

STATES OF JERSEY

Committee of Inquiry Fields 848, 851 and 853, Bel Royal, St. Lawrence

THURSDAY, 24th APRIL 2008

Committee:

Mrs. C.E. Canavan (Chairman)

Mr. D.J. Watkins

Mr. R.P. Kemble

Witnesses:

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

Connétable G.W. Fisher of St. Lawrence

Clerk to Committee:

Mrs. J. Bell-Cook

Mrs. C.E. Canavan (Chairman):

Do you feel in a position this afternoon to raise points from this morning as well as answer the questions?

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

Yes, I think one or 2.

Mrs. C.E. Canavan:

Shall we deal with the questions first then?

Connétable G.W. Fisher of St. Lawrence:

John has made copious notes, I think.

Mrs. C.E. Canavan:

You have had the comment from the statement from Axis Mason about: "The existing properties in the vicinity are currently at risk from flooding and no proposals or funding for mitigation currently exist to enable the States to address the problem. The various scenarios identified by respondents regarding climate change and global warming will impact on existing properties around the site no matter what. The view that less or even no development is an improvement on this is simply burying one's head in the sand. The simple fact remains that appropriate development of the site is currently the only route for funding construction of the service water pumping station and on site attenuation measures necessary to improve even the existing flood risk situation". [Any] comments?

The Connétable of St. Lawrence:

Generally I do not think we have got any particular objection to that statement other than, of course, it is implying that in order to alleviate the situation of flooding in the area, which is a major concern for a lot of the residents who live in that area, then we have got to have a housing estate nearby so that we can

afford to build a pumping station. That is the implication. There might have been no current plans to have a pumping station and no funds available, but that is hardly a justification for having a development on the site. I think that is one way of arguing it, anyway.

Deputy J.A.N. Le Fondré:

At the end of the day the whole scheme is predicated to, one presumes and hopes I imagine, that it is a profitable development and that those profits go to the developer. Obviously a condition of that scheme is that you need a pumping station, it is a planning obligation agreement.

Mrs. C.E. Canavan:

Do you agree though that once it is sorted out, in whatever way it is sorted out, that it will have a benefit on the surrounding properties?

The Connétable of St. Lawrence:

Well, we have no particular knowledge of flooding issues. Neither [myself] or John are experts on flooding and, rather similarly to an item we discussed earlier, the developer was asked to get a specialist to look at the flooding issues and come up with recommendations, et cetera. Peter Brett & Associates were asked to do that by the developer. Mr. Watkins raised earlier on who are these people working for and in fact we had a meeting, it was not a public meeting but a private meeting at the Planning Office sometime back and I did raise the point: "How can we be sure that what you are advising is the best advice because the developer is paying your fees? How can we be satisfied that you are acting in the best interests of everyone concerned?" I was assured by the gentleman concerned who had done the work for Peter Brett and was a partner, I think, or an employee of the firm, that they were professional in the way they conducted their affairs and I have had no reason to argue with that. But, on the other hand, we have not at any stage employed any specialist flooding engineers or whatever to look at the issue. So, we basically had to accept what we were told, I think. But there is a further mention there that we might make that the criteria that Peter Brett used was questioned by somebody who appeared to know what he was talking about, who had looked at various flooding issues somewhere in the U.K. (United Kingdom), I cannot remember where it was. It was one of the objector's fathers-in-law or something.

Deputy J.A.N. Le Fondré:

There was a letter of objection which you would have seen on your files and it was included in a report that was done by ourselves and a parishioner I think and we met with Freddie Cohen in 2005, 2006, had some pictures attached and things and there were some attachments to that which included a letter from Jersey Met and included a letter from the individual quoting his father who is tied into some drainage board in the U.K. and basically he listed, what to us as laymen, seemed to appear to be relatively practical problems that they encountered. So, for example, if you have a flood area here, you have a pumping station here, what measures [would] you have to make sure the water can get from here to here and that sometimes they encountered it, but I am not too sure, if I remember correctly, that the middle bit sometimes dries up. So if your pumping station is not connected directly to the source to where the water is accumulating you have a problem. You have to read the letter to see...

The Connétable of St. Lawrence:

I mean, basically as laypeople, that is the information we were given.

Deputy J.A.N. Le Fondré:

Can I just go back also to - I scribbled it down from notes - but there is a P.B.A. (Peter Brett & Associates) report which is for 102 units which is *Flood Risk and Drainage Issues*, October 2006, created 24th October 2006, and there is 2 parts in there. One is on page 11 which talks about the lost flood storage area which is predominantly because of the noise ban, which is essentially that they state that the loss would potentially increase flood risk in the Goose Green Marsh area. That is the loss. If

you have got a field that is current flood storage, if you stick a damn great pump in it you lose the flood storage.

The Connétable of St. Lawrence:

I do not know if you heard that word. You used the word “berm” in the middle of that and that is where this berm has been built or is being built in order to reduce the noise effects from Jersey Steel on the houses concerned and because this berm is being built in an area that regularly floods we have concerns, obviously, about where the water is going to go. Some of the residents in that area who seen it regularly sort of say: “Well, where is this water going to go now?”

Deputy J.A.N. Le Fondré:

They certainly, even in the officer report -- I think it is the officer reports, but certainly the *P.B.A. Report* I believe refer to 4,500 tonnes of water being displaced. Essentially, the *P.B.A. Report* carries on: “The loss would potentially increase flood risk in the Goose Green Marsh area during an extreme flood and there may be also be local effect on the opposite bank of the stream, which could be mitigated by some additional channel works.” The slight difficulty there is it could be mitigated by additional channel works, but does that involve land that the developer does not own at the moment. In their actual conclusion, which is really coming back to the Axis Mason comment, it says: “Based on the outputs from the study of the construction for 129 units at Bel Royal, it would not increase flood risk provided that an additional pumping station is constructed.” It is saying, basically, in my view as a layman - and I think that is one of the reasons we are all here - there is an increased flood risk from the estate and that you need that pumping station to mitigate it. You cannot just mitigate the flood risk of the estate by the onsite attenuation measures that they are having to put in place. That was my conclusion from that statement. At the end of the day, we are laymen and the response has been: “We have got engineers, trust us, we are sticking a pumping station in and that is fine.”

The Connétable of St. Lawrence:

In fact, I think it is true to say that at the formal hearings on the 2 applications of 129 and 102, our concerns on the flooding side were fairly ... well, they were not stated very strongly, let us put it that way, because we had no professional advice on the matter at all. We merely accepted what we were being told.

Mrs. C.E. Canavan:

As parish representatives it has been stated that you were consulted and ignored and you heard the response from the Planning members this morning about consultation in general. Do you accept that more consultation than usual has taken place in this case?

The Connétable of St. Lawrence:

It probably has. I do not think we are experts on the amount of consultation that normally takes place. A lot of the consultation took place at public meetings which we called in the parish hall and we had a meeting at St. Matthew’s Church Hall on the technical matters. Yes, probably so. There has been more consultation, probably. As I say, we are not aware of what levels are normal. I think a message that came out at several of those meetings from the floor was that: “Well, we are making all these points, but you obviously are not listening to us.” That was where these comments came from about being ignored, really. That may be a sense of frustration coming out, I do not know.

Deputy J.A.N. Le Fondré:

I think it would be fair to comment that certainly a number of the public meetings were not called ultimately through the parish to get updates as the proposals changed. We had the initial 2001 situation; we had I think it was 140 units - I keep thinking of a higher figure, but I think the first official one was 140 - and then 129 and 102. Each time that plan did keep changing.

The Connétable of St. Lawrence:

Yes, because it was a different plan we thought it appropriate that people should be able to comment on it. The last one, unfortunately the developer refused to come. Nevertheless, they sent a model of part of the plans so that the people could see it. The Planning Office though did come along, their Minister came along, and I think the officer concerned came along as well, if I remember rightly.

Deputy J.A.N. Le Fondré:

Just to expand a little bit on the consultation side though, because you can have as many consultation sessions as you like. I went back and found the phrase and I think it is one I used in a speech in the States at some point. If you say that consultation took place and it resulted in changes to the Island Plan then it was successful because if you take the draft Island Plan and the descriptions and look at the finalised Island Plan ... for example, at paragraph 8.71 on the Island Plan, you find in there, for example, that they have inserted the, I will say “infamous”, fact that the northern part of the site is overgrown and disused and they have inserted: “And would be mainly retained as a landscape buffer to the development.”

Mrs. C.E. Canavan:

This was previously, you mean?

Deputy J.A.N. Le Fondré:

No, they have gone from ... I do not know if you have got our submission there. If you look on page 25 and 56, what we have got, we have got - in our documentation it is item 6.10 - the paragraph 9.72 of the draft Island Plan has certain wording in there. At 6.11, if we have got it right, the new finalised paragraph of 8.71, as approved by the Island Plan, you will find there are some items in bold there of what has been inserted. For example: “And would mainly be retained as a landscape buffer to the development” was inserted as a result of the consultation. You can argue that the consultation up to that point was effective because that was one of the concerns that there was a very large woody area overgrown that people were quite keen to see retained. Also, as the development progressed I think, I am not too sure now, there were between 12 and 18 houses that went on it, and obviously it has been built on now. That is the ignored bit because you had the consultation and things have changed. It was not acted upon after approval of the Island Plan, in my view, or our view, as objectives.

Mrs. C.E. Canavan:

Sorry to interrupt, it was consultation before the Island Plan. What I meant is was it successful.

Deputy J.A.N. Le Fondré:

I would say that point was raised on a number of occasions going through as well in the proposed Island Plan. I think the other one that you could use would be, for example, the element concerning the schools. Certainly, from very early days, reports were being made by members of the public in public meetings saying the schools cannot cope, which was, as they say, anecdotal evidence being that they were picking up from either parents at the school or people working at the school. It was only really pinned down much later on in the process.

The Connétable of St. Lawrence:

On that same issue, at the meeting I mentioned where I asked Peter Brett about how we could rely on their outcome, at that same meeting I said that Bel Royal School cannot cope with many more additional pupils, I am told: “That is not the case at all.” Education was saying one thing, but I had spoken to the head teacher there and she said that there was no way. They were not prepared to just accept that that is what the head teacher had said. There, another piece of evidence perhaps.

Mrs. C.E. Canavan:

Sticking with the pre-rezoning for the minute, were you involved then with that?

The Connétable of St. Lawrence:

Not really. I did go to the consultation session in the parish hall. I knew very little about it, to be quite honest, at the time, but I did say: "Is this wise building this estate on an area that is known to flood?" The answer I was given was that: "Where the actual building is going to take place is above the area that floods; it is on a bit of higher ground on the top end of the site", which seemed a reasonable enough thing to do. As time moved on and I became more aware, I became concerned that when you are covering a very large area with concrete and tarmac, which formerly was absorbing moisture and it is already near an area that floods, is that not going to create more problems? As I say, I am not an expert in this area. It is just ...

Mrs. C.E. Canavan:

That was after it was rezoned?

The Connétable of St. Lawrence:

Yes, that was after it was rezoned, yes.

Mrs. C.E. Canavan:

Deputy Le Fondré, what was your involvement before the rezoning, if you can remember?

Deputy J.A.N. Le Fondré:

Yes, I can; it is unfortunately imprinted in my mind. When the Island Plan came out, the draft one, I remember going to the public meeting. I cannot recall Geoffrey being there. I have to say I can remember ...

The Connétable of St. Lawrence:

I cannot remember you being there, either.

Deputy J.A.N. Le Fondré:

I remember it was being very well attended and I can remember some of the comments that were made at the time. I do recall reading something like a 15-page letter, but it was generally on the Island Plan as a whole and I was sad enough to go through and read the whole lot, so it was not just on the H2 site; it was various bits and pieces. In fact, when I eventually saw the *McAuslan Report* I had to identify my number, if you see what I mean, and some of the responses that were quoted. Yes, so that was my first involvement, I would suggest. I would have probably got significantly involved when I then became aware that it was 150 units that were being considered, which I was not terribly pleased with, as were a number of other individuals as well.

The Connétable of St. Lawrence:

I do not think there was ever a formal application for 150, but it was strongly mentioned that there was ...

Deputy J.A.N. Le Fondré:

I think, and this is recollection, I have got a feeling that was the first consultation that went out.

The Connétable of St. Lawrence:

Yes, I think so. There had been an application at that time.

Deputy J.A.N. Le Fondré:

I am not too sure about this.

The Connétable of St. Lawrence:

[That was] the first formal application. By that time I think people had already made their feelings known and it went down to 140 and so on.

Mrs. C.E. Canavan:

Is there any more to say on the “ignored” point, rather than the next one, which is how do you think the consultation process can be improved?

The Connétable of St. Lawrence:

No.

Deputy J.A.N. Le Fondré:

I do not think it is so much on the consultation, but maybe it is picking up on a comment this morning which was about being independent and fiercely challenging views and things like that. I would say our objectives as a whole had a feeling that there was not necessarily the degree of fierceness they were expecting in certain issues being challenged. I suppose the example I used, and again you hopefully are now in a far better position than mine to judge whether it was reasonable comment or not, if you see what I mean, but if you take -- going back to the traffic scenario that you have touched on this morning, certainly the T.T.S. (Transport and Technical Services) - well, anyway, whatever the department was at the time - letter that had an appendix there which said: “This is the traffic impact from that particular site”, which we quoted in our submission. When that seemed to have I think it was something like a 97 per cent or 90 per cent increase in traffic units on Mont Felard, which is the one that sticks in my mind, as a result of 97 units. To be honest, people seemed fairly resigned just in accepting it. Do you see what I mean? There seemed to be a lack of will as to how big an issue is it. Within the Island Plan, again, it does say the numbers are approximate. In the paragraphs above the 97 units it says: “These yields are approximate.” It does also say: “Subject to various assessments” I think including those of traffic and schools. That probably gets into a different area of discussion, but where is the balance there? Because if you are saying: “Well, hang on, the Highway Authority are saying that there is an impact and it is this”, which is not insignificant, to me, that is a fairly big increase. Then how strong a weighting are you placing on that?

Mrs. C.E. Canavan:

As Mr. Thorne raised the matter this morning of changing the rezoning process to the more formal independent, as you just mentioned, have you thought of any improvements that you would like to see made, as States Members or as parishioners, to the actual rezoning process?

The Connétable of St. Lawrence:

I did not hear what he said this morning because I was not here when he spoke.

Mrs. C.E. Canavan:

He just touched upon possibly changing the process so there is not a feasibility study which is just sent out to the parishes to look at and then passed it on to the States. He was inferring that there would be a far more structured process, open public forum for discussion which would be led by a planner who would be independent; I think he said, from the U.K. It would be much more open and formal, but it would still then go the States for approval.

Deputy J.A.N. Le Fondré:

I think he also made a reference to some form of effectively a public inquiry within this with --

Mrs. C.E. Canavan:

A public inquiry within that [process], yes.

Deputy J.A.N. Le Fondré:

[This would include] written representations and that type of stuff.

The Connétable of St. Lawrence:

I do not think I have got any particular comment on that at the moment. I have not given a great deal of thought to that particular aspect. I do not know if you have got anything on it?

Deputy J.A.N. Le Fondré:

I have scribbled a couple of notes down. The trouble is trying to encapsulate it. The problem with consultation, and I have seen it at a variety of levels in different areas now as well, is that quite often you have quite a big fuss about the initial plan and that gets people's attention, if you use this as an example, and you get submissions in and things may move on that. Then when you get down to the detail level, as we were saying, this one went through 3 or 4 iterations and it really was not -- I would have said it was from the parish pushing that we got presentations coming back saying: "This is the revised scheme and this is how things are being dealt with." The feeling I had is if that had not happened it would have just quietly gone on ahead as a normal planning application and you are certainly not engaging the public in that process. Also, if people have put their views in I think they would like to know how they have been adopted. Whereas, at the moment, you tend to have initial consultation, the finalised document goes to the States, you do not have a middle process before -- I mean, there is a balance between how many times you go back to the public to finalise something. It depends where you sit on that balance, effectively. It is do you try and have some mechanism that says: "Yes, this is the results of the outcome and this is what we are doing"? I do not know, is the short answer and I am almost slightly hesitant in saying it. Maybe I am biased, but it was a view I had come to before I came to the States, is you look at what Treasury have done with the Fiscal Strategy package. They went through a whole level of stages and it kept going backwards and forwards. On the whole, I cannot remember, I think there was an initial -- there were certainly 3 consultation papers that went out probably about 6 months to a year apart, from recollection. There were definitely time gaps. He kept going back to the public and then he kept going back to the professional bodies and saying: "This is what we are proposing to do." Then it sort of got fine-tuned down as well. It has had its critics, let us put it that way, but I think they went through a fairly rigorous approach there. I am being slightly waffly, I am afraid, but do you see what I am trying to say? How do you get that feedback to the public to say: "This is what we are doing, and let us have your final comments on the matter" or something. I do not know.

Mrs. C.E. Canavan:

I am digressing; stop me if I am going too far. Where I am coming from is if there is a formal process of consultation, inquiries with the public, public inquiry, the process is rigorous, transparent, and at the end of the day a Minister makes a recommendation that the field next door to my house should be rezoned for 200 houses, you, as States Members then, or part of the States group, are charged with making the decision as whether my field should be rezoned or not. This is a question for going forward, not past applications, obviously. I am interested in finding out views on is it right that the States Members at the end of that day make that decision when, as it was said this morning, strictly speaking they could take no notice of all the documentation that has been put forward? They could change the decision.

Deputy J.A.N. Le Fondré:

I think the question is if they do not make the decision, personally, I think I would certainly be more comfortable with the States making the decision. It does depend on the information given and in fact

you may want to touch on it. But I would be more comfortable with that than just one individual making that decision or a very small group of individuals.

The Connétable of St. Lawrence:

This is sort of moving along to question 4, is it not, really, because the Island Plan is a document not unlike that in terms of thickness and I wonder how many States members went through there in any great detail before voting on the Island Plan. So I suspect, having seen the way that certain States Members operate anyway, they probably may not have done and there is an awful lot of detail in the Island Plan. It does take time. 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. Time and time again, for example, we have had debates in the States about the number of units that were approved in the Island Plan. Now, it is quite clear that if you look in the Island Plan it is only the number on the site was 97 units was the approximate yield. But I would suggest that it is unlikely that anybody imagined, having seen the likely yield on this site to be 97, that somebody would apply to build 150 units or 140 units even on this particular site, which is what happened on day 1. Yet the answer at that stage was that is only an indicative yield. Well, in that case what is the point of putting it in there at all because it is meaningless? So those sorts of things threw the thing straight off. People were objecting and saying: "Well, hang on, we were told it was going to be about 97 and here we are people are talking about 150 and then the first formal application is 140". Then on top of that, in terms of numbers of units, I think it was at the public hearing in respect of 129 the Minister went public and said that in his view the site should not have more than 60 units built on it; 40 or 50 would be more appropriate. Yet we end up with it being approved for 102.

Deputy J.A.N. Le Fondré:

Just to back it up, when the first presentation was made back in 2001, or perhaps even when the thing was approved in 2002, and it was 97 units and I think I can remember thinking they probably will not get 97 units. They will probably get 70 or 80 and that is still quite a few, but we could probably live with it, which was a kind of completely naïve not knowing how the system worked at all which was from the point of view that a developer normally puts in a few more than they are going to get so one is tending to assume that in terms of the bidding they are bidding slightly higher to come in at something slightly less. But putting that aside, if you have got 2 measures in the Island Plan you have got approximately 97 units in plain English, any layman can understand that. But then you have got another paragraph that says it is going to be an approximate density of 70 per acre or whatever the number was. Then you can get into further argument as to whether that is net density or gross density, you know.

Mrs. C.E. Canavan:

I am not trying to stop you, but that is moving off from the question that I asked because we are obviously looking, one of our remits is to recommend changes and process and having looked at some of the Hansard reports of States debates subsequent to the rezoning, possibly on your proposition as well, it is interesting to note the comments of Members of the States who were Members of the States at the time. It is fairly obvious, to backup what you have said, Connétable, that people did not read the papers. So, I go back to the question is that the appropriate process for 56 people, 52 who may not have read the papers, to make a decision to rezone?

Deputy J.A.N. Le Fondré:

I go to the point, I think it depends where you go because if the alternative is that it has got to be the Minister for Planning or the Council of Ministers or something along those lines then, unless they are the Minister for Planning, you have still got the same issue as to the level of understanding and I think at

the end of the day the States is the ultimate decider on these type of things. I would hope these days that with the scrutiny process that they will have a much more rigorous investigation. I do recall comments that were made, and I will not allocate a name just in case I am wrong, but I do remember a Deputy saying that at the time he and someone else it was only at the last minute they realised that the Island Plan map had suddenly coloured all these areas in white that had previously been in the countryside zone and by putting them into a built-up area, even though they were fields, they could suddenly be developed. That had not been appreciated and the impression I had is it had not been identified either. It is always on this knowledge where you have to know what question to ask to get the answer and if you do not know the question to ask then you are not going to pick it up. How you get around that is the difficult thing.

Mrs. C.E. Canavan:

So, going back to the question ...

The Connétable of St. Lawrence:

So, we are not being very helpful.

Deputy J.A.N. Le Fondré:

No. It is a dilemma.

The Connétable of St. Lawrence:

It is. Somebody has got to do it. Somebody has got to make the decision. I cannot think of anybody better at this stage.

Deputy J.A.N. Le Fondré:

But it does depend on having the information to hand and I think people saying the consequences of you approving this is not that you are just going to get X number of units rezoned, it is going to be this, this and this with the negative points as well as the positive points in there. That is the whole point of being objective, I would have thought, and then you make a balanced decision weighing up the problems.

Mrs. C.E. Canavan:

Question 4, really was, neither of you were really involved before the rezoning, but it is possible that if somebody had objected then they could have taken it back to the States before or after it was rezoned.

The Connétable of St. Lawrence:

Yes, what you have to do, certainly today, is, as you say here, request the Minister for Planning to bring a proposition to the States. I am sure you are aware of the legal process on that. So, you can only request the Minister and of course he can ignore the request. So, that is where you stand at the moment. But, no, I am not aware that anybody either planned or did propose to put forward some sort of proposition on that plan, but they could have done.

Deputy J.A.N. Le Fondré:

I think it may well have been the difficulty, and I certainly never appreciated before becoming a States Members that you could only request a Minister and that even before ministerial government came in, as I understand it, I believe you could tell other committees -- I am not too sure on that one, but you could only request the planning committee to do something. So, even if the States decide, you know, overwhelmingly to do X Y or Z, that particular committee of the day could have ignored that decision.

Mrs. C.E. Canavan:

It was the committee and then it went to the Minister, yes.

The Connétable of St. Lawrence:

I suppose the sort of man in the street is not really aware of that. If an area is zoned for housing, they would take the view well, it has been zoned, it has been rezoned for housing. If at any time somebody comes along and makes an application to build on that site, then we have to make representations at the time. I would guess that is how the man in the street sees it generally.

Deputy J.A.N. Le Fondré:

I certainly never appreciated that if you got approximately 97 subject to, then that gives the expectation that there is going to be at least 97 units on the site.

The Connétable of St. Lawrence:

In fact, you can argue the other way that if you say that 97 is an indication of an approximate yield and somebody comes along and says: "I want to build 140 units there", equally somebody else could come along and say: "Maybe they should only have an expectation of 50 units." Has it got to be more or is it less? How approximate is approximate?

Deputy J.A.N. Le Fondré:

Prices can go down as well.

Mr. D.J. Watkins:

Well, I think the Director of Planning said that the habitual rooms per acre is a better guide because a unit could be a one, 2, 3 or 4 bedroom house, so therefore to say 100, it is better to put it the other way. What I was going to ask on looking forwards: we have debated on how you get to an Island Plan, are you still in favour of debating and producing an Island plan every few years as the sort of bible for the way forward? Is that still, do you think, the best way to look at rezoning and look at housing and every need really, all needs, industrial need, housing need?

The Connétable of St. Lawrence:

I think it depends on how you use it when you have done that. 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? We come back to a point that is already made in the submission about sheltered housing, for example. Now, in the development brief, as I remember it, it was a requirement that 15 to 20 units of sheltered housing should be incorporated together with guardians' accommodation. Now, what does that mean? Does that mean that that has to be produced or you can do whatever you like? The answer was if it was 5 per cent of the total, 5 units, that was okay. Well, it is not really okay because what makes it sheltered housing? There is no guardian provided for in there. Now, that is a class of sheltered housing. My understanding is that the lowest form, if you like, of sheltered housing is to have somebody that people can contact if they have difficulties. But there was no provision for that sort of person in the 5 units. The original plan for the 102 that came in did not have any sheltered housing at all. In fact, we pointed out to the officer that there was no sheltered housing incorporated into the plan and I do not know if it was a result of that or whether he had already spotted it or whatever, but anyway the upshot was to end up with 5 sheltered housing units. Now, that was significantly different to the development brief. So, I had pointed this out to the Minister and I said: "Well, look, you have told us, together with the Housing Minister, that you are in desperate need for 450 sheltered housing units in the Island. Here is a requirement in a development brief for 15 to 20 of what could be those units. If you insist upon it, it reduces the traffic problem because obviously people who live in sheltered housing, on the whole, they

do not travel in peak periods and it reduces the schooling problem because they will not have children to worry about. You will not have to find schooling for those children.” That kind of fell on deaf ears, but it goes back to the point of saying 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? There were other examples. I think the ecological assessment that was going to be required, it was laid down in the development brief, but that was not followed. So, either you have it or you do not have it and to have it as a guideline, I heard the answer this morning and it sounded reasonable enough, but nevertheless to put things in a development brief as a requirement and then not insist upon them makes you sort of think what is the point of having it in the first place.

Deputy J.A.N. Le Fondré:

If you consult on this and it becomes a public document and this is what the expectation is and, to go back to that one, it says in this particular instance the social development should include a small development of 15 to 20 sheltered housing units and then it goes on to say it would suggest developing 15 to 20 times one-bedroom units and a warden’s home and off we go. That is an absolute summon there and I must admit what I heard this morning - and it may just be memory here because there is, as you know, an awful lot of documentation and I think you have seen more than me now - the comment about 162 units being recommended in the development brief I had not tuned into at all, previously. But you see it depends. Okay, so the argument then if this was written when it was 162 units and 15 to 20, then it not unreasonable to go down to 5. But if we as members of the public who have not seen all that have seen 97 units, 15 to 20, why were we not at 15 to 20? I suppose, if I can just make a comment there as we on the subject, to me if you have got your Island Plan, that is your overarching document and that is the policy that you have set. Your development brief, you would go back to the overarching policy and say: “Right, these are the issues that are documented in there, [and] that is what goes into the development brief” and then it is a top down approach, I suppose. But it is almost like, as a personal opinion, quite a lot of the comments from the Island Plan I would have said were potentially ignored. Sorry, I will just pick up on Peter Thorne’s comment which he touched on and we are going to talk about the boundary areas of the site as well. He was effectively turning around and saying: “I am taking the area on the Island Plan map, [and] that is what was zoned.” That is what is being used for housing and was then, I would have said, attempting to ignore the descriptions that were read and were part of the policy that make up the Island Plan, would be my interpretation as a layman. I do not know what the legal standing of those descriptions is, so they either have a legal standing or they do not. If they do not, then the advice that there is an expectation of 97 units surely cannot stand or am I just picking the bits that suit? I do not know. To me, if you are going to say there is a legal expectation of at least 97 units then there is an expectation that you are not going to build on the northern part of the site. How do you pick one and ignore the other?

Mrs. C.E. Canavan:

The next point for us was what comments would you like to make on what has happened since you have put in your written submissions with regard to the changes, if there is anything?

The Connétable of St. Lawrence:

I think the only thing that was touched upon this morning was the issue of trees. That was a bit of a sorry saga with regard to the 2 remaining trees. The one that has been felled fairly recently we were invited to have a look at this tree that was apparently less than safe in about 5 years time and I think the Minister was not quite sure how to tackle this one. On the one hand, he was under pressure from Transport and Technical Services to allow the tree to be felled for road safety purposes. On the other hand, he had placed a protection on the tree and I went along to a meeting he had on site with representatives of the developer and so on and also with the States agriculturalist who there was some thought that maybe the tree could be moved, which apparently has been done in other cases. But anyway the thing was to try and identify whether this tree was worth saving, whether it was not worth

saving, et cetera. The developer offered to pull out the tree, which is what the agriculturist had recommended, but unfortunately when that was done, it was no more than a totem pole. There was nothing left on it really and I think the view was that everybody felt: "Well, it has gone too far to be worth saving now and it was taken down." However, trees like oak trees in particular -- I think the oldest oak tree in Britain is over 1,000 years old - I have got a photograph at home and I did not think to bring it - and it is just the outer skin of the tree effectively that is still there, but the tree is quite happy and it is growing away quite satisfactorily. So, the fact that the tree might have become dangerous in 5 years time was only a sort of question mark. Some people were very concerned about that tree coming down because I think it was 9 had already been cut down and big danger signs were put up around the tree because the agriculturist had indicated that perhaps in 5 years time it would be dangerous and other parishioners got upset worrying about this tree falling on their house. So, it was all a bit messy and I say that because that is the way it happened, but just for information purposes.

Mr. D.J. Watkins:

How old were the trees?

The Connétable of St. Lawrence:

I do not know. They were mature trees that had been there.

Mr. D.J. Watkins:

[Were they] about a tenth of the way through their life?

The Connétable of St. Lawrence:

Well, at 1,000 years, yes, but I do not think every oak lasts 1,000 years. But, yes, it was some years old. They were not young trees. No, very mature.

Mrs. C.E. Canavan:

What about the varying of the conditions, leaving the trees aside; the time? Have you any comments on the variations?

Deputy J.A.N. Le Fondré:

I will start with the thing that I am very curious about - a number of people still keep stopping me and saying: "How did it change?" - was from the draft recommendations by the officer to the Minister which, for example, states that the flood mitigation measures must be in place before commencement of development and how and why that changed to the final permit before occupation. It might be worth making the comment as well, is that I think we all respect the officer in terms of he is a nice chap and is working very hard and so we are really dealing -- and genuinely in fact the whole thing is about process. It is not having a go at individuals; no instance of that. I did have the chat with the officer quite some time ago - I cannot remember, it might have been 2006 or 2007 - and he said one of his key concerns was making sure that the flood mitigation measures were in place because, the way he put it is, we would all look very silly if you have a whole load of slabs of concrete in the middle of winter and it rains and you get all the runoff and that causes flooding to the people at the south. That in that particular regard did satisfy me to quite a large degree that they were treating it very sensibly. I really was not very happy and I still do not know why it changed to that changing conditions which must have taken place over 2 to 3 weeks, I would have said, because the officer report at the March meeting with 102 units still has that condition in place and it was only at the drafting of the final permits that it was changed and I do not know even who recommended that. You can turn round and say they have got the temporary flood relief measures in place and to be honest it touches on later I do not think we have really had that wet a winter this year compared to the ones that cause concern. I do not know the statistics, I have to say. So we have been lucky as well. There has not been a problem, but certainly at that point in time it always has been a big concern. Other than that, I think the officer touched on that

and I think Peter Thorne touched on that, the fact that I think it is 71 units have been released for construction up until before signing off the P.O.A. (Planning Obligation Agreement) as well. It is at the developer's risk but that is being again at odds with the unlimited amount of work. The problem of that is it is not anything sinister, but it is about the public trust element. In other words, again from a layman's point of view, if they are seeing one thing written down and they are hearing one thing and then it does change, it is to an extent perhaps more explanation needs to be given as to why that happens at the time those decisions are made.

Mrs. C.E. Canavan:

So, it is rather public perception of the decision; the change in the decision itself rather than the reasons why it was changed.

Deputy J.A.N. Le Fondré:

If you consider that from 2002 from all the public meetings: "Yes, we are going to be fine on the published measures." In fact, apart from the conversation I had with the officer which was obviously, up to now, private, I have certainly been told by people who have been to the meetings, they said this, which was along those lines. So, if somebody goes to the meeting and that is his main concern and he says: "Yes, that is going to be sorted", they are obviously concerned now that the thing has not been resolved. On the other hand, if you have got temporary measures that are working, is it an unreasonable position? That it is a purely public perception, I think, that you have to address somewhat more carefully there.

Mrs. C.E. Canavan:

Is there nothing more specific on the changes to variations that were made then?

The Connétable of St. Lawrence:

No.

Deputy J.A.N. Le Fondré:

I do not think so.

Mrs. C.E. Canavan:

So, do you know what if anything happened on the site during the really bad weather in March?

The Connétable of St. Lawrence:

I do not know if you have got those photographs, John, have you?

Deputy J.A.N. Le Fondré:

I have got them for question 8. Do you want to combine [questions] 7 and 8?

The Connétable of St. Lawrence:

Well, I suppose, yes, let us deal with [question]7.

Mrs. C.E. Canavan:

We will deal with [questions] 7 and 8 together. Number 8 is 2 car parks really.

The Connétable of St. Lawrence:

Okay. Certainly the one that I recall in March and it was pretty lumpy at times and I was not here part of the time, but the night that the sea wall was breached further along and was it 400 metres, I think, were knocked out, as I recall that was very strong winds coming from the south that drove the sea into the wall. I do not think it was a lot of rain then, but it was more wind and sea related and certainly there

was a significant amount of flooding which brings us on to question 8 down at the car park at the bottom of the Perquage there and in fact the road was flooded. But I think most of that was sea water that came over the wall rather than rain.

Deputy J.A.N. Le Fondré:

Because the issue, generally, where the flooding has occurred in the past and I have strong recollections of the water that came down into Jersey in 1999, for example, which was in the marsh and seriously flooded, predominantly because I was working a project which got washed away at the time, which is why it sticks in my mind and I was told: "Well, that was your one in 50 year storm. It will not happen again so we will not worry." I said: "No, forget that, we are putting 16 tonnes of concrete underneath" and low and behold a year later it happened again. I think it was a year later, but anyway those are the ones where you genuinely had quite steady rain for a period of time so the ground does get waterlogged and then you just basically have the sudden huge downpours coming through which is when the whole system seems to get overloaded. Obviously what happened this year, and has occasionally happened, is just when you get bad sea weather, high tides and storms coming through now. Obviously the worse scenario is if you get the 2 together which ...

The Connétable of St. Lawrence:

Or if you [were to] have a significant downpour as well as the sea water coming out of the wall.

Deputy J.A.N. Le Fondré:

That would not be funny.

The Connétable of St. Lawrence:

Well, let us say we do not know what it would have ended up like, but it probably would not have been very good, no.

Deputy J.A.N. Le Fondré:

I know because I did track down Jersey Meteorological a good couple of years ago, I think, and I am sure you will see in the letter that there are some letters written to Steve Fisher from the Met Department which gave an overview. They enclosed 2 reports and one was, I think, written by the Met Department and one written by the Société about giving the backgrounds and the rainfalls that occurred and they give you various measures as to what a one in 80 storm is and that type of thing. Certainly, I have never appreciated, for example, a one in 100 year event is not half of a one in 200 year event in terms of volume of water or anything like that. It is a logarithmic scale and if you look at the scale that was in the correspondence - there is one here somewhere - it is not along here. It is fairly close up. So, when, for example, someone says: "Yes, we have got to do it for one in 100, but we are going to do it for one in 200 as well" it is not double the proportions that have been put in place. Yes, we did have a slightly rye smile when you asked us question 8.

Mrs. C.E. Canavan:

Are these the [photographs] outside the sports shop?

Deputy J.A.N. Le Fondré:

No, that is the inner road and that is the inner road and that is the water coming up the car park. That is the Perquage. That is also the car park. It would be good if the cars were floating. That is probably a better one. That is the road and that was the water going down the Perquage and obviously a resident has blocked up his garden. The significance there, by the way, you can see the running water going down. Although the stream is high - as a layman it is not as high as I would have expected - I thought the water would have been pumped and I do not know why. I think we would probably like them back at some point, but if you want to take copies and things ...

Mrs. C.E. Canavan:

We can do that and copy them and send them back to you.

Deputy J.A.N. Le Fondré:

So I think the short answer is yes. Did the car park flood during the storms? Yes, it certainly did to a fair degree of depth.

Mrs. C.E. Canavan:

I do not know if you have seen the photographs that somebody sent to us from the parish of the car park at the back of the sports shop?

Deputy J.A.N. Le Fondré:

Is that the drains? Is that just the sewage or is that the drains?

Mrs. C.E. Canavan:

That was my question. Was that sea water or was that sewage and is it connected?

Deputy J.A.N. Le Fondré:

Well, I am told that basically the system got overloaded with sea water. It got into the sewer. I think [I was] probably told by an individual and that it was sewage coming out. Yes, I have been told that essentially no action was going to be taken because it was considered to be an extreme event. Just for the record, I know one or 2 people in the past have approached me because the response there appeared to be and what we will do to stop that. I think it has happened in Goose Green Marsh if you like, because we all call it Goose Green Marsh - as you know there is a difference - is that the drains that release sewage pipes significantly in 2004, I cannot remember to be honest, they have basically bolted them down so that the pressure falls out. The concern expressed by a couple of residents to me is that: "If you are doing that there is no release valve and the only release valve is out of our ground floor toilet if it backs up far enough." Now, I do not know if that is over-dramatisation or not, but it is a concern that I would think certainly some residents have because they do say it to me. In fact somebody took me to their house a year or so ago and said the water there at times has come up to just below the rim of the bowl. So, one gets nervous, shall we say, you know, if systems are being overloaded in that way.

The Connétable of St. Lawrence:

We have not seen that many photographs since the development started, apart from those, but certainly at the consultation meetings in the parish hall many people brought photographs along to say this is what the marsh looks like when it floods but that is before the development started.

Deputy J.A.N. Le Fondré:

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, but once again I am not a technical person and that is my conclusion.

Mrs. C.E. Canavan:

Underneath the road linked to the car park?

Deputy J.A.N. Le Fondré:

As I understand it, there are 2 sewers. There is one that goes under the main road between Bel Royal and Beaumont and I presume heads off to First Tower, I do not know, and there is another one on the actual promenade, so, effectively probably underneath the rather waterlogged bit. How the sea water

gets into the foul system, I do not know. So, the one on the promenade is the one with the larger capacity and that is a condition of the permit that that would happen.

Mr. R.P. Kemble:

Well, I think the sewer situation is that there is a main sewer just inside the sea wall, that is the valve drainage, yes, and that is the one that they are going to in fact pump up from one side.

Deputy J.A.N. Le Fondré:

Yes.

Mr. R.P. Kemble:

The surface water is the one which they are going to pump out to sea. That pumping station will be located in the car park which is flooded.

Deputy J.A.N. Le Fondré:

Yes, and which I will say objectors do tend to question, but we are being told it will be fine.

Mr. R.P. Kemble:

That is a technical problem for T.T.S. (Transport and Technical Services) or their colleagues.

Deputy J.A.N. Le Fondré:

[I agree] exactly.

Mrs. C.E. Canavan:

Is there any more on the drainage side? There is not, no. So, the legal advice that you took, are you able to tell us if you took it?

The Connétable of St. Lawrence:

I did not take any.

Deputy J.A.N. Le Fondré:

Unfortunately, I did. I was asked the question and I would like to have been advised not to. I did take legal advice and essentially I have followed it.

Mrs. C.E. Canavan:

You heard this morning that none of our people this morning could say what was happening with regard to the right of way and whatever. Have you heard anything?

Deputy J.A.N. Le Fondré:

Would it help you for me to outline where we are and what is my understanding is of the situation, at all?

Mrs. C.E. Canavan:

It would help, yes.

Deputy J.A.N. Le Fondré:

We did give you the documents in there. I am trying to think how I first came across it, but I believe that the problem had previously been identified. I am fairly sure I have seen a letter somewhere from the Law Officers' Department saying there are these issues about a link to Le Perquage and a link to the culvert underneath and things like that and that they will need to be resolved. I have to say I cannot remember the date on it. Really what happened is I was looking at the file and I had not appreciated the

car park was zoned in 3 sections; that the States own the west side and the east side and they do not own the middle bit at the moment, but they do lease it for, I think it is, a 99-year lease or something, I cannot remember. In the documentation I was looking at it said the States acquired it from the Société and it raised a query in my mind as why on earth would we acquire a piece of land that was a car park from the Société. I did not really consider that the Société normally sold land off. So I essentially tracked down, which are public documents, the relevant deeds that took place and it was a contract of sale from the Société of the States, £250 I think, to buy that land. Then when you started looking at it, it turned into that the land was acquired because it was the whole perquage that had been transferred to the States and essentially from the reading of that, it looked like the Le Perquage car park, oddly enough, is [that] the Perquage obviously does run from what we call the Perquage which is the gravel path across the traffic lights and through where the pumping station is still I believe proposed to be built and then, you know, in theory to the beach at that time which would make sense if it is a perquage footpath. Then when you track down how the Société obtained it, it was left to them and the contract to the States makes references to a codicil of the will via which the land was left to them. Obviously they are public documents but I have given you the copies of the documentation which put me in a very interesting position here at which point I went and sought legal advice as to what one does. To be honest, I have rather felt it was an issue that, given the importance of the flooding side, if it come to exist to me you need to follow the process if you are going to shift it and we have got examples – Jersey Girls College is one of them and now DeBeere’s Farm is another - where it has been a States debate to lift a covenant because the States want to do something else with the land.

Mr. D.J. Watkins:

If a change of use is required for that land, would it be a States or Royal Court decision?

Deputy J.A.N. Le Fondré:

My understanding that what happens -- we essentially took the view that we have not been instructed to do anything at this stage. So, just wait until things start happening, effectively, because my understanding is when you try and start identifying the land, and if you are going to amend a covenant you have got to identify the land it relates to, and to identify the land and especially something like this can be quite a cumbersome process, which sounds pretty costly to me as well if you have law officers who are up to there in their work already and do that because if it is inherited land and if that land was inherited in itself, you are going back to the 1800s to track down the contracts or to track down the documentation. I am involved on something else in my Assistant Minister position where we have previously amended a covenant which is the Howard Davis Farm, that is public domain, and obviously we are looking at the other uses that are going on up there at the moment. It has always been done by law, the States pass a law to vary the covenant on that site and Girls College was the same. Girls College had a clause attached to it which I believe was part -- I have to say this is recollection so it may not be fact, if you see what I mean, but I believe it was taken on by the States as a result of the liquidation way back in the 1920s or 1930s or something, or it might have been in the 1950s, but a condition of the liquidation or somewhere within there was that it was retained for secondary education, I believe. Therefore, if you are going to do anything other than run it as a school, you need to change the use. Certainly Howard Davis is a law and, from memory from that one, that was a law as well.

Mr. D.J. Watkins:

So it is not a developer’s responsibility. Although it is in the planning obligation agreement which has links in all these outside sites ...

Deputy J.A.N. Le Fondré:

It is not within the power of the developer to sort it out, as far as I understand it.

Mr. D.J. Watkins:

[Or] to change that, no.

Deputy J.A.N. Le Fondré:

Because the States are the landowner, bearing in mind this is in relation to land that was States owned.

Mr. D.J. Watkins:

That they have agreed to use at the moment?

Deputy J.A.N. Le Fondré:

At the moment, yes, the States essentially committed themselves. As I understand it, by agreeing the contract with Société, they committed themselves to using their land in that particular way and to change that, as I understand it, requires ...

Mr. D.J. Watkins:

Unfortunately there are houses sitting at the other end, to be putting the pressure on.

Deputy J.A.N. Le Fondré:

Well, it does. You have touched on it about building and it has been declared that it has all been at the risk of the developer. To me, it was one of those situations that really should have been resolved before final planning permission was given and I appreciate Planning does not deal with all the legal issues but that is the decision that was taken.

Mrs. C.E. Canavan:

We have touched on the next topic really but just for the sake of the record, we did receive an email from the Connétable at the time of the rezoning - sorry, I have jumped back again there - just to advise that he could not recall receiving any notification from anyone that they had a problem with the rezoning of the land and the question was do either of you have recollections but I think we have dealt with that. I just wanted to put it on the record that ...

The Connétable of St. Lawrence:

Yes, well, I do not think either of us would have been in a position at the time to have been aware of it.

Deputy J.A.N. Le Fondré:

The only point you can say is that the public meeting was pretty full, or what I recall of that conversation.

The Connétable of St. Lawrence:

Yes, it was fairly active. A lot of people asked questions but I cannot remember at this point in time whether ...

Deputy J.A.N. Le Fondré:

It depends on the recollection. Did people come along and say yes, yes, it is a great idea or did they just ask questions or did they express a view? I cannot recall. I suspect that there were concerns expressed. I know I personally did not write to the Connétable. I did write to the Parish Deputies of the day but I wrote after the zoning and there is a 14-page letter apparently on the Island Plan to Peter Thorne on 14th July 2001.

Mrs. C.E. Canavan:

So, question 11 that really goes back on what we have discussed. Are there any points from this morning that you would like to comment on?

The Connétable of St. Lawrence:

Yes, there are a couple of things that I have noted down here. One is I gather before I arrived that Peter Thorne commented on the statement I made, I think it was at the hearing for 129 houses. I made some opening comments on behalf of the objectors and I made it very clear, I thought, that I was not referring to any individual concerned but that I was talking about the process and I criticised the process in the event that someone who -- you discussed it this morning, Roger Corfield mentioned it this morning. He said he was upset by it. I wondered why he was upset by it because I have prefaced it by making it quite clear I was not referring to him but to the process that allowed an officer to be deeply involved in putting together the Island Plan to then deal with the developer over a 3 to 4-year period and then was the person who again advised the Minister on how he should deal with the application. Now, I still stand by that as a concern. I do not think that is right. I am not casting aspersions at any one individual because anybody, if they act in a truly professional manner, hopefully would be able to find their way through it, although I think it is rather difficult for anybody to do that in that position, particularly if they are dealing with a developer, in this case with a team of maybe 3 or 4 people. I do not mean that in any way as a negative thing but because you are dealing with the same people over a period of time, it becomes more and more difficult, I think, to be objective. Now, I am not saying he has not been objective but that is a weakness of the process, I think. So, in fact, I did raise that because at that hearing the Solicitor General was in attendance and I happened to bump into her the next day in the Royal Square and I asked her specifically about that particular point and she agreed with me and said that she did not think it would be allowed in the U.K. So I felt that I was kind of vindicated in having said that in the first place but, as I emphasise and I did at the time, that was not a personal comment. It was talking about the process. So that is one thing. Another thing that we touched on just now was putting requirements into planning conditions which I accept are not really planning issues but if you put a requirement in like, I think, the development brief which was only a guide, or was it, was talking about a community facility and I am using the words that we used this morning so, without going back to the documentation, that apparently means a building. That immediately creates a potential problem as we have now because we were asked in the parish, quite understandably, would we take on the parish roads, would we take on the community hall, would we take on the children's play area, et cetera, et cetera, and we declined to do so. Now, this has not only happened in this case but in a case not so long ago which is not totally comparable but nevertheless, in St. Clement, a development there, a road, La Rue Hamel, was part of a development. It was offered to the Parish of St. Clement and as I understand it - this is from the debate - the parish declined to take on responsibility for the road. So the States took on responsibility for the road which is probably a logical thing to happen but it seems to me that that sort of thing should be dealt with at an earlier stage. With this particular development, saying that you have a community hall, you now have a situation where you are not quite sure who is going to take it on. Yes, I can see the logic of having one for the residents but the question is does the wider community need it? I am not so sure that it does. I am not aware that it does and certainly I did not just make that decision myself. I discussed it with my procurators and I think the Deputies as well, I cannot recall now. Anyway, it was a discussion and we declined to take it on. But that is immediately creating a problem then about who is going to take this on. It is all very well making that a planning requirement but then you are left with that problem. The same thing happened with this development with regard to certainly the hearing for 129 homes. We heard earlier that the suggestion for keeping down noise from Jersey Steel was to put up roller blinds. Now, up to the time of the hearing on 129 - I am looking at John here to confirm this but I think this is right - Jersey Steel had not been involved in any discussions with the developer. It was news to them. Now, that does not seem right to me that discussions should take place at an earlier stage and these things should be addressed because otherwise you end up with Jersey Steel, who are perhaps in a difficult position, they may well supply significant amounts of steel to the developer, for example. I do not know if they do or they do not but it is possible. They might find themselves in a very difficult position. These things, I think, should have been sorted out earlier in the process.

Deputy J.A.N. Le Fondré:

Yes, I am trying to find my way through my notes from this morning but a few bits and pieces ...

The Connétable of St. Lawrence:

Anything you mention I have forgotten about. [Laughter]

Mrs. C.E. Canavan:

As I said earlier this morning, if there is anything that you forget you can put it in writing and give it to me.

Deputy J.A.N. Le Fondré:

I can give you some comments, certainly. I know Peter Thorne made a comment about he was sure I would not be offended or something - and I think he referred to myself and, oddly enough, Deputy Gorst as well - which was essentially Members coming in after the Island Plan had been approved and not taking ownership of it, et cetera. Going back to stuff we have already touched on, I would have had far less of a problem, I think, if the parts of the Island Plan that to me set out and described what they are going to do had been, in my view, followed. That goes back to the northern part of the site issue. The trouble is that you find there is an amendment in there which says they will do an ecological assessment. The developer does the ecological assessment and, as I said, you get this lovely phrase, I think it was there was evidence of bird life having visited the southern part of the marsh or something, which I have to say I was expecting a little bit more, if I can put it that way round. But then you find that that is accepted as a reasonable assessment by the people doing the assessments. But then when you find that after all of the thing has been approved and the trees come down and then they get Durrell Wildlife to come in and do a separate assessment, he then points out, I believe, endangered species of bird life and things like that down there. I know, okay, fine in the overall scheme of things, how important is it but I just find there is a major conflict between what the States put through and I have to say maybe people do not appreciate difference -- I certainly do not really appreciate the difference between the ecological assessment and the environmental impact analysis say what took place and then what should have taken place which you find after the event. So it is not a case of I do not take ownership of the Island Plan; it is the case of was the Island Plan followed in the way it was intended to be followed. You can also put that into the context of the *McAuslan Report*. He does say about checking the specific details of the sites. That is one of his recommendations so somebody has flagged it out. There have been letters written in about it already. It is flagged up as an issue and then, funnily enough, as I say, what was the in-depth analysis? You have touched on it and the Health Protection one will be an interesting one but there are other issues around it. How deep was the further analysis that was done?

The Connétable of St. Lawrence:

I am not sure whether it is new States Members or old States Members but since I have been in the States, I can recall similar sorts of debates about sites in the Island Plan, St. Clement, St. Peter and, I think, St. Brelade. It is a fairly regular feature so that although the Island Plan is in place, people do not seem to have a great deal of confidence in it, I suppose when they start getting down to the brass tacks of looking at a particular site.

Deputy J.A.N. Le Fondré:

I think we touched on the point about you try to split the role between the person approving the site and approving the actual development of the application and one comment was about lack of resources. The good thing about Jersey is that a lot of us in the room work in an environment where you have a big finance sector presence, a lot of professionals who work in an area where litigation is becoming more and more prevalent and a lot of it is process-driven as well. Certainly I can recall comments or discussions I have had in trust administration, for example, where they might say - and I am talking mid-1990s now -- this might have been acceptable 10 years ago, so you are back into the mid-1980s but now

you must follow the due process, you must demonstrate the arguments. You cannot just effectively tick the box and move on. In fact, I think they even go as far as to say -- I am sure there was a case and I think it was locally where a manager or someone was either fined - I do not think he was in prison but he was certainly heavily fined - essentially because the court felt he had been negligent in the work that had been done. One of the defences was he had not had the resources to do the job. He had been up to here in the normal run of the day work that he was doing and he had not complied with the various requirements that were laid down by the law which ultimately was set by the States and the court did not feel that was acceptable. I think one has to be a little bit careful as you go forward. If people say we do not have the resources and therefore not necessarily following either due process or fulfilling our legal obligations, then there will come a crunch where we will lay ourselves open to some form of case being brought against us and one has to be a little bit careful there. Roger Corfield said the site description is similar in the final plan, which I think relates to the Island Plan, but we have to accept that changes were made between the draft and the final so changes were made again without going back to consultation. Politicians do tend to rely on the advice of their officers. It does depend on the level of public response you get, controversy and things like that, but generally you will rely on the advice of the officers when you rely on their decisions and therefore civil servants do have to be aware of the importance of the advice that they give. You cannot just say: "Oh, it is the Minister that made the decision." The Minister does make the decision but it is always on the advice -- well, often it is on the advice that you receive, not always. There is sometimes a problem when a comment was made yesterday at a presentation to States Members. Obviously I was not there, it was well before my time, but certainly presentations that we go to now on big issues tend to be for an hour, might be 2 hours, but they tend to be high level and, at the end of the day, you do get hung up where at what point does the detail become important. On here, it has been quite a lot of intermediate detail, if you see what I mean, between rezoning of the site and leases around that particular site that have really brought the problems to the fore.

Mrs. C.E. Canavan:

It is also the fact, is it not, that a lot of the issues that you have to decide are issues which are completely alien to you and this goes back to the question I asked you before?

The Connétable of St. Lawrence:

Yes, you have to rely on really your fate.

Deputy J.A.N. Le Fondré:

Well, it is the same throughout the system, at the end of the day. Whether you are in Planning or Health or anything, you are dependent on the -- you know, now sometimes you can say it is a fairly common-sense decision. You cannot say: "Yes, I agree with the officers, is a sensible decision, let us go. It is a technical decision, this is the issue." If you do not understand the technical stuff, it is down to you as a politician to make that judgment call and it is also down to you if you do not understand it to investigate it further, I think, it depends where you are on that, and there are others where you can challenge it. If you do not have the responses, you can turn around and say: "Sorry, if you want me to -- you are either going to change what your advice is, what the final decision is going to be because we are going to do it this way because what you are saying is patently not sensible or you have to justify it to me" and you challenge. But one comment was made. It was purely an opinion as, within this, you have fairly technical issues which obviously the planners themselves are having to decide and I do not know but I imagine if you are a planner, you are also not a technical specialist in noise, flooding or traffic. So if someone comes to you with how far do you challenge as a planner, the response is you are getting from the departments is it reasonable to say: "Yes, they are the technical experts. What they are saying is fine" and therefore then accept them or do you go back and just double check what they are saying which is, I think, one of the judgments you are going to have to make as to if what was done was reasonable. That is not just focused on health but there is a balance that you have to take and I think, personally, again, ecological assessment by developer versus environment, well ecological assessment

by Dr. Glen Young who is based in Jersey and there is a major difference in the technical content of those documents. This is just really picking on points that are made and again I am probably just chucking them in for the purposes of discussions almost. The comment was made that there is a conflict between health as a regulator and for noise and then obviously the advice that they are advancing to Planning. Well, how far do you extend that analogy because you could extend that analogy to other areas as well, possibly Planning themselves. Jersey Steel, the point it was not identified as a statutory nuisance in days gone by because obviously the noise goes out, the noise is funnelled. It comes out of the door of the shed and goes straight across the fields so the cows or whatever it was that was grazing there at the time were not too bothered about it. As I understand it, it is very directional and, yes, it depends when they are working and it depends on wind direction and all that type of stuff so if you go down to Beaumont and what have you, do you hear the noise? I have never heard loud decibel noises coming up from there and it is right on the site but the noise is focused out towards the marsh.

The Connétable of St. Lawrence:

Talking about that, it has been suggested now -- whether this would have happened is anybody's guess, I suppose, but the Health Protection is concerned about the noise at Jersey Steel. If their comments had been received before the Island Plan was submitted to the States, the position of that site might have been somewhat different when the Island Plan was approved. Now, obviously we cannot tell that looking back on it but you made the point this morning when you asked the question was anything done about it when their submission was approved. In one of their letters, and I cannot remember the date, but I remember very clearly they said that this site is not suitable for category A housing, full stop. That seems to have been ignored. Nobody seems to have taken any action to think: "Oh gosh, maybe we should look at rezoning this particular site. Maybe we should not build there" because, as you made the point this morning, I think nothing appeared to happen for about 2 years and yet the comments that were made were immediately after the Island Plan was approved. So I think there has to be a question there, should action have been taken at that time. I do not know. It was not clear to me from the answer this morning, not that I noted down every word, as to whether it was properly considered at that time or just, oh, well, it is too late now so we leave it.

Deputy J.A.N. Le Fondré:

[It was] an insane theory at the time, and less hassle. Going back to the point I was trying to make about process, and to be honest, I was quite surprised, is that if -- and this is going back to approval of the development break, I believe it was said it was decided to delegate that to the sub-panel but nothing was documented. That was my recollection of the comment that was made this morning. Now, in 2004, the fact that that --

Mrs. C.E. Canavan:

I am sorry, [do you mean] the approval of the brief?

Deputy J.A.N. Le Fondré:

Yes, so the delegation of the authority, if you like, to approve the brief was delegated to the sub-panel but the quote was nothing was [actually] documented. Well, in 2004, given my comments which were based on the mid-1990s, I found that quite surprising and I do not know if everybody has quite got the hang of it yet but certainly now, as far as I am concerned, is that the ministerial decision process is quite a lot clearer so you could say there is an improvement there but I am surprised. I do not know how it was worked in the States previously but I was surprised that: "Yes, I authorise you to do X."

The Connétable of St. Lawrence:

It should have been included in the minutes, I would have thought --

Deputy J.A.N. Le Fondré:

Yes, at least minuted. If it is in the minutes, then fine.

The Connétable of St. Lawrence:

[As] it is a delegation of an authority.

Deputy J.A.N. Le Fondré:

The quote was that there is nothing documented. That is what was said. That is what I found worrying. Just to go back to the ecological assessment briefly as well is should not that [assessment] have taken account of environmental law, out of curiosity? I cannot remember the law is now but Article 6 you were going on about, which has been in place for a while, should the ecological assessment not have taken account of that. If it did not - from memory, I have to say it is a long time since I looked at it -- why did it not and why was it not challenged? That applies generally if there are Jersey law issues that come through that impinge. Having said all that, you must be fair to Planning, they are not lawyers but one would expect them to have a working knowledge of the laws in their area. It is the Planning and Environment Department after all. But if there are laws that impinge upon the planning process, presumably they take account of them, I would hope. I am sorry, that was slightly garbled. That was my scribbles of comments that I made as we were going along. I do not know if that helps.

Mrs. C.E. Canavan:

[Do you have] any other comments, additions?

The Connétable of St. Lawrence:

[I don't have] any that spring to mind at the moment, no.

Mrs. C.E. Canavan:

We have the other points we have not mentioned today and I keep emphasising that, we are not ignoring them but we were happy on those points.

The Connétable of St. Lawrence:

No, no, I understand that.

Deputy J.A.N. Le Fondré:

What I am trying to say is it is probably transparent; the process and it may seem personal views that the States have done this kind of path, as it were, which means we started here we have shifted a bit, arrived to this position. Then suddenly it has gone off on a different variation tenet and, as I said, that is public perception and how do we marry those two up.

The Connétable of St. Lawrence:

There is one other thing, I suppose. I received a phone call last night in view of today from somebody who was very concerned about -- the way they put it, and I will just mention this for research purposes as much as anything else. The way they put it was that the Minister felt constrained to approve 102 units because he was in danger of being sued and yet the developer appears not to have carried out all the planning obligations in the time in which they were supposed to carry them out. Now, I do not know if that is entirely true but that was the way it was put to me as a concern of this particular individual. I will just mention that for what it is worth.

Mrs. C.E. Canavan:

Just to clarify that, is that conditions have not been carried out within the time other than those that have been given extensions of time?

The Connétable of St. Lawrence:

Yes, I think that is what he was implying, yes.

Mrs. C.E. Canavan:

Right, so some have not been given extensions of time and there are some that are out of time still?

The Connétable of St. Lawrence:

I am not sure if they are out of time but one thing is this, we keep coming back to the pumping station. It is still not in place, have not even started it, and yet 71 houses we are told are virtually ... Oh, another comment that just crossed my mind as well is again nothing specific in relation to this but the implication was there was a great demand for these houses and there was an extensive waiting list. Well, on the back of the *Jersey Evening Post* the night before last, a full-page advertisement for these very same houses, so either they are too expensive or maybe there is not the interest in them after all. So what is the truth about the demand for housing? I am never sure on that.

Deputy J.A.N. Le Fondré:

I know the comment was made this morning that one of the key messages of the brief is larger family homes and affordable housing and the remark I have written down here is did we get this? The question is at the end of the day, I have to say, it is a problem that is challenging everyone at the moment: is £500,000 for a first-time buyer home an affordable house?

The Connétable of St. Lawrence:

Yes, the advert says from £432,000, I think, yes, and there is another ...

Deputy J.A.N. Le Fondré:

I will preface that with "I believe".

Mr. D.J. Watkins:

Oh, you found it? I do not think we have the answer to that.

The Connétable of St. Lawrence:

I do not know the answer to it. It just raises questions in my mind.

Mr. D.J. Watkins:

Well, the answer is all the planning obligations that are imposed in the end are paid for by the buyers because of all the extra costs on top.

The Connétable of St. Lawrence:

Yes, absolutely, yes, and the fact that you have to build a pumping station is going to be additional cost, the fact that you have to put in sound protection of some sort. That is extra cost.

Mr. D.J. Watkins:

Two buses [will be an additional cost].

The Connétable of St. Lawrence:

Two buses, yes, that is right.

Deputy J.A.N. Le Fondré:

Five years, £500,000 or something, yes. Now, that is absolutely valid but one has also to bear in mind it is spread across 100 houses so I think the pumping station -- I believe we would hold, at some point in the past that it was in the order of £1 million. I do not know how that has changed. Well, that is £10,000 a house which is still large but relative to, I think, build -- the land cost was in the order of

£70,000 to £80,000 and the build cost is, I think £130,000 to £150,000. Certainly I am being told 2006 it was about £130 a square foot to build and they are about 1,000 square feet, if I remember correctly. So you put that all together in the context, you see you have a reasonable margin in there on the profit side.

Mr. D.J. Watkins:

Did the contracts for purchase of the land go through the Royal Court?

Deputy J.A.N. Le Fondré:

Yes, they are public domain.

The Connétable of St. Lawrence:

Yes.

Mrs. C.E. Canavan:

Contracts for ...?

Mr. D.J. Watkins:

[Did the] purchase of whole site go through the Royal Courts?

Deputy J.A.N. Le Fondré:

I saw one for 6 million, there is one for 1 million.

The Connétable of St. Lawrence:

[There was one for] six million, yes.

Deputy J.A.N. Le Fondré:

Then there are some small ones for about £50,000 which are small chunks of land towards the south.

Mr. D.J. Watkins:

[Making] a total of about 8 million?

Deputy J.A.N. Le Fondré:

I think, yes. There is a caveat to that on one of the contracts that says subject to a private agreement but I think that is not an unreasonable position.

Mrs. C.E. Canavan:

That is really not within our reach anyway. The question is is there a demand for houses at this price which we will ask the Housing Minister tomorrow.

The Connétable of St. Lawrence:

I tore [this] off the back of the *Jersey Evening Post*.

Mrs. C.E. Canavan:

Yes, we have both seen that.

The Connétable of St. Lawrence:

Tuesday 22nd [April 2008] and that is the housing supplement yesterday from yesterday's *Jersey Evening Post* which is slightly different -- oh, of course, that is £435,000, not £432,000, sorry, and these are advertised as due for completion winter 2008-2009, so that is part of the same development.

Mr. D.J. Watkins:

Are they all for sale?

The Connétable of St. Lawrence:

That is an interesting thought, is it not? I wonder if they are. Well, it was the sort of point you made this morning, was it not, really, at what point do you stop selling them? Certainly, these are advertised for sale, 10 per cent deposit, [the] balance [due] on completion.

Mrs. C.E. Canavan:

I think that was answered this morning. They know that they can sell up to 55 per cent [of the houses].

Deputy J.A.N. Le Fondré:

Yes, which is not [an] unreasonable [amount].

Mrs. C.E. Canavan:

Which reminds me, do you know when the States debate on the Jersey Home Scheme will be?

Deputy J.A.N. Le Fondré:

No, I do not. We did touch on one matter this morning that for some reason has now popped into my mind which is the areas of the site in terms of the zoned area and then the expansion outwards. Certainly I think it was Roger Corfield who was dealing with it touched on the 102 units, which I think was your black and red dotted lines, I cannot remember. I have to say, most people did not get excited about the fact that the road had been moved, that was reasonable. There was a reservation about how uses for the community building and the play areas and stuff had, in our perception, changed. The community building originally was for new residents, had then gone to a wider definition, and then I believe somewhere in the reports that Roger Corfield produces, the fortnightly ones or weekly visits, there was a comment that the developer was then going to take them back to being just for the residents. The query in my mind was if it was just for the residents, to me it should be in the zoned area. That was the main -- it is a function of the estate, therefore it should be in the area that belongs to the estate. But I am sure you are looking at it but what I was not clear on is the earlier process which objectors had had to identify whereby the site had increased by at least 10 per cent, I think it was, I cannot remember now, between the area that had been zoned by the States and the area that had been -- or that the developers intended to use. You had a small reference to a committee that allowed a small encroachment to the south, I think it was, and then when you looked in the details it was 10 metres to the south, which is a house at the end of the day in terms of depth, and 25 metres to the east. I presume you are following that up but still in my mind is that did not seem to have been identified terribly clearly in the officer reports when commenting on the scheme and, again, it comes down to the process by which the good points of the scheme and the less good points are reported. You may be dealing with that.

Mrs. C.E. Canavan:

It is on the list.

Deputy J.A.N. Le Fondré:

That is definitely me [finished].

The Connétable of St. Lawrence:

Well, just to end this on a slightly lighter note, I have here a photocopy of an article from the *Jersey Evening Post* which was probably 2 years ago, must have been 2 years ago, 2006, and it was 25 years ago, 1981 and it says: "The development of Goose Green Marsh, one of the few large areas of land still being considered for building, would involve substantial drainage work at high cost. With much of the

land under water after this week's heavy rain, it is being suggested that the drainage scheme might cost over £1 million. The Island Development Committee has said that they are looking again at the possibility of developing the area. There was a public outcry when this was suggested some years ago and they are also considering an area on the other side of Le Perquage which is the subject of an application at the moment. The Resources Recovery Board has indicated that although it would be possible to develop this site, they believe it might cause problems with flooding further along at Beaumont." So this is not a new decision.

Mrs. C.E. Canavan:

Thank you very much.