement as if it were the sole principal obligor and not merely a guarantor
- 3.2 The Guarantor shall not be discharged nor shall its liability be affected by anything which would not discharge it or affect its liability if it were the sole principal obligor including but not limited to:-
- 3.2.1 any amendment modification waiver consent or variation express or implied to this Agreement or any related documentation
- 3.2.2 the granting of any extensions of time or forbearance forgiveness or indulgences in relation to time to the Owner
- 3.2.3 the enforcement absence of enforcement or release of this Agreement or of any security right of action or other guarantee or indemnity
- 3.2.4 the dissolution amalgamation reconstruction reorganisation of the Owner or any other person or

L1235-353--

L1366608.7



3.2.5 the illegality invalidity or unenforceability of or any defect in any provision of this Agreement or any of the Obligations

3.2.6 any indulgence or forbearance payment or concession to the Owner

3.2.7 any compromise of any dispute with the Owner

3.2.8 any failure of supervision to detect or prevent any fault of the Owner

L1235-354-



L1366608.7

Signed on behalf of Bel Royal (Jersey) Limited

By John Le Carr Bisson

[Handwritten signature]
Attornied Signatory

In the presence of

[Handwritten initials]

This 31st day of March 2008

Signed on behalf of Jersey Steel Company (1935) Ltd

By Bruce Halliwell AS DIRECTOR

[Handwritten signature]

In the presence of

MICHAEL JOHN BACKHURST - ADVOCATE

This 2nd day of April 2008

Signed on behalf of Dandara Holdings Limited

By John Le Carr Bisson

[Handwritten signature]
Attornied Signatory

In the presence of

[Handwritten initials]

This 31st day of March 2008

Signed on behalf of Barclays Private Clients International Limited

By Denis James Tully

[Handwritten signature]
Attorney

In the presence of

[Handwritten signature]

This 8th day of April 2008

Signed on behalf of Michael Blair Sarre

[Handwritten signature]

L1235-355-

L1366608.7

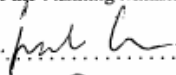


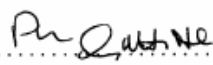
By ANTHONY PAUL DEL ANNO ATTORNEY OF MILLHALL BLAZA CADRE

In the presence of  PAUL C. SCARRY

This 8th day of April 2008

Signed on behalf of the Planning Minister

by 

in the presence of 

this 11 day of April ,2008

L1235-356-



L1366608.7

Chronology re trees

<p>March 2003 DDB</p>	<ul style="list-style-type: none"> • The mature trees which are to be lost to allow for satisfactory vehicular access, etc. are reinstated along the realigned northern boundary of the site, using indigenous tree species. • The established trees and hedgerows along field boundaries elsewhere on the housing site are retained and reinforced where appropriate, with the possible exception of the hedgerow on the eastern boundary of Field 853.
<p>4th May 2004 Planning Sub-Committee</p>	<ul style="list-style-type: none"> • It was noted that in order to achieve road widening measures a row of large oak trees alongside the roadside would require removal. • The Sub-Committee agreed that the safety benefits associated with the roadworks were considered to outweigh the retention of the trees and accordingly approved their removal subject to the reinstatement of the roadside wall, banque and trees along the new road alignment. It further considered that the replacement trees should be of the “heavy standard” type.
<p>May 2004 Development Brief</p>	<ul style="list-style-type: none"> • It should be noted that the Public Services Department’s presently preferred scheme is likely to involve the loss of 12 mature oak trees along the northern boundary of Field 851. Given the valuable contribution that these trees make to the character of the landscape and to wildlife and their many other advantages, the developer should also look to explore with the traffic engineers and planning officers the potential for more innovative and less disruptive forms of vehicular access. To inform this process, the States Arboriculturalist was requested to prepare a tree condition survey. • The mature trees which are to be lost to allow for satisfactory vehicular access, etc. are reinstated along the realigned northern boundary of the site, using “heavy standard” indigenous tree species (preferably replacement oaks). • That the established trees and hedgerows along field boundaries elsewhere on the housing site are retained and reinforced, where appropriate, with the possible exception of the hedgerow on the eastern boundary of Field 853
<p>21st May 2004 Letter from P&E to Axis Mason</p>	<ul style="list-style-type: none"> • Members generally support the access arrangements proposed by the Public Services Department. Whilst they believe it is regrettable that this will involve the loss of roadside trees, they recognise that this is necessary in the interest of highway safety. • They are keen to emphasize that the existing roadside wall, banque and tree feature is reinstated along the new road alignment. • They also require the replacement trees be “heavy standard” oak trees so that they have an instant impact.
<p>16th May 2006 Officer Report for 129 houses</p>	<ul style="list-style-type: none"> • There are 12 mature oak trees, one sycamore and one ash set on a 1.5m. bank along the northern roadside boundary of Field 851. It is proposed that these be removed to achieve highway improvements including the extension of the existing roadside pavement to La Rue de la Blanche Pierre. • Some of the trees are not healthy and wet rot cavities are evident at the bases of some. According to the tree survey conducted in

	<p>consultation with the States Arboriculturalist, only one tree is classified as having the highest retention value, the retention of 5 others would be desirable in normal circumstances, 4 do not merit retention in any event and 3 are dying or dangerous.</p> <ul style="list-style-type: none"> • The Development Brief recognises that the trees could potentially be lost, emphasises that highway safety must not be compromised and reflects the former Sub-Committee's decision on reinstatement. • This matter has never really featured strongly in the public consultation to date.
14th August 2006 Minister's refusal of 129 homes	<ul style="list-style-type: none"> • I note the issues which have been raised in relation to wildlife and habitat. However, I am satisfied that these issues have been reasonably addressed by the environmental work required and carried out in association with the application, together with the deliberations of former Committees. Most developments will have some impact on the habitat and wildlife and this is no exception. However the effect is considered reasonable in this case.
16th March 2007 Officer's Report	<ul style="list-style-type: none"> • Following the most recent public meeting, the Minister asked that further consideration be given to whether there is scope for some or all of the trees to be saved, The matter was put to TTS which responded as follows: "regrettably, I do not believe there is potential to create the essential road improvements for pedestrian safety without removing all the roadside trees to the south of the existing track. The road needs to be widened to provide a footpath on the north side joining to Rue de la Blanche Pierre and a pedestrian refuge at the entrance to the new site. This cannot be achieved without the loss of the trees".
21st March 2007 Minister's reasons for approval of 102 houses	<ul style="list-style-type: none"> • I gave instructions for a reassessment of the position to establish whether or not there was any possibility that some or all of the trees might be saved. Regretfully, the response from TTS makes it all too clear that this is not possible, if we are to achieve essential road improvements for pedestrian safety and a safe access for the site. • I believe it would be essential to require the re-establishment of the wall, banque and tree feature on the proposed new road alignment and to re-plant with semi-mature trees of the same species.
8th May 2007 Planning permit	<ul style="list-style-type: none"> • Condition 9– The proposed road widening/ improvement works to St. Peter's Valley Road, including the realignment/reinstatement of the roadside wall, banque and trees.... shall be carried out at the expense of the developer and to the satisfaction of TTS and the Minister for Planning and Environment, prior to the first home being occupied. • Condition 20– Tree protection measures included, inter alia, the erection of fences around all retained trees before any work could be carried out and the stipulation that no trees could be felled, lopped, topped or in any way destroyed without prior written consent of the Minister.
11th May 2007	<ul style="list-style-type: none"> • Tree-felling commenced
12th May 2007	<ul style="list-style-type: none"> • Roadside oaks felled
14th May 2007 Letter to States Members from Deputy Pryke	<ul style="list-style-type: none"> • Confirms that the felling which has been undertaken complies with the approved plans. • An Environment Officer had visited the site and found no

	<p>evidence of the destruction of any nests</p> <ul style="list-style-type: none"> • The developer had agreed to halt further felling until issue resolved. • P&E to arrange for an independent viewing of the trees which are remaining for evidence of nesting birds.
15th May 2007	<ul style="list-style-type: none"> • Minister answers questions in the States
17th May 2007 Minister's decision	<ul style="list-style-type: none"> • To provisionally include the two most northerly of the three remaining oak trees along the north east boundary of Field 851 in the list of protected trees
May/June 2007	<ul style="list-style-type: none"> • Dr. H. Glyn Young commissioned to carry out the independent survey to establish the situation regarding nesting birds • States Ecologist asked to conduct a wider ecological review in relation to the tree habitats and suggest how anything significant might best be protected • Assess how many endangered species may be resident in the wetland area to the south of the site.
23rd July 2007 Minister's decision	<ul style="list-style-type: none"> • No tree-felling to be carried out anywhere on the site until the end of July • No trees containing protected nests that are in use or being built are to be felled • There must be independent verification that any trees felled after July do not contain any protected nests • P&E to review the potential adoption of BS5837 "Trees in relation to construction – Recommendations 2005" • P&E to enter into discussions with Environment Department to encourage a better integrated cross-departmental system of appraising trees on development sites
23rd July 2007 Minister's decision	<ul style="list-style-type: none"> • Approved lifting of 2 silver birch trees and relocation in the same vicinity • Approved the lifting of an alder, an evergreen oak and common ash from the hedgerow along the southern boundary of Field 851 and relocation elsewhere on the site. • Approved the raising of the crowns of 2 common oaks. • Directed that none of the work should be carried out before the end of July and only then where no protected birds' nests are in use or being built.
23rd July 2007 Minister's decision	<ul style="list-style-type: none"> • Retain tree numbers 54 and 58 on the list of protected trees
24th September 2007 Minister's decision	<ul style="list-style-type: none"> • Approved the felling of trees 1 and 2 provided they are replaced by 2 new heavy standard trees of the same species • Approved the crown reduction of tree no. 4 • Approved the crown reduction of the remaining poplar trees.
30th January 2008	<ul style="list-style-type: none"> • States Arboriculturalist carried out detailed inspection of tree no. 54 and his opinion was that it should be downgraded to the lowest grade and recommended its removal.
4th February 2008	<ul style="list-style-type: none"> • Minister held a meeting on the Site with local politicians, the States Arboriculturalist and representatives of the developer to discuss the way forward. • Minister agreed that the tree should be pollarded as a matter of urgency for safety reasons. • The States Arboriculturalist was to inspect the tree after it had been pollarded and report back on the tree's condition.
3rd March 2008	

Minister's decision

- Approved the felling of tree no. 54

**Rapid assessment of breeding birds at Bel
Royal Development Site, La Vallée de St
Pierre, Jersey**

24th-26th May 2007

Dr. H. Glyn Young

**Durrell Wildlife Conservation Trust
for Environment Division**



Background

Work started on development of fields at Bel Royal site in early 2007. In May, trees alongside the main approach to the site, La Vallée de St Pierre, were felled to improve access. This latter action was greeted by public concern and prompted a reassessment of the environment of the site and a more thorough understanding in particular of the bird life there.

Before this study, birds had been poorly represented in reviews of the site and no Environmental Impact Assessment (EIA) carried out. The only written account of fauna in relation to the proposed development is from Mike Felton Ltd. (2004) and this document, never intended as a faunal assessment, includes only a passing interest in breeding birds i.e. it states:

6.0 Fauna

- 6.1 It was noted that some wetter areas had been recently visited by bird life, but that there was nothing on site which was particularly rare or required specific protection.
- 6.2 During periods of flooding, the area could be visited by Lapwings, Oystercatchers and the Mediterranean Gull. These birds are regular visitors to the adjacent Goose Green Marsh. (Authors note: Mediterranean Gull is an uncommon visitor to Jersey).
- 6.3 It was agreed that the most important part of the whole site at Bel Royal is the wetter, low lying areas and any landscape improvements to the site would enhance the present environment.
- 6.4 There are a number of habitat types which may support small mammals which include hedgerows, ditches and small banques. None of these habitats are particularly unusual nor are they particularly species rich which would attract certain types of fauna.
- 6.5 An area which would be worth noting for its wildlife potential however, is the Willow Carr to the east of Zone 3. Willow trees are noted for their high capacity to support wildlife, in particular small insects, which in turn attract many bird species.

It is obvious from this section in the 2004 review that no survey or assessment of birds at the site was undertaken and, therefore, the needs of bird fauna were not adequately met.

Following the felling of trees in May 2007, it was proposed that a rapid assessment of breeding birds at the site be undertaken. It was recognised that the time available was not sufficient to fully determine bird usage throughout the year or to estimate populations of each bird species on site. It was further acknowledged that while some species were probably no longer

nesting, having fledged young already, those birds still holding territory on the site could be identified and individual territories approximated and mapped.

The site

The Bel Royal Development Site lies in the parish of St Lawrence adjacent to La Vallée de St Pierre at approximately (N49°12' W02°10'). The principal fields outlined for development are abandoned agricultural fields 851, 853, 854 and 848 (see **Map 1**). Adjacent fields to south (861, 862, 862A and 863A) are seasonally flooded meadow and will not be developed; however, improvement to these fields has been proposed (see Mike Felton Ltd. 2004).

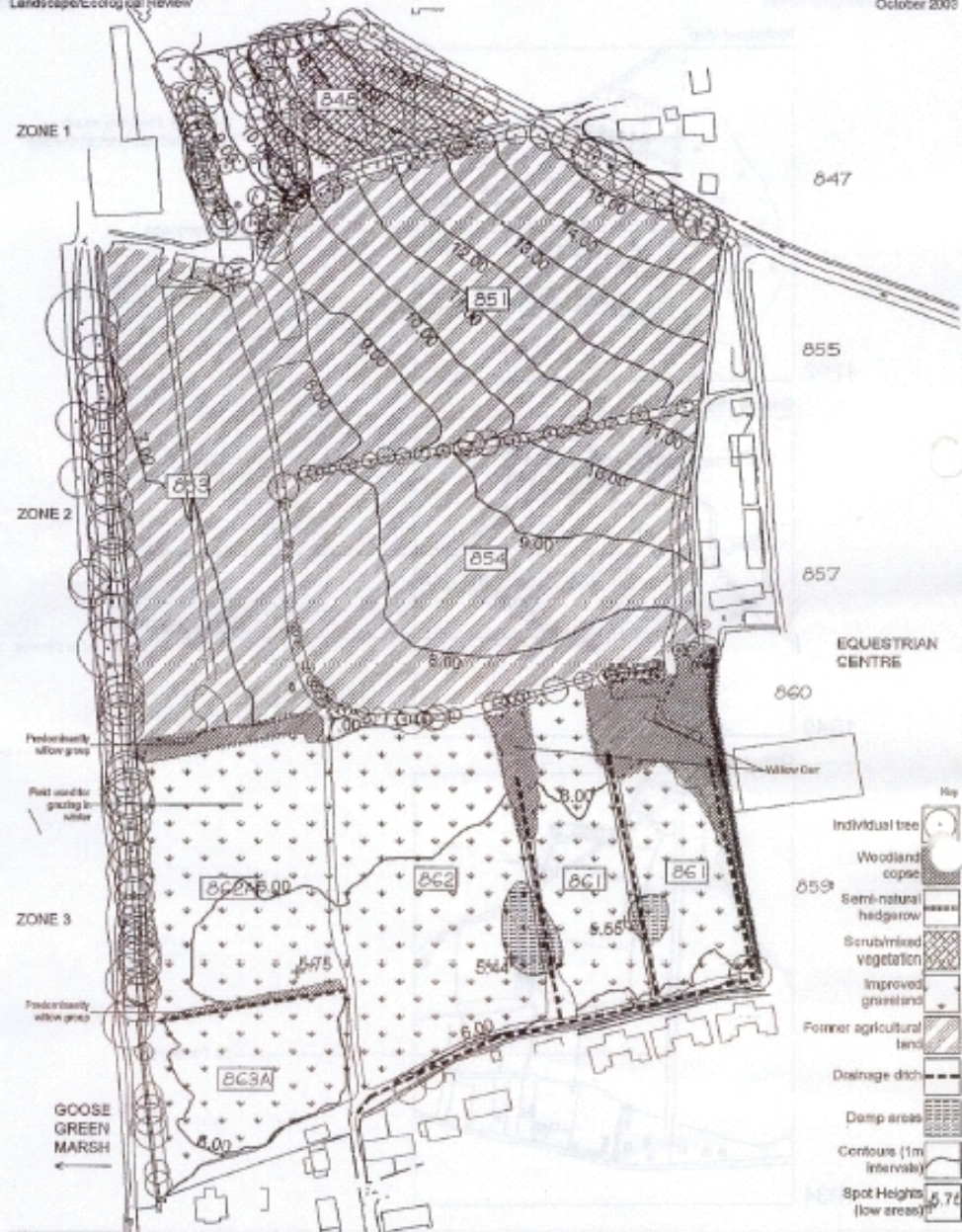
The most obvious habitats available to nesting birds were the field hedges and trees bordering fields 851, 853, 854 and the area of partially felled vegetation including trees at field 848. Substantial willow carrs in fields 861 and 862 bordered the development site and were occupied by several species of bird. No ground nesting birds (with the possible exception of the exotic Common Pheasant *Phasianus colchicus*) were found at the site and, therefore, all birds were nesting in trees/hedges. Only field 853 had not recently been disturbed.

Method

In view of the time constraints of this project, a very simple methodology to determine the presence and approximate number and sites of breeding birds was developed. Methods detailed in Bibby *et al.* (1992) were reviewed and these were further simplified to the location and mapping of singing males. These were considered as confirmation of the location of probable breeding territories. Song may be used for many different reasons (see Ligon 1999); however, here it was considered indicative of territory holding and, at this time of year, breeding males and, therefore, probably pairs. Great care was taken to confirm that singing birds were not double counted if moving between song perches. The assumptions in territory mapping discussed in Bibby *et al.* 1992 (pp 62-63) were acknowledged before the initiation of data collection.

The site was visited at approximately 0615 on the mornings of 24th, 25th and 26th May. On each visit, all singing birds were recorded on a 1:2,000 map of the site produced by Mike Felton Ltd. in October 2003 (Mike Felton Ltd. 2004: see **Map 1**) enlarged to A3 for convenience.

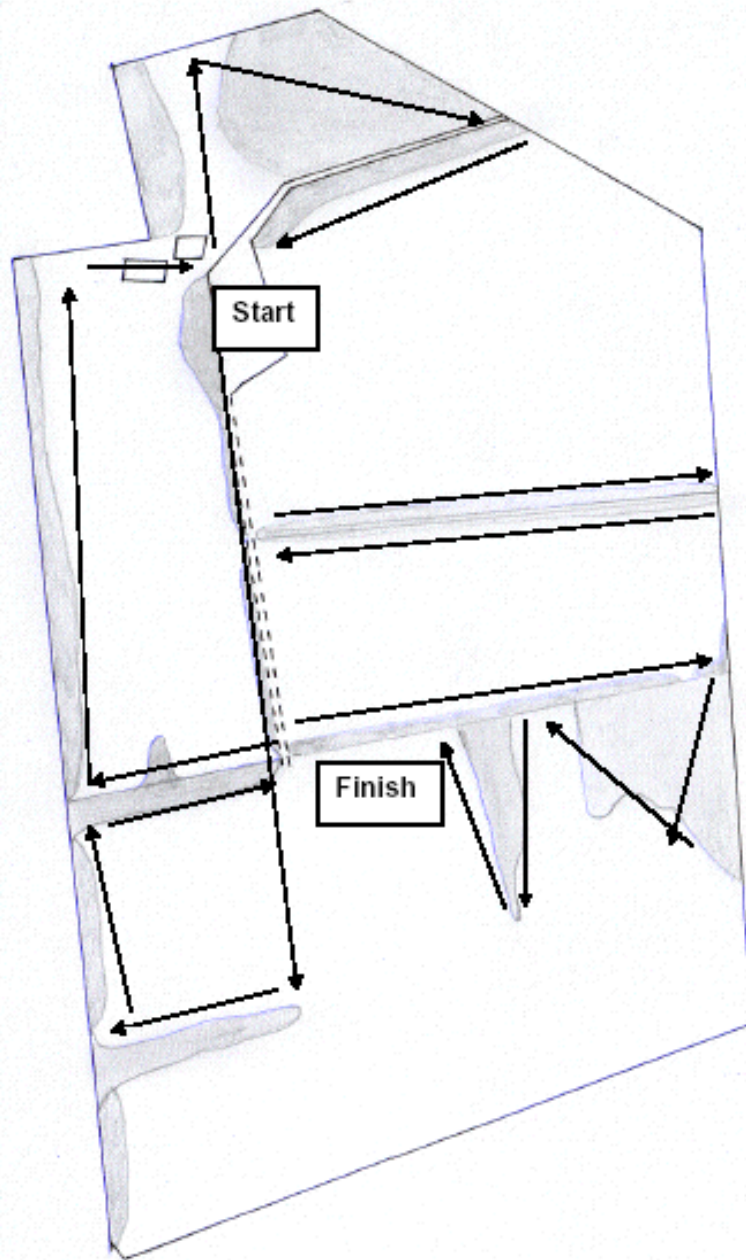
From the disused buildings at the intersection of fields 853, 848 and 851 the fields were walked south along a track dividing 853 from 851 and 854 until the willows separating 862A and 863A. These willows were walked west and the 862A border walked north; the trees separating 862A from 853 were walked and the western border of 853 followed north until 848 was walked through to the road to the east. From the road the trees on the north edge of 851 were walked, followed by the trees separating fields 851 and 854, those separating 854 from 861 and 862 and finally the edges of the willow carrs in 861/862 were walked (see **Map 2**). This simple survey line took approximately 90 minutes to follow and was repeated in the same pattern each day.



Existing Landscape/Ecological Situation
1:2,000

Figure 103

Map1. Map of the Bel Royal Development Site produced by Mike Felton Ltd. In October 2003 (Mike Felton Ltd. 2004).



Map 2. Route of survey at Bel Royal Development Site, 24th-26th May 2006.

The weather was favourable, sunny with clear sky and little wind, each day. All singing birds of each species encountered, typically identified by song, were marked on the maps each day. Other potentially breeding birds were recorded; however, during analysis, it was apparent that presence of singing birds did not vary greatly between days and, therefore, only singing birds were mapped (see Results). No attempts were made to locate nests as disturbance was kept to a minimum.

10 x 40 (Bausch & Lomb) binoculars were used throughout the survey; however, a good knowledge of the song of those birds known to breed in Jersey (see Allan & Young (1997) for details of Jersey's bird fauna) was more important. To comply with developer's health and safety regulations, high visibility vest and hard hat were worn throughout. Notification upon departing site was given on each day at approximately 0800.

On completion of data collection the maps were combined to plot approximate territories of probable breeding birds

RESULTS

Breeding birds

Fourteen species of birds were found singing at the Bel Royal site during 24th–26th May 2007. Of these 11 were considered to be within breeding territories (see Table I; Figures 2a-2k). Great Tit *Parus major* was singing but as birds were predominantly actively foraging, often with fledged young, it was impossible to determine whether singers were within a nesting territory and this species was not mapped. Wood Pigeon *Columba palumbus* too was highly vocal but actively moving and, therefore, while probably nesting it was difficult to determine even approximately how many pairs were breeding at the site. Mallard *Anas platyrhynchos* (one female with one-week old young), Carrion Crow *Corvus corone* (one pair) and Magpie *Pica pica* (2+ pairs) were definitely nesting but were not mapped.

Non-breeding birds

Eleven other species of bird were found to be using the site or foraging directly above it (Table II). Of these, the scarce (in Jersey) White Wagtail *Motacilla alba alba* was the most notable. Blue Tit *Cyanistes caeruleus* was common and may have bred within the site.

Exotic birds

Common Pheasant *Phasianus colchicus* was common.

Species		24/5/07	25/5/07	26/5/07
Collared Dove	<i>Streptopelia decaocto</i>	3 (1)	3 (2)	2
Blackbird	<i>Turdus merula</i>	1 (4)	3 (2)	1 (4)
Song Thrush	<i>Turdus philomelos</i>	2 (2)	2 (1)	1 (1)
Robin	<i>Erithacus rubecula</i>	7 (1)	10 (1)	8 (1)
Blackcap	<i>Sylvia atricapilla</i>	5	5	4
Chiffchaff	<i>Phylloscopus collybita</i>	2	3	1
Goldcrest	<i>Regulus regulus</i>	-	1	1
Great Tit*	<i>Parus major*</i>	3 (3)	2 (4)	1 (3)
Winter Wren	<i>Troglodytes troglodytes</i>	14	16 (2)	11
Hedge Accentor	<i>Prunella modularis</i>	5	5 (3)	3
Greenfinch	<i>Carduelis chloris</i>	3	3 (2)	2
Chaffinch	<i>Fringilla coelebs</i>	3	1	2

Table I. Birds singing at Bel Royal site 24th-26th May 2007. Numbers in parentheses are non-singing birds observed and considered to be nesting within site. * Not included in species maps Figures 2a-2k.

Species		Nesting at site	Possibly nesting at site
Mallard	<i>Anas platyrhynchos</i>	Yes	
Common pheasant	<i>Phasianus colchicus</i>		Yes
Herring Gull	<i>Larus argentatus</i>		
Stock Pigeon	<i>Columba oenas</i>		Yes
Wood Pigeon	<i>Columba palumbus</i>		Yes
Common Swift	<i>Apus apus</i>		
Barn Swallow	<i>Hirundo rustica</i>		
House Martin	<i>Delichon urbicum</i>		
White Wagtail	<i>Motacilla alba alba</i>		
Long-tailed Tit	<i>Aegithalos caudatus</i>		
Blue Tit	<i>Cyanistes caeruleus</i>		Yes
Eurasian Jay	<i>Garrulus glandarius</i>		
Black-billed Magpie	<i>Pica pica</i>	Yes	
Carrion Crow	<i>Corvus corone</i>	Yes	
Common Starling	<i>Sturnus vulgaris</i>		Yes
House Sparrow	<i>Passer domesticus</i>		

Table II. Non-breeding and possibly breeding birds at Bel Royal site 24th-26th May 2007.

Mammals

No systematic attempt was made to survey mammals at site: however, Rabbit *Oryctolagus cuniculus* and Red Squirrel *Sciurus vulgaris* were obvious.

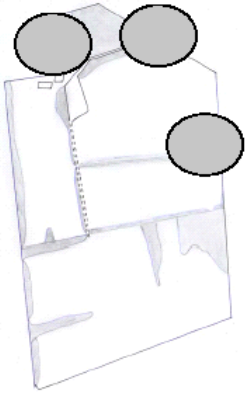


Fig 2a. Collared Dove *Streptopelia decaocto*

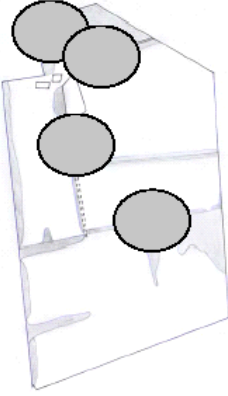


Fig 2b. Blackbird *Turdus merula*

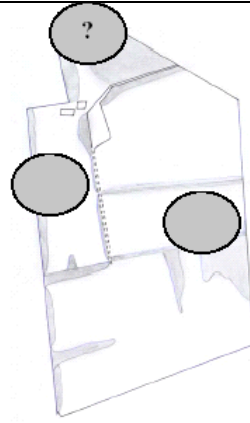


Fig 2c. Song Thrush *Turdus philomelos*

Figure 2. Approximate sites of singing birds at Bel Royal site 24th-26th May 2007.

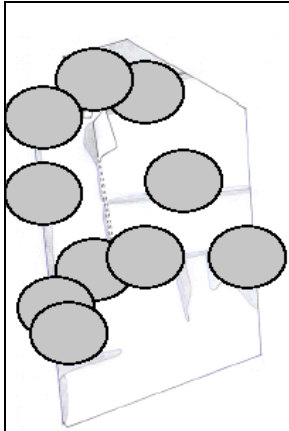


Fig 2d. Robin *Erithacus rubecula*

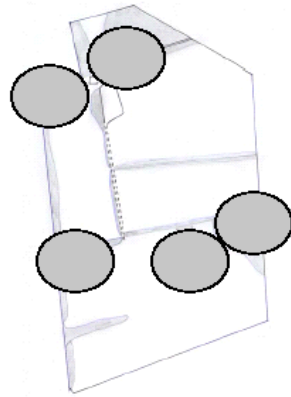


Fig 2e. Blackcap *Sylvia atricapilla*

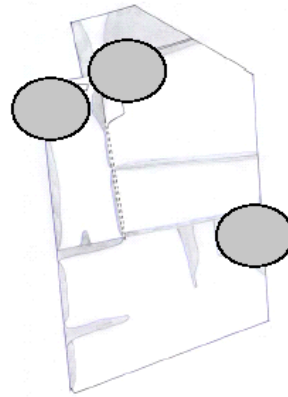


Fig 2f. Chiffchaff
Phylloscopus collybita

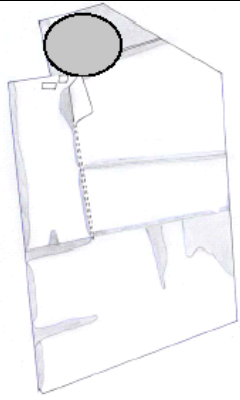


Fig 2g. Goldcrest *Regulus regulus*

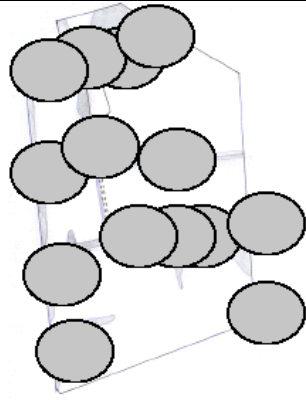


Fig 2h. Winter Wren *Troglodytes troglodytes*



Fig 2i. Hedge Accentor *Prunella modularis*

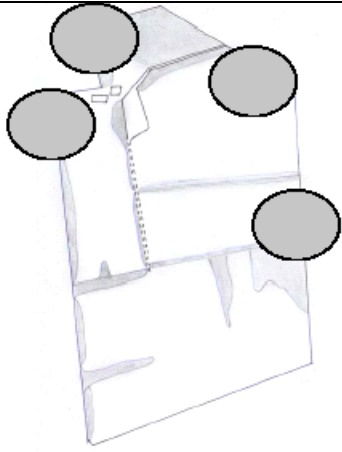


Fig 2j. Greenfinch *Carduelis chloris*

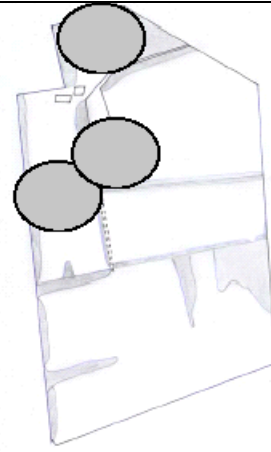


Fig 2k. Chaffinch *Fringilla coelebs*

CONCLUSIONS AND RECOMMENDATIONS

Three species considered nesting at the site have a UK and Channel Islands conservation concern listing (Gregory *et al.* 2002): Song Thrush is red listed (rapid ($\geq 50\%$) decline in UK breeding population over last 25 years); Dunnock has amber listing (moderate (25-49%) decline in UK breeding population over last 25 years) and Goldcrest is amber listed and considered a Species of European Conservation Concern.

It is immediately obvious from the results that there are (*contra* Mike Felton Ltd. 2004) a large number of birds breeding at the development site. It is also probable that many of these birds will be lost from the site in future either from loss of habitat or from disturbance from housing and the increased pressure from alien predators (e.g. Domestic Cat *Felis catus*). Farmland birds in Europe may have undergone an almost 50% reduction in numbers in the last 25 years (see European Bird Census Council 2007) and those in the UK have shown similar declines in many species (Gregory *et al.* 2002, 2004).

The destruction of any breeding birds' habitat should be discouraged be it through direct action or through the incipient adding of unnatural pressures: the loss of further sites for farmland birds will only exacerbate the already perilous situation for these birds locally and in Europe. It is recommended that as much of the area holding breeding birds is left intact and buffering to safeguard this is developed. It is essential that the wet fields (861, 862, 862A and 863A) are left unimproved unless this is acknowledged to be in the best interest of wildlife. Fencing to prevent incursions from cats should be erected along the southern boundary of the development site (fields 853 and 854).

ACKNOWLEDGEMENTS

I am grateful to Mike Freeman of Environment Division, the developers Dandara Ltd. for allowing access to the site and to David Jeggo (Durrell Wildlife Conservation Trust) for his support during the survey.

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APPENDIX 16

BEL ROYAL DEVELOPMENT REVIEW

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

**Report of
The Minister
For
Planning and Environment**

Senator Freddie Cohen

May 2007

increased by at least some 2.2m² so that they too are at least 7.5% above the current published minimum floorspace requirement.

Tenure

3.23 The tenure mix of the current proposed homes is not stated and, in its formal response to the application, the Parish of St. Lawrence questions why the tenure split requirements in the Island Plan (i.e. for 45% social rented housing and 55% first-time buyer housing) appear to have been ignored.

3.24 As I explained during the recent Public Hearing, I will shortly be taking a proposition to the States, seeking to change the tenure requirements for Category 'A' housing sites, effectively by substituting the social rented element with 'shared equity' housing. This is one of my election pledges and would reflect the changing housing situation, the reduced demand for social rented homes and the States' objective of promoting an increase in home ownership.

3.25 In the interim, I would be content that any planning conditions and obligations related to this matter should provide for compliance with either existing tenure requirements, as set out in the Island Plan, or any revised requirements agreed by the States, or by me, where I have satisfied myself that there is sufficient justification for doing so.

Sheltered Housing Provision

3.26 The original drawings for the current application omitted to include sheltered housing units, prompting objections from local residents, and revised drawings have since been submitted, which include five such units described as 'lifetime homes'. At the recent public hearing, the objectors suggested that the revised proposals make inadequate provision for sheltered housing units, contrary to the requirements in the development brief. It was also suggested that this is at odds with recent pronouncements by the Housing Minister and I, regarding identified requirements for such accommodation.

3.27 I am aware that the development brief suggests the development should include 15-20 sheltered housing units and a warden's home. However, as I mentioned at the outset of this paper, it is important to recognise that the brief is intended as a guide and has evolved since it was first approved over a protracted period by a process of negotiation and decision making. It is also pertinent that Island Plan Policy H12 requires all developments of twenty or more homes to normally ensure that at least 5% of housing units are fully accessible to meet the needs of the elderly and those with disabilities.

3.28 In effect, former Committees and I have considered a lower number of seven sheltered homes (around 5%) to be acceptable for the previous two applications (i.e. for 140 and 129 homes), having regard to:

- The numerous similar types of accommodation provided nearby at L'Hermitage Gardens;
- The proposed compliance with Island Plan Policy H12.

3.29 I recognise that the current proposal of 5 sheltered / lifetime homes again represents 5% of the reduced number of homes now proposed. However, in view of future requirements for such homes identified recently in the latest 'Planning for Homes' report, and the reduced impacts associated with such homes, I feel it is important, at this time, that I reserve my position on the number of such units.

3.30 The design and layout of the proposed sheltered / lifetime homes are presently unacceptable. I note the recommendation that this part of the scheme should not be approved and should instead be the subject of a planning condition for later agreement. Any such planning condition should look to ensure that the sheltered/lifetime homes are well designed

and provide adequate space, good accessibility and good opportunities for appropriate adaptation to meet the changing needs of occupants.

Environmental Impact of the Development

3.31 A number of objectors have again raised concerns that the proposed development will damage and/or destroy the wetland habitat and ecology of the marsh. This theme was taken up by objectors at the recent Public Hearing. The value of the landscape / ecological report supporting the application was questioned, arguing there was a lack of sufficient detail included on fauna and it was not fair to say the area was "*of little environmental importance*". In support of this view, attention was drawn to the potential value of the marsh for wintering Brent Geese, during high tides and stormy weather, and its attractiveness to other migrant winter visitors, including Snipe and Water Pipits. The objectors concluded that this would best be addressed by an 'Environmental Impact Assessment'.

3.32 I have already addressed the reasons why I do not consider it necessary to require an 'Environmental Impact Assessment' in my report on the previous application and will not repeat them here.

3.33 The 'Landscape Ecological Review' supporting this application was prepared by local landscape architects Michael Felton Ltd in consultation with a local ornithologist and the States Ecologist who are well placed to advise on ecological matters. It is my belief that the report generally does what was required of it, notably in:

- Using suitably qualified persons with appropriate conservation knowledge;
- assessing the ecological value of the proposed wetland amenity area;
- identifying opportunities and constraints; and
- providing a good basis for future landscaping and landscape management.

3.34 Having reviewed the evidence provided by the objectors, I do not believe it provides any significant new information. I note that references to the marsh being used by up to 250 Brent Geese actually refer to the area of back meadows extending along some 2 miles of coastline from Bel Royal to Belcroute. Furthermore, the only area referred to specifically as having concentrations of these geese in submitted e-mails from the Société Jersiaise is Goose Green Marsh, which is not to be developed.

3.35 I would be the first to acknowledge that a new housing development on open land above a wetland area will have an impact on the character and wildlife of the area. Such matters were clearly weighed in the balance, when the decision was taken to zone the site. However, the proposed housing development is confined to former agricultural land. The marsh area nearest the site would remain to all intents and purposes undisturbed by building works, and it is proposed to retain the marsh virtually as it is now. I am also confident that the low key landscaping proposals, which form an integral element of the application, combined with the surface water drainage proposals (which allow for periodic controlled flooding), would go a considerable way to enhancing the wildlife value and landscape character of the area surrounding the housing site. The reduction in the number of homes now planned and the area covered by those homes would also be helpful in this regard.

3.36 I do not, therefore, consider that there are sufficient grounds to alter my previous conclusions on the potential impact of the proposed development on wildlife and habitats in this area. Nor do I believe there is sufficient justification to require a further ecological assessment.

Impact on Le Perquage

3.37 A number of local residents have argued that the proposed development will have an adverse impact on Le Perquage and it was suggested at the public hearing that the proposed

[1] Added on 4th July 2007

[2] E-mail received on 12th March 2008 (Appendix 7)

[3] Paragraph 17 of the report attached to proposition P.49/2007

[4] See pages 38 – 39

[5] Minister's answer to P.49/2007

[6] See pages 14 – 16 and Appendix 11

[7] Paragraph 3.54 Report dated May 2007

