

STATES OF JERSEY

Committee of Inquiry Public Meeting

FRIDAY, 25th APRIL 2008

Panel:

Mrs. C.E. Canavan (Chairman)

Mr. D.J. Watkins

Mr. P. Kemble

Witnesses:

Mr. S. Smith (Assistant Director Health Protection)

Mr. A. Irving (Environmental Health Officer)

Clerk to the Commmitte:

Mrs J. Bell-Cook

Mrs. C.E. Canavan (Chairman):

Good morning and thank you for coming. We have sent you the list of questions and just to explain why it looks as if it is limited, it is because we have obviously read through huge amounts of paper and we did not want to bring people here to sit for hours going through everything when we have already read it and digested it. These are really questions that have cropped up from our side while we have been going through the paperwork. One thing that has cropped up since then is we are not quite sure how the department rests within Social Services or the actual role of the department and how it is split. First off could you give us a brief explanation of what the department was in 2001? [What were the] roles that the people whose names cropped up played in 2001? The next question will be what has changed?

Mr. S. Smith:

No problem. It is probably best for me to answer that for you. From my arrival in 1998 on the Island to the period when I moved through to being the head of what was changed to be the head of Health Protection Service in 2002, the Department of Environmental Health formed part of the Public Health Service. Public Health Services are a directorate of Health and Social Services. The lead officer for Health and Social Services being the chief executive, at that time Graham Jennings I believe. Richard Grainger and John Harvey subsequently were then the medical officers of health and Tony Bruce I believe was the Chief E.H.O. (Environmental Health Officer) who reported to Richard Grainger. Environmental Health was very much divided into a district set up with an individual environmental health officer having responsibility for an area of the Island and being responsible for everything that Environmental Health undertook within that distinct area. As you might imagine, Environmental Health and even more so now, Health Protection, has a huge remit which put obviously distinct pressures on the officers at that time. Between the chief and the layer of E.H.O.'s there was a senior environmental health officer who looked after the more operational day-to-day stuff and liaised with the officers to ensure that there was a sort of uniformity across the department. Then under the environmental health officers we had a number of environmental health assistants whose role was to undertake a number of duties, mostly aligned to things such as pest control, water sampling, as well as some inspections. But generally more towards the pest control and water services at that stage. So, that is how the department was operated. Subsequent to that and since I have taken over we have reorganised the department

entirely. We have taken on additional services in that the registration and inspection arm, which is the nursing homes and the registration of healthcare professionals, has all moved within the remit of health protection. What we did with the environmental health aspect was to reconfigure it so that it was more specialised because we recognised that there were huge problems for individuals to be able to stay up to speed and to understand every aspect of environmental health. What we have is effectively 2 teams within the department which are Environmental Health teams. One: community health which deals with all the pollution, noise, community activity, if you like; housing; drainage; those aspects. Then on the other side we have a public protection team who are responsible for looking to all of the imported food, food hygiene, food safety, swimming pools, infection control and other aspects. So, we have a division. Then what we have done under that is to make each -- we have 2 teams within each of those so we have an environmental health officer and a technician working as a group. We have made each of those officers to gain specialism in a particular area of our work. So, we have an officer who is responsible for looking after the contaminated land issues. We have an officer whose responsibility is dealing with housing issues. We have an officer who deals specifically with imported food as a specialism but, of course, they will do the other aspects of the work in that public protection or community health team. So, it allows us to improve our expertise in all of the particular areas while being able to move people about as and when emergencies require us to so it has brought in a greater specialism and means that officers do not have to have such a broad range of knowledge every day.

Mrs. C.E. Canavan:

So, in 2001, which is our start date, it was the original scheme with one person for each area?

Mr. S. Smith:

That is right, yes.

Mrs. C.E. Canavan:

Was the change gradual then after that?

Mr. S. Smith:

No, I came in to post in October 2002. We spent a year reviewing the service because clearly we could not continue to do everything. There were other more strategic issues that we needed to become involved in, so as a department we reviewed the whole process and then on 1st January 2004 the department changed and we reorganised into the set-up that I have explained to you.

Mrs. C.E. Canavan:

That is helpful, thank you. The letter is dated 3rd October but I think it must have been 13th October; the letter from ...

Mr. S. Smith:

That will be the one from Martin Walton that you are talking about.

Mrs. C.E. Canavan:

Yes. Can you explain that letter? It is in the bundle at divider 43.

Mr. S. Smith:

It is one of our first letters here anyway.

Mrs. C.E. Canavan:

The first question on that, apart from the questions we will come on to, is Mr. Walton was down as Acting Chief Environmental Health Officer there. What was the situation with his post?

Mr. S. Smith:

What happened was that when Tony Bruce retired there was a period of review by the medical officer of health and during that interim period Martin Walton, who was the senior, was made acting chief Environmental Health Officer (E.H.O.) and that lasted for just over a year before eventually I was appointed to the post.

Mrs. C.E. Canavan:

Also in that letter, [against] where number 3 obviously [is] on the list of sites, there are the initials W.J.C. Was that person who was allocated...

Mr. S. Smith:

That was the environmental health officer whose area included the Bel Royal site.

Mrs. C.E. Canavan:

Okay. The Environmental Health department have had the letter from Mr. Corfield about the site that is dated 12th October so I assume that is why the next letter should be 13th October.

Mr. S. Smith:

Yes.

Mrs. C.E. Canavan:

Why was there no comment?

Mr. S. Smith:

We do not know. I mean, the officer no longer works for the department. She left in 2004 from memory. It is a difficult one. We can only speculate as to why it was missed. In fairness, she was probably one of the newer qualified inspectors in terms of the department but nevertheless she had experience of dealing with requests for consultation on planning applications. But we really do not know why that was put in. Certainly I had no input into that aspect on that particular time.

Mr. D.J. Watkins:

Would they normally visit the site before commenting? They always visit the site before commenting or just ...?

Mr. S. Smith:

Generally speaking with this particular aspect I can tell you about the ones which have got [my initials] S.D.S. against them because they are the ones that I was involved in providing the comment. I visited each of these sites personally to look at them as well as looking at the plans that came through so I had a fairly intimate knowledge. Whether or not Wendy Cole, who was the officer who dealt with this at the time, went to the site at this period in time I have absolutely no idea.

Mr. P. Kemble:

Are there no site records kept of the officers' duty during the course of the day?

Mr. S. Smith:

We have not found any relating to her. I mean, in fairness, with this I still have my records going back to the day I started and one of the things I will come on to is with regard to this particular site because you are going to ask about what my knowledge is and I can explain it. I went back through my records to see and I have got an admission in that, I cannot find the date I visited, but I know I did visit. So, I have an indication of roughly the month I visited but I do not know the exact date because it is not in my records.

Mrs. C.E. Canavan:

After it was rezoned?

Mr. S. Smith:

No. No, in fact, I visited this site with Wendy Cole about a year or more before this came through which is a surprise why we have got no comment here.

Mrs. C.E. Canavan:

Why did you go that time?

Mr. S. Smith:

We had a complaint about Jersey Steel at that stage with regard to their hours of operation.

Mr. P. Kemble:

Can we be clear as to exactly what month we are talking on now?

Mr. S. Smith:

It was about September/October 2000.

Mr. P. Kemble:

2000? But you were not appointed until --

Mr. S. Smith:

No, I was an Environmental Health Officer here from 1998.

Mr. P. Kemble:

I beg your pardon, yes, I am sorry.

Mr. S. Smith:

27th October 2000 was when we wrote to Jersey Steel about the issue. So, that was a year before.

Mrs. C.E. Canavan:

It was in 2000 that you visited?

Mr. S. Smith:

[It was in 2000] that I personally visited the site, yes.

Mrs. C.E. Canavan:

What happened as a result of that then? One of the questions we have been asking is [did you have] any complaints beforehand about Jersey Steel?

Mr. S. Smith:

There was a complaint. We did an inspection of the site, interviewed the management and the letter (which we can obviously let you have) lays out the comments that we were making which is effectively about weekend working and starting before 8.00 a.m. in the morning.

Mr. D.J. Watkins:

Then they changed their hours and you were satisfied after that?

Mr. S. Smith:

Yes, because the complaint to us was specifically about early morning working and also about working at weekends.

Mrs. C.E. Canavan:

That was your involvement. Were you involved with it then again before the rezoning?

Mr. S. Smith:

No, the next visit that I made was with Alan in about 2005 subsequent to the planning application when we visited the site and I had a discussion with the management of the site then.

Mrs. C.E. Canavan:

You are down on a few of these [site recommendations], so when you got those applications in, what would be your normal procedure? [What would] you [do] personally?

Mr. S. Smith:

It really depends on the type of application that you are getting. Sometimes we used to get very simple applications such as an extension to somebody's house which clearly do not require us to go down and look at it because we are not going to have too many aspects. The plan will be able to tell you enough. If you have got something that is very complex like this, or to do with an industrial process or whatever, then really you need to visit because it is only by visiting can you get a real understanding of what the issues are because obviously the height of buildings, the orientation of buildings, the close proximity to roads, et cetera, will give you a feel as to what might be the problems that you are going to have from a particular site. It is really a matter of judgment of: "No, this does not need a visit and I can make comment purely and simply off the plan." "No, this is very complex. We will need to have a better understanding. We need to go down to site and might even need to interview people about exactly what the process -- or what they are intending to do so that we can provide a more objective response to planning."

Mrs. C.E. Canavan:

So, you literally go and stand in the field and look around and use your experience to decide where to go and who to --

Mr. S. Smith:

Yes. You probably drive around the area to get a feel of the property from different angles. We might go down -- I mean, in some instances with these it might be that we decide we wanted to put in some form of noise measurement beforehand (before making the response) or want to get some other tests carried out. I mean, we do not tend to do very many of those I have to say but it is something which we could do.

Mr. D.J. Watkins:

Do you make initial measurements of noise when you do that or do you just listen and think: "Well, that is a bit high"?

Mr. S. Smith:

Often you can get an idea subjectively and it is a question of understanding whether there is anything nearby that you are not aware about because obviously as a district officer you are around the district most days. Okay, the districts cover a fair sized area but you get a feel for what are potential issues and what are not because of other visits you are making. You come out of a house and you hear a loud noise, natural instinct is to think: "Where is that coming from? What is the cause?" So, you get a feel for what is in your district. But nevertheless, yes, you would go down and you might do a subjective assessment. If it is something that is in an application stage that the planning department are looking to

make a decision about, that is when we might want to do more in-depth analysis with noise measurements and the like.

Mr. D.J. Watkins:

This was just rezoning, the first one.

Mr. S. Smith:

Yes.

Mr. D.J. Watkins:

You would assume the proper thing would be done at the application stage.

Mr. S. Smith:

[Yes] absolutely. Here we were just looking to see whether there would have been any issues particularly that might throw a spanner in the works into which you would say: "Having this type of development in this area is probably not appropriate because there are going to be these kinds of problems." That is the sort of thing we would be looking at in looking at this.

Mrs. C.E. Canavan:

So, at that stage, before the rezoning, it was not detailed? It was just: "We will need to flag these issues up when the application comes in"?

Mr. S. Smith:

Well, it is about flagging up now because some of the things could be show stoppers in terms of the later -- you would not want to get an application in because there is a problem so in terms of the rezoning you would not want to say: "Yes, this is okay but there is a problem" because that problem might be the show stopper at the end of the day so you would need to be a bit sure about what you are saying in terms of your comments here. If you take number one on that letter you will see there I made a comment about the fact the development was going to be quite close to St. Saviour's Hill. That means there could be issues with traffic. It might not be a show stopper but it might mean you would have to change the scale or type of development you have got or you take the houses in a particular way so that there was not going to be a particular issue for people because you have got heavy lorries coming up and down St. Saviour's Hill.

Mrs. C.E. Canavan:

On your number 2 which was again you where you have put: "No observations" would that mean that, as far as you were concerned, that was the end of the matter, or would you think: "Well, there is nothing like a show stopper and we can deal with that -- any issue when the application --"

Mr. S. Smith:

I mean, in that particular instance it is well away from any major road. There is no industry around it; a bit of agriculture but nothing that would be a show stopper and nothing that would want you to think now: "Is this going to be something that would make you say yes or no to the development"?

Mrs. C.E. Canavan:

So, number 15, for example, that is an example of what you have just said I think.

Mr. S. Smith:

That is right.

Mrs. C.E. Canavan:

That you flagged it up but it is not a showstopper.

Mr. S. Smith:

No. That development has taken place since then. In fact, it has not been a problem because the dairy farm stopped operating after this. But I mean, as a separate aside, we have now got an issue where we have been dealing with the changes at that farm because it now may impact upon this development. So, that is coming at it from a different side.

Mrs. C.E. Canavan:

Once you had done your assessment, what was the process then? Did you write up a report or ...?

Mr. S. Smith:

The application came through listing the sites, providing a plan of the site and the immediate surrounding area, and then we made comments against that in terms of a brief note about whether we felt there were any issues. Then that was -- all of the comments were compiled by the acting chief environmental health officer and he provided the comment back to planning.

Mrs. C.E. Canavan:

This is not meant disrespectfully: is your report taken as read or does anybody check up and give a second opinion?

Mr. S. Smith:

That would be down to the senior officer to make a decision of whether he felt there was anything else that needed to be done.

Mrs. C.E. Canavan:

Sorry, we took you way off track there, did we not? That was helpful to know what the process was. A question that crops up later, but we might as well deal with it now while we are on this letter: is there any difference between the phrase "no observations" and "no comment"?

Mr. S. Smith:

Not really. I think it is just down to whichever preference the officer had. The inference is that it is the same.

Mrs. C.E. Canavan:

Can you, from the files, tell what happened to bring the fact to light that nobody commented because it was rezoned in July 2002 and it was fairly quickly after that that --

Mr. S. Smith:

I think Alan probably is the best person to answer that.

Mr A. Irving:

We received another complaint around 31st July 2002 which related again to out-of-hours noise from Jersey Steel. Although, as Steve said, they had been written to in 2000 we had another complaint about the same sort of issues. I am not completely sure but I think Wendy was possibly on holiday so I got involved and went down to Jersey Steel and spoke to them about the issues and it became apparent to me then as obviously Jersey Steel may have made a comment and said: "Well, we are here and you do realise they are building there" and I went: "Ah."

Mrs. C.E. Canavan:

So, Jersey Steel pointed it out to you as well?

Mr A. Irving:

I cannot remember exactly whether it was them or me or a combination but it became apparent that there was going to be housing very close to that site during a visit in response to noise complaints during working hours on 31st July 2002 so I then wrote that same day to Roger Corfield about our concerns.

Mr. D.J. Watkins:

Your letter says: "Further to our telephone conversation" so you initiated the telephone call; not the other way around?

Mr A. Irving:

Yes.

Mr. D.J. Watkins:

Okay.

Mr. P. Kemble:

The actual complaint that was raised, in terms of proximity, is it east, south, north or west of Jersey Steel?

Mr A. Irving:

[It is] north-east.

Mr. P. Kemble:

Because there are some flats on the right-hand side if you walk back going north.

Mr A. Irving:

Yes, this is the main St. Peter's Rd.

Mr. P. Kemble:

[Is it] as far away as that?

Mr A. Irving:

If you stood at Jersey Steel looking east, it is in that direction. The main road goes that way, does it not?

Mr. P. Kemble:

Right, yes.

Mr A. Irving:

It is on the other side of the main road.

Mr. P. Kemble:

Oh, was it? This is mid-summer with foliage full on trees and everything else. What was the outcome of the complaint? Was it substantiated?

Mr A. Irving:

Again, there was a letter written. I think they may have been working on something saying they had to try and get something finished.

Mr. P. Kemble:

Out of normal working hours, was it?

Mr A. Irving:

It was out-of-hours, yes. Saturday and Sunday early morning and: "It will not happen again, sorry."

Mr. P. Kemble:

If that was noise that was a disturbance from the distance of where Jersey Steel is, I can understand why you found yourself in the situation where the housing was a problem.

Mrs. C.E. Canavan:

There was a letter then, was there not? You wrote to Mr. Corfield.

Mr A. Irving:

Yes.

Mrs. C.E. Canavan:

Then it seems to have fizzled out and you wrote and said you were not happy, and as far as I can see, everything went silent after about August. Is that right from your files?

Mr. S. Smith:

Yes.

Mrs. C.E. Canavan:

After you realised that the mistake was made, were there any changes made at that stage with regard to the procedure?

Mr. S. Smith:

Not immediately, no [there weren't]. It became after that a part of the whole review of the Health Protection Service.

Mrs. C.E. Canavan:

Sorry, I am jumping around a bit here. After September 2002 I think was the last letter we saw on the files ...

Mr. S. Smith:

Yes, there is one on 16th September.

Mrs. C.E. Canavan:

Yes. Why did it fizzle out from your point of view? Was it because there was no application or was it a conscious decision to wait for something?

Mr. S. Smith:

I think there were 2 issues really from our perspective. One is that I am not entirely sure whether there was very much going on with regard to it. We were not consulted so we do not know whether or not anything happened prior to the application coming in in 2004. What I can say to you though is that during this early period there were difficulties with the consultation process with planning. That finally came to a head in February 2003 when the Director of Planning wrote to us saying that they were reviewing how they consulted and that for the future they might not bother to consult with us. I responded the following day to that saying: "That is not acceptable in terms of how government operates in that clearly they were important issues." From that February things got much worse, to the point that at one stage we were not being consulted on almost anything. You were involved in the Trinity Landfill saga. That was one of the issues that we were asking for consultation and paperwork on and were

refused. It got to the point where in 2004 things got so bad that I raised it with my President, Senator Stuart Syvret, and subsequently he made a formal complaint to the head of the Civil Service about it and there was subsequently a grievance procedure which followed through on that because of this and a number of other items that Senator Syvret rose. That investigation obviously is something which Mick Pinel, who was the head of the H.R. (Human Resources) part of the service then, was responsible for and there was an investigation and we all had to give evidence to that. Subsequent to that outcome I am pleased to say that all of the issues were resolved in terms of the lack of consultation and since that period in time there has not really been an instance since then where if we have asked for something we have not been given an opportunity. In fact, the law has been 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.

Mr. D.J. Watkins:

The date when it all became well was roughly when?

Mr. S. Smith:

[It was] late 2004, beginning of 2005.

Mrs. C.E. Canavan:

So, as far as this site is concerned, I think you were consulted in November, were you not?

Mr. S. Smith:

November 2004 was when the application came through and we were sent the application for comment then.

Mrs. C.E. Canavan:

So, things were getting better then?

Mr. S. Smith:

Yes.

Mrs. C.E. Canavan:

But it could have been then if the application had gone in in January 2004 you --

Mr. S. Smith:

We might well never have seen it.

Mrs. C.E. Canavan:

From September 2002 when was the next contact that you had, apart from inquiries from outside obviously? Or were there any other complaints?

Mr. S. Smith:

I am not aware of any.

Mr A. Irving:

No.

Mrs. C.E. Canavan:

So, was that application in November 2004 the next contact?

Mr. S. Smith:

Yes.

Mrs. C.E. Canavan:

What happened procedure wise when that came in?

Mr. S. Smith:

Do you want to explain that?

Mr A. Irving:

Yes. The application would come in and it would come on to -- it came on to my desk and then we obviously look at the site, look at the plans in detail, obviously visit the site and I think I did some noise measurements as well on site. We looked at it in quite a lot of detail and made quite a lot of -- you can see from the comments.

Mr. S. Smith:

There is a letter of 30th November.

Mr A. Irving:

[There were] 15 comments; 15 issues that were raised in relation to that application. That was for the application that relates to 140 houses.

Mrs. C.E. Canavan:

Is this November 2005?

Mr. S. Smith:

No, it should be a letter 30th November 2004.

Mrs. C.E. Canavan:

In that letter (we have it somewhere) is that the one that said that as far as you were concerned it was unsuitable for Category A?

Mr. S. Smith:

Yes, that is right, and it sets out the reasons.

Mrs. C.E. Canavan:

That was for any Category A. It was not so much the numbers; it was any at all. A hypothetical question now: if that visit that you made in order to write that letter in November 2004 had been made before the rezoning, would it have been a show-stopper?

Mr. S. Smith:

Yes.

Mr A. Irving:

Yes, it would have been, yes, but whether it would have been taken on board is obviously another issue.

Mrs. C.E. Canavan:

By planning?

Mr A. Irving:

Yes.

Mrs. C.E. Canavan:

No, as far as you were concerned. Following on from that, I assume you have done it before; you have flagged up showstoppers which have been ignored. What happens from your point of view then when the application comes in?

Mr. S. Smith:

We would make comments to the effect that it is inappropriate. We have had issues in the past with regard to the aircraft noise zones where they were changed when we said they should not because there were issues and that would have a direct impact on whether or not you could develop within that particular area. We have had aspects where they put housing on to the Rue des Pres trading estate above premises which, again, we said was inappropriate and potentially had a risk to the occupants. Again, although we went to an Inquiry with the committee at the time, the medical officer of health at the time and myself made comments. We were ignored over that as well so even though we can make comments to the effect that this is a showstopper and the like, does not necessarily mean that comments will be taken on board or actioned. I have to say, in the current climate it is more likely that if we were to raise an issue now that would be taken on board and there would be a far more serious review of the whole thing. I think that can probably be said for a whole raft of areas across government now. I think there is a much greater level of cooperation at officer level and partnership working I think is the best way of putting it.

Mr. D.J. Watkins:

Can I just ask in your report on 20th January, just shortly after 20th December, in the recommendation you say there are a number of serious issues?

Mr. S. Smith:

Which document was that?

Mr. D.J. Watkins:

It is 20 in your file.

Mrs. C.E. Canavan:

It is your report dated 20th January 2005.

Mr. S. Smith:

Sorry, the one I put to --

Mr. D.J. Watkins:

I am just trying to categorise "serious issue" as opposed to "issue" or "very serious". What status of alarm is "serious issue"?

Mr. S. Smith:

Here we were talking about a view that this was a showstopper that we had a problem with. Clearly -- it was clear that the planning department still wanted to go ahead with a proposal for housing then so it was a question of having got that aspect clearly focused then our role really was to ensure that we got the best outcome that we could possibly get.

Mr. D.J. Watkins:

Planning outcome?

Mr. S. Smith:

Yes.

Mr. D.J. Watkins:

Having seen the new proposals could you decategorise it from “serious” or are you still happy with what is being proposed in terms of the bund and the doors and ...?

Mr. S. Smith:

The issue is that there are still from our perspective, the current development and how it deals with the noise issues is not resolved. We still have this position where in order to effect the best possible noise reduction requires provision of works at Jersey Steel because as you will have noticed through the other information to get good sound attenuation you either need to have a barrier or form of barrier either very close to the receptor or very close to the people generating [noise]. Here we are not going to have a barrier close to the receptor because it is just not possible. The only other option is to ensure that we either create a barrier or enclose the operation as it is at Jersey Steel as far as we can, because obviously some of their work is external as well as internal. But if we are able to improve the encapsulation of the building then that will make a big difference in terms of the noise exposure for residents. That still has not been resolved.

Mr. P. Kemble:

As far as the degree of noise exposure is concerned, is this injurious to health or is it an irritation that the prospective owners will have to deal with?

Mr. S. Smith:

I think here we are talking of nuisance rather than particularly being injurious to health. At the end of the day, because of the hours of operation, we are not talking about it interfering substantially with people’s sleep. It is not consistent enough to be interfering with someone’s undertaking a job locally. In those respects it is not likely to be prejudicial to their health but clearly because of the crashes and bangs and the rest of it, it is likely to be a material interference.

Mr. P. Kemble:

Also bearing in mind I suppose during the course of the normal working day most of the inhabitants (50 per cent probably) of the development are going to be not there.

Mr. S. Smith:

There is the possibility. It depends really on how many [of the families] have children and how many are subsequently at home. But this is a first- time buyers development with an expectation that we will probably see families on the site here.

Mrs. C.E. Canavan:

Once you had received the application in November 2004, as far as you were concerned did you receive the documents after that? So, for example, the draft development brief. That would have been in February/March 2003.

Mr A. Irving:

No, I have not seen that.

Mr. S. Smith:

No.

Mrs. C.E. Canavan:

So, you only get the actual applications to develop?

Mr A. Irving:

Yes.

Mr. S. Smith:

We will get a copy -- normally we would tend to get the application and any supporting document provided by the applicants. Not necessarily all but generally we would expect to get the applicant's submissions because that may have extra information that would allow us to make a judgment on a particular application.

Mrs. C.E. Canavan:

Just to explain to you, this draft development brief was what the planning put together for what they wanted for the site and it was approved in March 2003 and was then given to the developer as the basis or guideline.

Mr. S. Smith:

Whether that was drawn up subsequent to the last involvement we had in September 2002 when we had already made comments with regards to the problems with the site, I do not know, but we have not seen that particular document. Without going through it, it would be difficult for me to say whether or not it contains what we had asked for.

Mrs. C.E. Canavan:

If you would not mind coming back to us on this because if you look at divider 9 and go to the very end of that appendix 2 it says: "List of contacts." It seems as if planning[has listed Environmental Health as a contact].

Mr. S. Smith:

They may well have taken on board our comments from earlier, yes.

Mrs. C.E. Canavan:

Or whether it means it is historical contact or a present one [contact], would be helpful for us to know.

Mr. S. Smith:

Yes. Yes, if you can provide us with a copy of that, we will have a look and we can let you have some comments.

Mr. D.J. Watkins:

But you do identify noise from the plan; the Jersey Steel noise, access and visual issues.

Mrs. C.E. Canavan:

I cannot see that it says in that document that they consulted you on that. So, the application that you saw in November 2004 was when you made your first serious comments. That was the application for how many houses?

Mr. S. Smith:

140.

Mrs. C.E. Canavan:

After that, were you consulted again on the next application (the 129) or were your comments taken as read?

Mr A. Irving:

No, we were asked to comment on the planned 129 as well.

Mrs. C.E. Canavan:

Did your comments change in any way?

Mr A. Irving:

What was the date for that?

Mr. S. Smith:

Yes, 129, it is 27th October 2005, our comments.

Mrs. C.E. Canavan:

Were your issues the same or were there any more or any less?

Mr A. Irving:

They were more specific in relation to -- because a consultant had been appointed by Dandara so they were commenting on the reports produced by the consultant on the noise issues. So, they are talking about the proposed barrier length; were the measurements done by the consultants? Were they representative of Jersey Steel on the day they were done?

Mrs. C.E. Canavan:

If it is easier for you, would you like to tell us, from your point of view what happened throughout? Is that the easiest way to do it?

Mr A. Irving:

From when to when?

Mr. S. Smith:

It would be from November 2004 through to the current time is what you are saying, is it not?

Mrs. C.E. Canavan:

Yes.

Mr. S. Smith:

I think what we can say is that during that period of time there has been an awful lot of consultation. There have been a number of officer meetings (with [the] Environment [Department], [the] Planning [Department]); with the developer and with the developer's consultants) to try and get consensus on what is the most appropriate and effective means by which noise from Jersey Steel can be dealt with. There have been some comments with regard to that. In the early days, certainly, and probably still to this point, there is some disagreement over the measurement standard that is required because the applicant has been looking to you to follow P.P.G. 24 (Planning Policy Guidance) which is talking about issues of using Leq [average noise level] as a measurement for this. Our view is that is completely inappropriate because of the nature of the noise that is being generated here and the nature of the problem. We have been asking for Lmax [maximum noise level] as the representative measurement level because it takes into consideration the fact that there are these very sharp peaks of crashing when the steel is being manoeuvred on the site. If I can explain to you Leq --

Mrs. C.E. Canavan:

Please do.

Mr. S. Smith:

It is an averaging system. If you can imagine traffic noise, if you live next to a road, traffic noise tends to be fairly even. You get periods when it peaks a little bit or it drops out if there is no traffic, but generally it is very consistent and Leq a very good measure for that, because, Leq is an average, so the average is going to be very close to the general level of noise. It is a good representative means of measuring. When you start getting crashing noises and very sharp peaks, of course, what Leq does is equals those out, so effectively they disappear from any measurement technique. For that reason, it is not appropriate to use Leq as a measurement of measuring the peaks of crashes and noises like that. Lmax is far more appropriate because it gives you the actual impact that you have from a particular episode. That has been a disagreement between us and the consultants and will probably remain so, because if they concede our position, then it makes the noise climate look much worse than if you use their methodology.

Mrs. C.E. Canavan:

What does the Lmax register, then?

Mr. S. Smith:

The Lmax registers the peak noises, which is effectively what people hear.

Mr. D.J. Watkins:

Is it standard for specialist reports to be prepared by the applicant always? Because there is obviously going to be a conflict; they want to produce the best picture and you want to see a nice picture. Is that a satisfactory way of doing it?

Mr. S. Smith:

Yes. At the end of the day, part of it is around the resources. We will do a certain amount of work, but we ask the applicants to provide details, and planning ask applicants to provide details to support their case. Clearly, if things are not very contentious, then the reports probably are going to be fairly close to what we would be looking at and you would tend not to have too many problems. Where it becomes very contentious and there is an issue such as we have here, then clearly the applicant is going to have a consultant put in a report that looks best for them. Noise is fairly subjective at the best of times. Measurement really only confirms the subjective nature of the issue that you are dealing with, but how you measure is quite crucial to whether you get agreement on that subjective or a very different perspective on that. That is really why there has been quite a lot of long-standing negotiation here, because there has been a difficulty over us and Dandara agreeing the methodologies.

Mrs. C.E. Canavan:

Just on that, now that I understand it a bit more, where are you now?

Mr. S. Smith:

Well, they have gone ahead and done the work here on the basis of Lmax in the end, as I understand it, but of course what we have is very big differentials in noise level between the background and the actual crashing noises that we get. It is something about 15 to 20 dBA [decibels], which is very substantial. If you can imagine that a difference of 5 dBA is likely to start generating complaints, 10 dBA almost certainly will be a nuisance, [and] 15 to 20 dBA is well above that. That is why our expectation is that ultimately we will generate complaints here because of people being so close and because of the levels of noise, and that is really why our view of this has changed as time has gone on, because it has become more apparent to us how bad the issue really is.

Mrs. C.E. Canavan:

That was the next question. You have been accused of moving the goalposts, when documents are given and you ask for more. Can you expand on what you just started to say there; what would your answer to

that be?

Mr. S. Smith:

The thing is that in the early days it was purely a subjective assessment, but we were aware that with the crashes and with the few complaints that we had that there was likely to be an issue. 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 measurements which Alan [Irving] did showed a significant problem for us and [explains] why that first comment of “no comment” was apparently so wrong.

Mr. P. Kemble:

These peaks that are achieved are obviously mainly caused by steel being moved around the site. It is not related to work within the building, because if work was in the building then there would be an opportunity to control that by acoustic methods around the openings of the premises.

Mr. S. Smith:

The building encapsulation is an issue, because it is currently of fairly poor structural integrity. It has holes in it, which means that any noise reduction afforded by the cladding is breached, so it is almost like having no cladding there at all, to an extent. That is why our comments have come on to the fact that we need work done at Jersey Steel if we are seriously wanting to reduce the noise levels affecting the houses, because that is really the only way it can happen. That still has not been addressed yet, as far as we are aware.

Mr. D.J. Watkins:

That would require a planning application, would it?

Mr. S. Smith:

It needs for Jersey Steel’s premises to be effectively repaired and maintained. Alan[Irving] is just saying that they have put an application in for that.

Mr. D.J. Watkins:

And you will be consulted, obviously?

Mr A. Irving:

We have been consulted.

Mr. D.J. Watkins:

You have been. Thank you.

Mr. P. Kemble:

So [is] Jersey Steel taking steps already to minimise these undercover problems?

Mr. S. Smith:

It would seem so, yes.

Mrs. C.E. Canavan:

[With regard to] the level of complaint about Jersey Steel, can you give us an idea of how many complaints there have been in the last 5 years, say, regardless of this site?

Mr A. Irving:

As Steve [Smith] said, we had a complaint in 2000 and we had another complaint in 2001.

Mrs. C.E. Canavan:

Just the 2 as far as you know?

Mr A. Irving:

Yes.

Mr. D.J. Watkins:

[Where they] mostly out-of-hours?

Mr A. Irving:

Out-of-hours working, yes; early morning or ...

Mr. D.J. Watkins:

It has come off since?

Mr A. Irving:

Yes.

Mrs. C.E. Canavan:

So, nobody further away has complained about the banging noise? Not in the daytime, put it that way?

Mr. S. Smith:

No. I mean, the complaints have not been made to us, whether they have made them directly to the company or whether they have made them to the parish [of St Lawrence] we do not always get to find out.

Mrs. C.E. Canavan:

We have been asked to make recommendations with regard to process in the future as well. You might not be able to answer this, but if you were asked today whether or not you thought that particular piece of land was suitable for rezoning, what sort of tests would you carry out? You have said this morning that as it has gone on, you have realised from your point of view the situation is worse than you even thought when you started to look at it. With that in mind and a blank piece of site today, would you carry out more tests beforehand or would you just stand in the middle and sense [of the issues]?

Mr. S. Smith:

I think I would take a step earlier than what you are saying there. One of the things that we have tried to do in the past is to map the Island for noise to get an understanding of where the hotspots of issues might be. Subjectively we have a fair idea, but it is always useful to have measurements that will give us that information to back up that subjective assessment. We would want to do more mapping of the Island to get a feel for what the noise climate is and that will then give us a better understanding when we look at aspects like this to say: "Well, we know the noise climate in this area is high because of these particular aspects." That would start to form our judgment even before we made a site visit. Unfortunately, that is pretty resource intensive and mostly we have to rely on being able to keep our information on work that we do rather than being able to go out and proactively spend time doing spot-hourly measurements during the day and spot-hourly measurements during the night to give us a feel for what is happening. We will always be reliant on having to have officers go out and do a visit during the day and perhaps if it is apparent that there is night time activity, to go back and do a visit at night just to get a feel for what is happening. I do not think we will ever get away from that as part of our process and part of the professional decision that the officers have to make on what comes in. But there are means of assisting

that by having this background noise mapping of the Island. But it is resource intensive and at the moment I do not anticipate that we will ever get to being able to do that effectively. We did it at my previous authority in the U.K. and it was very useful, but it was incredibly resource intensive.

Mrs. C.E. Canavan:

As far as your process today is concerned, are you happy that this could not happen again?

Mr. S. Smith:

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.

Mrs. C.E. Canavan:

From your point of view, what happens if you cannot reach an agreement with the developer?

Mr. S. Smith:

The arbiter, at the end of the day is planning and the planning process. We put a perspective in terms of the health impacts; the developer puts a perspective in terms of the economics and development footprint. The Planning Department have the unenviable role of being the arbiter and making a decision on whether they take the developer's side or whether they support the view put by us. That has always been the case; I do not see that changing in the future. I suppose, as a government official, one would hope that the overall government perspective would be the one that prevails, but there are political situations.

Mrs. C.E. Canavan:

Yes. From your point of view, have you finished now or are you still negotiating with the developer or are you just waiting for planning to make their mind up now?

Mr. S. Smith:

The development is pretty much on its way. It is on the developer to satisfy the planning conditions and for that to be written off.

Mrs. C.E. Canavan:

Sorry, I am not clear; your involvement is finished?

Mr. S. Smith:

No, because ultimately the Planning Department will ask us: "Have the conditions relating to noise been satisfied?" They will ask us for that comment.

Mr. P. Kemble:

This is all part of the planning obligation agreement, is it?

Mr. S. Smith:

That is right.

Mr. D.J. Watkins:

And you will be re-measuring the site, will you, once it is complete?

Mr. S. Smith:

Probably, yes. We will have to look at all of the aspects, and if Jersey Steel are going ahead with their works, then that will almost certainly require us to do further measurements internally, externally and at distance.

Mrs. C.E. Canavan:

You did say earlier on that there was something that you wanted to mention later on. Have we covered that?

Mr. S. Smith:

I think we probably have. The only thing I was going to say to you is that you provided us with a chronology of events which planning had put together. Roger Corfield helpfully provided us with an electronic copy of that. What we have done is to add in to that chronology the comments from us, including anything that has happened that planning were not aware of in the background. That has expanded that document substantially. We will let you have a copy of that and the documentation that supports that as well.

Mrs. C.E. Canavan:

I think you said that there was a letter from planning to say that you were not going to be consulted any more. Can we have a copy of that?

Mr. S. Smith:

[Yes] absolutely.

Mrs. C.E. Canavan:

What date did you say that was, roughly?

Mr. S. Smith:

That was February 2003.

Mrs. C.E. Canavan:

Is there anything else that you would like to comment on to us? Anything that we have missed that you think is relevant?

Mr. S. Smith:

Not that I can think of at the moment. I think we have put across most of the points from our perspective.

Mrs. C.E. Canavan:

Thank you very much. Thank you for coming.