

STATES OF JERSEY

Committee of Inquiry Reg's Skips Limited

FRIDAY, 19th MARCH 2010

Panel:

Mr. J. Mills (Chairman)

Mr. E. Trevor M.B.E, F.R.I.C.S.

Clerk:

Mr. I. Clarkson (States Greffe)

Witnesses:

Senator P.F.C. Ozouf (The Minister for Treasury and Resources and former President of the Environment and Public Services Committee)

Mr. J. Richardson (Deputy Chief Executive)

[09:00]

Mr. J. Mills (Chairman):

I will read the oath to you. Do you swear that you will declare the truth, the whole truth and nothing but the truth in the present proceedings before this Committee of Inquiry, which you will do so without favour, hatred or partiality as you will answer to Almighty God at your peril?"

The Minister for Treasury and Resources:

I do.

Mr. J. Mills:

Thank you very much. Okay, I declare this hearing of the Committee of Inquiry open and we welcome Senator Philip Ozouf, the Minister for Treasury and Resources, and Mr. Richardson, who is now the Deputy Chief Executive of the States, but you are here really because you had a slightly different hat on a few years ago. The committee is myself, John Mills, and Edward Trevor. Richard Huson, who is our third member, is delayed and may not make this particular hearing. We are now in public session and one or 2 people are coming. Senator Ozouf, could I start by just asking you to confirm when you became President of the Environment and Public Services Committee and how long you were there and where Mr. Richardson fits in as the Chief Executive?

The Minister for Treasury and Resources:

I was elected as the new Environmental Services President around March 2004. This was following the resignation of the previous Committee under Deputy Maurice Dubras, who had been in office since the end of 2002. So I effectively did, I guess, two-thirds of the term of office. I was persuaded to stand for this position by some colleagues in the States. I had been elected as a Senator in 2002. The Committee was regarded at the time, in both its constituent parts, as being the poisoned chalice of politics. There had been a history of a successive number of Presidents at Public Services. I think that there were 4 or 5 Presidents over a period of time. There had been all sorts of issues which had dogged the Public

Services Committee. There were all sorts of controversial issues, bus inquiries, all sorts of things. It was then fused with the Planning Department, which itself is a controversial portfolio. It was said that Planning and Public Services should be merged. There had been a problem with the relationship with some of the constituent parts of the Committee and in the preparation in the move to Ministerial government it was seen that it would be best to merge and fuse the Departments. It did, when I took over, have 2 Chief Officers: Mr. Richardson was the Chief Officer of Public Services and there was another individual in charge of Planning. Over the period of the first few months changes were made to that management structure and Mr. Richardson was given the overall responsibility of being the Chief Executive of Environment and Public Services. Planning itself had also been ... if Public Services was not controversial enough, Planning too was extremely controversial. Following the bringing into force of the 2002 Island Plan, and particularly the rezoning of a number of sites, there had been significant controversy about the decisions concerning bringing into Planning and bringing into effect some of the Planning sites. This is all well documented in the newspapers.

Mr. J. Mills:

Yes, indeed.

The Minister for Treasury and Resources:

But it was difficult, it was controversial, and it has to be said that there was a morale issue with the Department, certainly at Planning, that was dealing with a very significant workload of planning applications as a result of a very successful economic situation. Staff were under pressure and morale was low because there was not, I do not think ... I think that there needs to be strong political leadership, both in ministerial government now, but also in Committee. I think both of the Committees, while well intentioned, in the past they needed some strong political leadership; they needed to be motivated, but make some necessary changes.

Mr. J. Mills:

All right, thank you. Mr. Richardson, you were Chief Executive of Public Services and then, as the Senator said, you took on the whole responsibility. When did you take on the whole responsibility?

Deputy Chief Executive:

I have not got the exact date, but I would think it was about mid-2004 and it was until about ...

Mr. J. Mills:

Okay. So shortly after the President essentially took over?

Deputy Chief Executive:

Shortly after the President took over the combined Committee.

Mr. J. Mills:

Was that on Mr. Young's retirement?

Deputy Chief Executive:

Yes.

Mr. J. Mills:

Yes, I understand.

Deputy Chief Executive:

Yes. Immediately Mr. Young retired I took over.

Mr. J. Mills:

What was your initial view? Picking up what the Senator has just said, what was your initial view of the so-called poisoned chalice?

Deputy Chief Executive:

Well, I think I would echo his views in that I obviously had, from my side of it, the very clear issues of controversy within Public Services and issues such as the bus inquiry and bus contract appointment. Equally, working very closely, if you are in the same building as Planning, it was very evident that they were also under a lot of pressure. As I took over there were still a number of sites that were going through, the H2/H3 rezoning sites, which were difficult sites to seek approvals for. Without question, the Department was overloaded with the volume of work they were dealing with and the number of applications that were going through.

Mr. J. Mills:

Senator, back to you, did you form views ... obviously there was a workload pressure and lots of difficult issues. Did you form any particular views about procedural weaknesses or procedural strengths in the Planning Department?

The Minister for Treasury and Resources:

There was a concern that Planning was focusing on the minutiae; that windows were important, but some large applications might have not received the attention that they ought to have done in view of their importance. One of the issues that we dealt with and the reason I think why the previous Committee fell was because of the famous Trinity infill application, which was a very significant planning application with very significant consequences to the countryside, which had been approved by a Sub-Committee which perhaps, in hindsight, and again I brought in an advocate in order to do a review of the Trinity infill application and the way that had been handled. Clearly, there was a failure there and the Trinity infill ... there is some resonance and some comparisons between the matter that you are investigating and the Trinity infill.

Mr. J. Mills:

We have been reading it.

Mr. E. Trevor:

We read that release. We have had the report and I assume we have all read it.

The Minister for Treasury and Resources:

This is trawling my memory and so I am trying to give you the best impression from my memory without it being polluted from subsequent reporting.

Mr. J. Mills:

What this led on to, obviously, you then commissioned this thing, the Shepley Report, and although it was only formally commissioned in September 2005, may I presume that you were thinking about something like this for a while before?

The Minister for Treasury and Resources:

We needed to, in the first few months ... I have dealt with a few difficult political issues in 11 years in the States. I have to say that dealing with the problems when we inherited the Environmental and Public Services' responsibilities, this was extremely difficult. We needed for a significant period of time simply to bring the Committee business to some sort of order. The Committee had significant responsibilities with the fused Public Services and Planning responsibility. We had a number of major strategies that were behind and had not been progressed for all sorts of reasons; not least the waste strategy. For a period of months we needed to get on with the important policy matters, but also deal with the never-ending conveyor belt of planning applications, of which many of them had been controversial; the H2 sites. It commanded an enormous amount of energy and time in order to get some order in dealing with those. I remember regularly sitting with Mr. Richardson in his office and we had a banana-skin list of problems that the Committee was going to be facing over a period of months. For the first 12 months I think it is fair to say that we were fire-fighting. We were attempting to deal with, and were dealing with, significant problems and significant issues that could have tripped the Committee up. I had threats of votes of no confidence, we had the States Assembly interfering into planning matters. It was a very difficult time.

Mr. J. Mills:

Were some development in the countryside proposals on your banana-skin list?

The Minister for Treasury and Resources:

There were of course, within the approved Island Plan, development applications. Of course, there are hundreds of planning applications of which need appropriate triaging in terms of political input. Some are done under delegated powers. One of the things - we will turn to this in a moment - that Mr. Shepley recommended was a focus on the big policy matters in order ... if you have got good policy then it is straightforward in order to process an application. The absence of policy means that you cannot deal with applications. You also needed to try and get rid of a whole load of minor applications that really did not need to command the attention of the Committee and the Sub-Committee at all.

Mr. J. Mills:

Okay. Talking of strategy, can we just talk a bit about the waste strategy. I mean, the Island Plan 2002 put a new emphasis on recycling and waste management and the Solid Waste Strategy appeared in 2005, and you were obviously intimately connected with that, Mr. Richardson. I think the issue for us is to try and understand to what extent that work spilt over into the deliberations of the Planning Department and the Planning Committee. I suppose the long question is in your new department with Planning and Public Services combined, did the 2 sides talk to each other?

Deputy Chief Executive:

I think when I first took over the answer would have been "very little", but that was one of the problems... that where the Island Plan 2002 had set the directions, set a vision for waste management, but there was no strategy below it to deliver it, no delivery mechanism. As I took over the 2 departments it was very clear that there was not the communication required between those 2

departments, the Environment and the Public Services side of it, to co-ordinate together.

Mr. J. Mills:

When you were just in charge of Public Services that department was a consultee on many occasions of planning applications, was it not?

Deputy Chief Executive:

It was, but with the lack of a clear strategy to meet the direction of the Island Plan it was sometimes very difficult to make comment.

Mr. J. Mills:

Yes, I understand that.

Deputy Chief Executive:

One of the first things that I did in trying to bring the 2 parts together was we formed a Waste Strategy team and that team was officers from Planning and Environment and Public Services brought together and we put 2 officers from Public Services and an officer from Environment together in an office to write the Waste Strategy. So it was the first piece of work which we forced through a new way of working, which was bringing the 2 departments together.

Mr. J. Mills:

Who from the Planning side was involved? Can you remember?

Deputy Chief Executive:

Peter Thorne was part of it. I am just trying to think; there was another officer further down.

Mr. J. Mills:

But Peter Thorne was the leader?

Deputy Chief Executive:

Peter Thorne was working with us to co-ordinate at senior level.

Mr. J. Mills:

Could I just turn to our clerk; can you remind us, Ian, what comment the Public Services side - it was then called T.T.S. (Transport and Technical Services), I think, was it not - what ...

The Minister for Treasury and Resources:

It was called Public Services.

Mr. J. Mills:

Yes, Public Services. What comment it made on the original 2005 Reg's Skips application? I seem to recall that when the thing went out, when it was sent around, there was a "no comment" came back.

[09:15]

Can I just give you notice of that? Because I think one of the issues that we are quite interested in is whether, in practice, consultation processes, whether with Public Services or within Environmental Health, whether they worked as people were expecting them to work. So, I mean, what you say is I think quite pertinent. But I mean, perhaps I can ask you this, Senator: in 2005, you got up to the point where you launched the solid waste strategy; lots of work behind all that, lots of thinking about trying to change behaviour through the tipping charges regime and so forth. There was a building boom going

on, so obviously an awful lot of inert waste was being produced. Indeed, one of your strategies was to try and slow down the rate of infill. Was that kind of set of issues brought to bear in any proper way on applications of this kind, which essentially were for ... in pursuit, really, of the recycling agenda?

Deputy Chief Executive:

I certainly do not recall any conscious decision that applications would be looked upon favourably if it was for waste management/recycling facilities. But, clearly, there was ... the Committee's policy at that stage was to try and set our charges at a level that would enable the industry to effectively operate below those charges so that it discouraged people from coming to tip on our site and encouraged the skip hire and the haulage industry in general to move more into a commercial waste management perspective.

Mr. J. Mills:

Was the skip industry on your radar as you were doing this work?

Deputy Chief Executive:

It was on our radar for a very different reason. It was about trying to encourage them to become more active in the management of the waste they were collecting from sites and to make sure that there was a degree of segregation.

Mr. J. Mills:

So the sorting of loads, in other words?

Deputy Chief Executive:

Well, I just need to clarify this. Our emphasis at that stage was trying to make sure that the segregation was between inert and combustible. The reason for that was very simple; is that the inert waste site at La Collette could not receive combustible material and that was under our licence to operate the La Collette site. Unfortunately, the industry in general - and I do not make any direction to a particular element of it - the general building/construction/haulage industry were not geared up at that stage to particularly good segregation between those 2 types of waste. So our focus was about putting quite a lot of pressure on the whole industry, not a particular element of it, into making sure the end ... in effect, we were rejecting loads and saying: "If you bring it in we will reject it."

Mr. J. Mills:

Okay, thank you. Just confirm that it was a "no comment" from Public Services on the application.

The Minister for Treasury and Resources:

On which application is that?

Mr. J. Mills:

On the application for Reg's Skips at Heatherbrae Farm; the one that was determined in March 2005 to set up their skip storage and sorting operation there.

The Minister for Treasury and Resources:

But was there an understanding of ... I mean, the "no comment" was based upon what information?

Mr. J. Mills:

Based, as I understand it, on the planning application document that was sent around. But the question you raised is a very good one, which we want to try and resolve because we think there is a set of issues, probably of general import, around how consultation was undertaken on planning applications generally.

The Minister for Treasury and Resources:

I obviously cannot comment about the Heatherbrae Farm application. What I can say is that I was aware of the application in respect of the earlier site at Homestead, which was in Rue de L'Etocquet, which I, in May 2004, went on site and I chaired the Sub-Committee in dealing with that application. I was aware of what that was about, but the policy issues concerning Public Services would be interesting, but from a planning perspective and a noise, et cetera, issue it was very clear.

Mr. J. Mills:

No, we understand.

Mr. I. Clarkson:

Chairman, sorry, just before you move on, I should clarify the sheet I handed you was the application summary sheet from the Planning file. What that indicates is the Public Services Department Highways and Drainage, as they were then, may not have been consulted at all. There are only date-sent markers and date-back markers against Agriculture and Public Health. There is no indication that anybody else was consulted.

Mr. J. Mills:

Okay, let us note that with care.

Deputy Chief Executive:

Can I clarify that position? I think what the Clerk has read out is very important. As a statutory consultee we were only consulted on highways matters and drainage matters; we were not consulted on waste management matters because the waste management licences were granted by the environment side of Environment and Public Services, not the Public Services side of it.

Mr. J. Mills:

Yes, I understand. So there is a little bit of ... there are a few bureaucratic issues here which we want to try and get to the bottom of.

The Minister for Treasury and Resources:

Also, the important issues of Environmental Health because there is Environment within Planning and Environment and there is Environmental Health. It is fair to say that the relationship between Planning and Environmental Health at the time was difficult, which Mr. Richardson and I, in dealing and repairing a number of relationships at the political level and providing appropriate guidance and leadership, politically appropriate, was also something that was a live issue.

Mr. J. Mills:

I was going to come to that later, but as we just touched on it, can we just touch on that now because last week Senator Shenton, who I think was the Minister for Health at the time, or perhaps he was not quite, but became the Minister for Health, but he said he ...

The Minister for Treasury and Resources:

Well he was certainly, he was not the Minister over this period; it was Senator Syvret.

Mr. J. Mills:

No, but he said exactly the same about the relationship between Environmental Health and Planning. Could you just enlarge on that a little bit?

Deputy Chief Executive:

Well, perhaps I can enlarge because the President of Public Health, or Public Health as it was in those days, lodged a formal complaint against the Director of Planning and I undertook the investigation and

brought in an independent to assist me with that investigation and conducted a full inquiry.

Mr. J. Mills:

What was that over?

Deputy Chief Executive:

It was over a number of matters relating to Planning. This one was not one definitely, but there were a whole raft of issues. A number of them related around particular planning applications and the way they had been managed and the way in which the West of Albert inner waste sites had been managed and particular reference to ash tipping.

Mr. J. Mills:

This was Mr. Syvret, was it?

Deputy Chief Executive:

Yes.

The Minister for Treasury and Resources:

When was that?

Deputy Chief Executive:

Again, I think it was 2004, late 2004. I mean, I have not got the dates, but I can easily get them.

The Minister for Treasury and Resources:

So under my watch, against all of this background, you adjudicated over a complaint of Planning made by the President of Health and Social Services?

Deputy Chief Executive:

Yes.

The Minister for Treasury and Resources:

Now ...

Mr. J. Mills:

Okay, I think you have said enough.

The Minister for Treasury and Resources:

Okay. So there was, again, a breakdown in relationships which we were repairing and dealing with a number of dysfunctional relationships, which I have to say, from where I was sitting in Environment and Public Services, was not ... whilst there were issues which clearly catalysed the importance of bringing in Mr. Shepley, the fault did not lie always, as it was suggested, with Environment or Public Services. Environment and Public Services could only do its job if it was receiving appropriate advice and responses to consultations and the other statutory body - in this case Environmental Health - engaged in the process to help advise.

Mr. J. Mills:

I understand that point, thank you. Edward, do you want to comment upon anything?

Mr. E. Trevor:

I do not think so. I mean, it was obvious from the e-mails and so on and so forth that Environmental Health did not get on with, effectively, that department. That is very obvious from the e-mails, of which

there are a lot.

Deputy Chief Executive:

That was effectively the crux of the investigation undertaken.

Mr. E. Trevor:

That was pertinent even to Heatherbrae Farm where they were commenting.

Mr. J. Mills:

Okay. Can we move on to just a few other things. There were a couple of points on Shepley I want to come back to, if I may, at the end, but more specifically on the actual case in question. First of all, Senator, when you became President you started by chairing the Planning Sub-Committee, so the records indicate then that you ceased to sub-chair it after January 2005. Is that in your recollection?

The Minister for Treasury and Resources:

It is and such was the scale of issues that was facing the Committee across the whole piece, but particularly the issues of Planning, I thought that it was best that I personally chaired the Sub-Committee, which was unusual, in order that I could see from the coalface some of the difficulties that the Committee was dealing with in terms of applications. That is not because I did not trust my Vice President or any other committees, but I wanted to get hands-on experience of dealing with planning applications in order that I could work with John and other officials within Planning to improve the processes. To understand, for example, agendas were enormous. There were agendas that were like doorstops that arrived on Committee members' doorsteps. I looked at these applications, I looked at the reports, and thought: "How can a Committee member read, digest, understand these issues?" I put all sorts of little things in place; agendas that were tabbed so that Committee members could flick through the applications and see where the important ... we strengthened the report writing, we strengthened the recommendations. We made all sorts of changes while we were dealing with and while I chaired the ... of course, my time had to be also spent on dealing with the other big policy issues of waste, which is why, once I had made improvements, as of January, I then moved on. There was no significance ...

Mr. J. Mills:

No, that is a helpful answer, thank you very much. Can I just clarify one other thing? Ian, can you help us again here? With the advent of an impending move to ministerial government, are we right in saying that the decision was taken that the minutes of the Planning Committee should be made public?

Mr. I. Clarkson:

By the period in question, Part A minutes of the Planning Sub-Committee were published once they were signed. Publication ...

Mr. J. Mills:

Right. But is that a reform that you instituted, or ...?

The Minister for Treasury and Resources:

No, I cannot recall that.

Mr. I. Clarkson:

That would be a general change arising out of changes the States made in refining the Code of Practice on Public Access to Information.

Mr. J. Mills:

I see.

The Minister for Treasury and Resources:

But, of course, I worked on an assumption that Planning minutes should be open and be published and moved to A. I think I am correct in saying that my memory serves me that we were always attempting to put stuff in the public domain as opposed to withholding it.

Mr. J. Mills:

What might you want to put in Part B? Perhaps I should ask the Deputy Chief Executive that.

Deputy Chief Executive:

Part B would predominantly be areas where the Committee were being asked to form a view, but not necessarily at that stage take a decision. So some of the large ... so they are looking at from a Planning side of it, there could be occasions when an application was in process had not been determined yet. So if it was impacting on a policy then that would have gone to Committee. In terms of something like the waste strategy then it was so big that it needed to go to Committee to get views at various stages. Clearly, that was not policy that was ready for the public domain because it was under consideration and under construction.

The Minister for Treasury and Resources:

That is correct from a policy point of view; policy under formulation would certainly be part B. In respect of individual planning applications, all of these things have been significantly strengthened since then...

Mr. J. Mills:

I realise that, yes.

The Minister for Treasury and Resources:

But the Committee did used to give pre-application advice. I think that is what it is now called; I cannot quite remember what it was called in those days. But where there was effectively an application that soundings were being taken from the Department and where officials or planning officers would wish to discuss that with the Committee there might have been occasions where pre-application advice would be under part B. But all actual applications, because they are in the public domain and they are advertised and all the rest of it ... and we were well aware, one of the uncomfortable situations that I inherited was the States had passed a new law which was designed to strengthen the whole of the planning application process making it more transparent, more open, putting up site notices, all the other new reforms, and yet another issue was this new law was incapable of being brought into force because there was one aspect of it which had not received funding, which was the issue of the Planning Commission. That was the sticking point to bringing the new law into force. I remember spending quite a significant amount of time wrestling with this issue of dealing with the Planning Commission.

Mr. J. Mills:

That is not resolved yet, is it?

[09:30]

The Minister for Treasury and Resources:

It was resolved because we found a solution which planning appeals were going to be dealt with through the court process and the court process has dealt with planning appeals extremely well. The court system is the one-stop-shop resolution body of dealing with all sorts of things and jurors were able to be judges of fact and therefore were capable, in my view, of dealing with some of the planning appeals process.

Mr. J. Mills:

Okay. Jumping back to the part A/part B thing, the Planning Sub-committee met on 9th March 2005 to consider the Heatherbrae Farm application. It was formally pre-application advice and it was in part B. I doubt, or I am not saying you should have been aware of that, but it was in part B, which judging from

our analysis of the minutes was quite unusual, even for pre-application advice. Is that a fair comment here?

Mr. I. Clarkson:

Yes, the analysis that the Committee asked me to do indicated that there were between 4 and 6 part B minutes per annum recorded by the Planning Sub-Committee against an average of between 14 and 22 items per agenda with the Committee meeting on a 2 to 3 weekly basis.

The Minister for Treasury and Resources:

So that is 4 or 5 per annum?

Mr. I. Clarkson:

Per annum.

The Minister for Treasury and Resources:

So the presumption is because you were dealing with applications, am I right in saying that even pre-application advice would be under A?

Mr. I. Clarkson:

The general analysis was that both pre-application advice and in principle applications both appeared as part As before March 2005 and after March 2005; regularly.

Mr. J. Mills:

It depends whether one makes much of this or not, because I know from my time working with the States, part A and part B could be slightly confused. So, the difference here is that in the former times neither was published, but this was. But let us note that. The other point we want to note about that application, which you may want to comment on, is the fact that in the minute itself there was no reference at all to Reg's Skips Limited as the relevant company for whom this permission was to be given, although there were quite a lot of references to it in the officer report presented to the Sub-Committee. So, whoever would have seen the minutes would have been perhaps a little in the dark as to what was being proposed. If we just make that statement for the record, really.

The Minister for Treasury and Resources:

I mean, I was not ... the duties of chairing the Sub-Committee was delegated to the Vice President at that stage and I would not have been routinely involved in ... I think that I was given the agendas of the Sub-Committee, but out of courtesy really with the volume and scale of work, but I would not have sat there with the agenda and redone the hearing. I have to say I have heard the fact that it was part B and that is unusual. If it would have been brought to my attention I would have asked a question... but it is easy to say that with the benefit of hindsight.

Mr. J. Mills:

Yes, indeed. We will say no more about it, but just note that because there were some slightly unusual features about that. Of course, the Sub-Committee was then chaired by Mr. Dorey.

The Minister for Treasury and Resources:

Also, in relation to that Sub-Committee hearing, I need to be absolutely clear and say that when I chaired the full Committee in March dealing with the previous Homestead ... sorry, in May 2004 that was the full Committee of which the Connétable of St. John had made an opinion about Homestead. I put in place extremely tight rules and strengthened the guidance for individual members in their conduct of the way in which they dealt with individual applications. Now, the former Deputy Taylor, who was a Sub-Committee member, had a relation of a skip company, declared an interest and withdrew. The

other member of the Sub-Committee

Mr. J. Mills:

Sorry, in respect of Homestead?

The Minister for Treasury and Resources:

In respect of Homestead.

Mr. J. Mills:

Yes, because the same happened in respect of Heatherbrae with Mr. Taylor.

The Minister for Treasury and Resources:

Exactly. The other member of the sub-committee was Mr. Dupré, who did not take part in the Homestead application because he had already opined in public about it.

Mr. J. Mills:

About the application or about the company?

The Minister for Treasury and Resources:

Yes. I am sorry to say this, but I am uncomfortable in now understanding that you had a 3-person sub-committee, one of which declared an interest and withdrew, 2 of which remained, one of which had ... and it is important to ask if there ... I do not know whether or not that was right or wrong, but we endeavoured and put in place much tighter guidance to Sub-Committee members and panel members about their conduct and what they should be doing. I mean, they must have the perception of absolute impartiality in adjudicating any application.

Mr. J. Mills:

Thank you for raising that point. We will note that and review it as we go. Can we just then jump forward a little bit, still on the Reg's Skips case, and after ... the application was granted; I am not going to dwell on that. We have got on record how it was done; it was done under delegated authority after the decision in principle by the Sub-Committee. Then about 9 months later there were complaints and another process of ...

The Minister for Treasury and Resources:

But it never came back to the full Committee.

Mr. J. Mills:

It never came back to the Committee, no. It never came back.

The Minister for Treasury and Resources:

There is a question mark in my mind about that, of course.

Mr. J. Mills:

I think there is a question mark in our mind as well, so we note that. Now, we are jumping forward now to 2006, which is after you left that role and you become Minister for Economic Development under the new regime. At the point in about July 2006 there had been a process of complaint about the operation of Reg's Skips at Heatherbrae Farm. There was a lot of to-ing and fro-ing between complainants and the owner of Heatherbrae Farm and Reg's Skips as the tenant and the Planning Department and so forth. The Minister, Mr. Cohen, had gotten involved in various ways and we learnt that in about July 2006 he got in touch with you and sought to delegate his consideration of the case to you as Minister for Economic Development. You appeared from papers ... you seem to have been rather puzzled by this

and I think you politely declined. I just wondered if you could put any flesh on that for us.

The Minister for Treasury and Resources:

Well, I was not being asked to adjudicate as Minister for Economic Development, but as Acting Planning Minister. When a Minister is absent from the Island he or she must always delegate his responsibilities and powers to another Minister. I have regularly been the interim Planning and Environment and indeed lots of other Ministers in the absence of Ministers. I have made, when Senator Cohen has been absent, one or 2 planning application decisions in his absence. From memory, I think that he was going to be absent at the time which a decision in respect of Heatherbrae Farm was going to be made. I would, in all cases, be meticulous in my understanding of the reasons why I am being asked to do something and be briefed by officials and certainly not engaging in discussions with the Minister himself about it. So I will have asked: "Why am I being asked to do it?" From memory, I think the issue fell away and I do not know for what reason. But I was certainly asked and I ...

Mr. J. Mills:

So you did no decision making? That was the point.

The Minister for Treasury and Resources:

I did no decision making, but I think I recall receiving ... I think that it had been known that I was going to be asked to make a decision and I think I received a representation from the applicants or those involved.

Mr. J. Mills:

Okay, good. Now, can I jump ahead again now please, still on the case, jumping right ahead now because you fall out of account with your new duties as a Minister, but if we can jump ahead to 2009 and the debate in the States on the proposition by Mr. Shenton that Mr. and Mrs. Pinel should be reimbursed and so forth. Then there were 2 debates: there was a debate in April of that year about the proposition, and the proposition was defeated and that then led to the Committee of Inquiry proposition coming forward. In the second debate on 13th May the actual proposal to have this Committee, you said in your speech that since the previous debate in April you had met with Mrs. Pinel in order to understand it all better. Can you just confirm that you did that and just enlarge that a little bit, please?

The Minister for Treasury and Resources:

Upon her invitation I did meet with Mrs. Pinel and I spoke to Mrs. Pinel on a number of occasions on the telephone when she telephoned me clearly about the matter.

Mr. J. Mills:

So you got in touch with each other after 1st April?

The Minister for Treasury and Resources:

I will be totally honest and I just simply cannot remember; I would have to look back to see if I have got anything in ...

Mr. J. Mills:

That is the implication of what you said because you refer to it in your second speech.

The Minister for Treasury and Resources:

Right. I would have to refer to my diary to see whether or not there are any diary entries. I put most things in my diary so I remember them because I look at the diary. I will have spoken to Mrs. Pinel on a number of occasions because of the difficulties that clearly were ... that Mr. and Mrs. Pinel were in.

Mr. J. Mills:

I would just like to enlarge on that a bit. Because in your speech on 13th May, and I am going to quote here if I may, what you said in the States, you said *inter alia*: “There are other issues, and I would just make some comments in the substantive debate because it is not appropriate to say them now [this was the debate on Roy Le Hérisser’s amendment] some comments in relation to the wider issues that I have just learned about in relation to the legal fees.” Then you went on to say that you hoped the lawyers involved would not press for payment until the inquiry was done, but also other inquiries into the way individuals could be put into the situation of owing so much in legal fees. Then you say, and I quote: “Perhaps other matters certainly that have been drawn to my attention, which in the public interest we would wish, I think, this Assembly to understand.” So you had obviously been quite influenced I think by these exchanges in that period between the first debate when you did not mention any of this and the second debate between April and May 2009. I just wondered if you can enlarge a little bit for us.

The Minister for Treasury and Resources:

I should first of all say that I was not aware but became aware that the late Advocate Lakeman was involved in that and Advocate Lakeman and I had been friends for many years, although I sadly had not spoken to him for some considerable time, but you just should know that there is a personal ... I have had a historic personal relationship, friendship, with Advocate Lakeman. I was extremely surprised at the extent to which Mr. and Mrs. Pinel had incurred legal fees in relation to resolution of their issues. There is an issue about the way in which local residents access and can achieve legal redress through the judicial system and it is an ongoing issue. The cost of legal services is a very significant issue. I do not think that I am the only one to have raised an eyebrow in respect of the amount of fees that have been incurred. Now, that is just a question. It may well be, as uncomfortable as it is to say, that the client sought to pursue the matters and to pursue attempts for resolving it. I have got no idea as to ... I am trespassing into delicate territory as to whether or not they were given an indication that they were likely to be successful in their appeal. Clearly, there is a very significant amount of money that has been spent on effectively fighting a legal case.

[09:45]

Mr. J. Mills:

So your reference to the public interest is really around that issue of the cost of access to ...

The Minister for Treasury and Resources:

Absolutely.

Mr. J. Mills:

Okay, understood.

The Minister for Treasury and Resources:

It is uncomfortable that individuals have been having to spend very significant amounts of money effectively arguing or attempting to see off applications that have been made by the Planning Committee for the removal of consents, et cetera. It all does not seem quite right to me, which is why this inquiry is being held.

Mr. J. Mills:

Could I then just sort of jump back and think about a policy issue now. We touched a moment ago on the question of the delay in the Planning Law because of the Planning Commission issue, which was about appeals really and how you sort out problems. You then said that you felt the solution of running an appeal process through the court system was good and satisfactory. Are you clear about that from what you have just said? This is really about this broader issue of how one does get justice, if you like,

through the planning system. We have had other evidence from other politicians on this point in recent days.

The Minister for Treasury and Resources:

The Shepley Review does say that the issue of the Planning Commission is something that needs to be reviewed. I think Mr. Shepley said: "However, I recommend the proposal for a separate tribunal should be revisited in due course." We made, through the very helpful intervention of the Bailiff and the Greffe in the court, a number of important changes to allow the court system to be accessible for people to be effectively applicants in person for it not to be entirely a lawyer-driven and ... nothing against lawyers, but lawyers are expensive. Other experts could appear within the court proceedings. It was effectively an ability for people to represent themselves, and architects and other professionals to represent themselves in dealing with it so that there would not be this very expensive lawyer versus lawyer situation. Flexibility has been put in place within the court system that is there. There are a number of examples where people have turned up in court and had their applications heard.

Mr. J. Mills:

Is there a case in your view for bringing into this frame some adjudicator or a person who has planning expertise along the U.K. (United Kingdom) model, for example?

The Minister for Treasury and Resources:

Well, the court system has ... we need to keep under review opportunities for strengthening and improving all the time. I am not close to this issue any more. However, there is, as Treasury Minister, an issue of cost. We have a track record of recreating large bureaucracies and tribunals and there is indeed ... comment has been made about other tribunals that have been set up and the cost associated with them and the quality of the decision making and the interplay between a lower tribunal and a court relationship. The court system, it is about the administration of who handles the court system. We have got the court system that is already in place that is accessible with a bureaucracy that handles it. The question is who sits and judges over the application? The court is able to appoint commissioners who have relevant planning expertise. The existing court system can be adapted and changed and made fit for purpose without creating a separate bureaucracy of a Planning Commission. In a small Island it is simply not possible to have a proliferation of sub-courts and tribunals. But where the existing appeal system can be improved then it should be looked at. I will say - and Mr. Shepley's report did say - notwithstanding the fact that I have no doubt that the Committee is going to find that there were opportunities for improvement in the way that this issue was handled, a lot has changed since this whole application was done. I believe that we made a lot of changes in respect of Environment and Public Services over the period of time and Mr. Shepley says that I think the Minister has made a lot improvements, but Planning will be controversial and the scale of applications means that sometimes, with the benefit of hindsight, things could be done better. I think in this case there are ... and I look forward to hearing the Committee's views on where it could be made better.

Mr. J. Mills:

Okay, well thank you for that. Turning to you, Mr. Richardson, for a moment, going back to when you started out as the Chief Officer for Planning as well as the other side of it. When we were making our initial inquiries and looking at reviewing the paperwork and so forth we received from the Planning Department, if you like, their office manuals, you know, procedural notes for staff and so forth. We were quite surprised when we opened this very large file, when we looked under E for enforcement we found there was nothing there at all. In fact, it was confirmed to us that at that time, this is 2005-2006, there was no office manual in place at all to govern the Enforcement function within the department. Is this something that was, again I will use the phrase again, on your radar as the incoming Chief Executive?

Deputy Chief Executive:

The Enforcement Section had, I think we have already described, along with the rest of Planning, a number of challenges in terms of managing its own workload and, my recollection - but it is fairly vague now because of the time - is that it was ... the number of staff in that section was very small. I think, from memory, it was only one or 2, but it ...

Mr. J. Mills:

There was only 2, but I am thinking more of the sort of process of enforcement, which of course is very, very critical in any aspect of regulatory policy.

Deputy Chief Executive:

I think it is fair to say that that was a time when that element of Planning - well, probably the whole area - there was very little in the way of written procedures and formalities, process. That is certainly one area which I can recall Senator Ozouf, as he was President in those days, brought in was to bring in some form of 4 eyes principle on paperwork and documentation. But I think - certainly my recollection is - that there was very little in the way of formal written documentation processes; not just for enforcement but for most of the areas.

Mr. J. Mills:

Okay. So you set about trying to rectify that?

Deputy Chief Executive:

I recall that we were trying to introduce a whole swathe of changes there to try to get some degree of control.

Mr. J. Mills:

Okay, thank you very much.

Mr. E. Trevor:

Can I comment?

Mr. J. Mills:

Edward, please do.

Mr. E. Trevor:

Following on from the point about enforcement, it would appear that the enforcement officers are anything but planners. Would you feel that to be a proper enforcement officer a person should (a) be trained properly and (b) should have planning experience so they understand the law?

Deputy Chief Executive:

I would agree with the first part; I think they need to be trained properly to do the job. I would not necessarily agree with the second part; that they have to be planners. An enforcement officer has to stick to process and procedure and follow it through. They clearly need advice from planners, the expertise, because of the nature of that particular investigation, but I would not necessarily agree they have to be planners.

Mr. J. Mills:

The enforcement process in relation to this particular case began around the end of April 2006; that was a few months before you then moved on. It began with a complaint from a neighbour which found its way to the Planning Department and one of the enforcement officers got involved. At what point did you become aware of this particular case? Were you aware of this from the outset in, I suppose, the end

of April or May?

Deputy Chief Executive:

No, I have no recollection of being aware of this particular case.

Mr. J. Mills:

Right. Were you acquainted with any of the protagonists? Do you know any of them?

Deputy Chief Executive:

No.

Mr. J. Mills:

Either Mr. Taylor of Heatherbrae Farm or Mr. Yates, the neighbour?

Deputy Chief Executive:

No, not directly.

Mr. J. Mills:

So you did not meet them or see them or anything?

Deputy Chief Executive:

No. This was mentioned to me yesterday, just for the record, that I attended the site. I have no recollection of ever attending the site, certainly in connection with this issue. The only recollection, but even then I am not sure that I ever went to site, would be that I was part of the Compost Working Party and we made many, many site visits to agricultural sites around the Island, looking for a suitable site for a compost operation. Whether or not this site was one of them I have no recollection. I even had to ask your Clerk yesterday where the site was, but I certainly did not know of it.

The Minister for Treasury and Resources:

If I may, Chairman, in relation to enforcement, it was one of the issues that I asked Mr. Shepley to review and, indeed, he comments on enforcement in his report. He says: "I was asked to comment on the enforcement function. The department received very little comment on it. Over 600 cases have been investigated in the last 2 years and they appear from the information I have been able to gather to be dealt with satisfactorily. Resources are currently adequate, but they are to reduce because of retirement and the Fundamental Spending Review."

Mr. J. Mills:

I did not think this was the deepest part of the Shepley Report somehow.

The Minister for Treasury and Resources:

No. But set alongside all of the other serious issues that were needing to be improved and strengthened at Planning, enforcement was not one of those that was particularly, I have to say, on my radar. What I did do when I was President is that I ensured that there was no inappropriate political involvement in enforcement. I was uncomfortable with what enforcement officers, fairly junior enforcement officers, did when I started, to attend upon Committee and ask for Committee direction in relation to enforcement. I thought that that was entirely inappropriate. That needed to be dealt with by officials and politicians should not be involved and I think I gave some guidance about that. Of course, enforcement can only be dealt with appropriately when there are appropriate permits and conditions on it and thereby lies a whole series of problems in relation to, from what I understand, this whole issue.

Mr. J. Mills:

Understood.

Deputy Chief Executive:

I can confirm I do recall a number of occasions enforcement officers having a view about political involvement in the role they were being asked to look at.

Mr. J. Mills:

Hostile to it or wanting it?

Deputy Chief Executive:

No, they were concerned that there was an enforcement issue that was being looked at and there was political involvement in that process and, clearly, it put the officer in a very difficult position.

The Minister for Treasury and Resources:

In respect of this?

Deputy Chief Executive:

No, I certainly do not recall this one at all, but I would say it as a generality it was something we were aware of.

Mr. J. Mills:

I understand your point. Okay. Edward, have you got anything else? Is there anything else you want ... I think we have probably covered the ground, but is there anything else you want to say? If this is in order, what I would like ... our next session is at 11.00 a.m. is it not? What I would quite like to do, with the Senator's consent, is to finish this session in a few minutes and then briefly go into private session because there are a couple of other points I want to ask, but I must ask you those points ... would that be all right?

The Minister for Treasury and Resources:

If that is what you wish.

Mr. J. Mills:

Is there anything that you want to ... you said some useful things to us and I think you have given us a good bit of context, I think, for the initial part of this process.

The Minister for Treasury and Resources:

I think I have given the impression - certainly I have given the context - of which the Committee was operating and which I took a Committee; a Committee with enormous controversy, with a massive workload, staff under pressure, attempting to fuse 2 departments together to improve communication. Mistakes were inevitable and did happen. I inherited a number. I think Planning has improved very significantly in recent years, but it must work on the basis of very clear reports with politicians very clearly understanding what they are deciding upon and it is incumbent upon officers, when asked to do something and bring something back to a Committee, it should be done. Having had the benefit of some research, because my memory is not that good, and reviewing some of the documentation and looking at some minutes, I am concerned about this issue that the matter for Heatherbrae Farm did not come back to the Committee to receive full, frank discussion, hearing, consideration and decision and it should have done. I do not think that I can say any more. If I can be of any more assistance to the Committee ... and I would also say this was not at the higher end of the policy list for the Committee to have a policy in respect, for example, of recycling or skip hire.

[10:00]

I think the presumption that I would have had at the time that these activities were best carried out at La Collette where noise and dust, et cetera, would be happening. The Committee was acutely aware of the controversy of recycling of building materials because of the extremely difficult situation with the Trinity infill.

Mr. J. Mills:

Absolutely. That is fine. Is there anything you want to add?

Deputy Chief Executive:

I would just echo what Senator Ozouf said in I think the 2004-2005 period when we joined Environment, Planning and Public Services together was a period of some difficulty. As I have already said earlier, I dealt with a fairly major complaint against the Department and senior officers. That took up a lot of time and clearly caused a lot of turmoil within the Department. It could have been potentially quite serious. Also, in the light of that I think we must bear in mind that at that time recycling waste management was not particularly high on the agenda. Clearly, post-2005 States debate and the significant public reaction to wanting more recycling, the whole issue of waste management and recycling segregation, et cetera, grew rapidly, but at the time when we were dealing with it and sort of pre the waste strategy debate, waste management was one of those that did not feature very high on anyone's radar screen.

Mr. J. Mills:

Yes, I think we got that impression, I think.

The Minister for Treasury and Resources:

Could I just, for the record, also just say that I was not party in anything to do with the Heatherbrae Farm application. Jersey is a small place, just as I know quite a lot of people around the table, and Heatherbrae Farm is a ... I was also involved in agriculture with my father and Mr. Taylor and I were acquainted. I think we sat on a Bull Proving Subcommittee of the Royal Jersey Agricultural and Horticultural Society at some stage. He is not a friend of mine ...

Mr. J. Mills:

A compost working group, perhaps?

The Minister for Treasury and Resources:

Possibly. But just to note that it would not have been any relationship in which I would have said: “I know Mr. Taylor but he is certainly not a friend of mine”, or anything like that. I would not have dropped myself out of the application.

Mr. J. Mills:

We note that, thank you. Okay.

Mr. E. Trevor:

The thing we have not asked upon is the policy in the 2004-05 period relating to redundant agricultural sheds. Which was we felt somewhat important as to the way in which the department was going and felt it should go. We thought it more of an interest to you because you may have an interest.

The Minister for Treasury and Resources:

It would be trailing some difficult periods of my life because it was such a difficult period to look back at all the notes of the banana skins and list of issues that we had to deal with during that period. Agricultural buildings ... I also declare an interest in having agricultural buildings now, not at that stage, but agricultural buildings were something which the Committee - I am sure the minutes clearly record - discussed on a number of occasions. The agricultural industry was changing. Heatherbrae Farm, I think, is an example of a farm which was a dairy farm which exited the industry because there was over capacity. There was all sorts of ... there was a waning of demand for smaller sheds and there was a steady flow of applications for very big, new sheds and it was very difficult to match the 2 issues. The Committee struggled with this, asked for reports, but it was one of those things that simply also was not able to be dealt with in the time. We did ask. I remember asking and expressing frustration that we did not get back information about the availability of agricultural sheds and it was one of those issues of policy development that needed to be sorted and it remains a live political issue as I understand it today.

Deputy Chief Executive:

Again, I can add to that. I can recall again, not in terms of time scale of exactly when the issue was debated or discussed, but following a number of Committee members’ concerns about this split between the industry saying they wanted new, large sheds and the smaller, original ones were no longer fit for purpose. There was, I can recall, a couple of representations at Committee meetings where an applicant was seeking permission for a larger shed and Committee members were challenging as to why they could not go and rent some smaller sheds of this equivalent area to the larger one. It was all about the changing nature of the industry, and it was a very difficult period of the industry wanting to move in a particular direction, but what was left was, effectively, they were saying was not fit for purpose and so, of course, any alternative use side of it then had to be considered, change of use, and in those days I remember a number of applicants, the change of use were not anything related to agricultural industry. They were for document storage or something like that. So it was quite a difficult period at that stage.

The Minister for Treasury and Resources:

I mean, farmers were entitled to get a change of use in respect of their agricultural buildings because, clearly, they had expended significant amounts of money.

Mr. J. Mills:

Yes, and that is what has happened at Heatherbrae.

The Minister for Treasury and Resources:

The difficulty is the word “dry storage” is a kind of quite comfortable word and dry storage indicates... it sounds quite nice, really. Innocuous.

Mr. J. Mills:

Why?

The Minister for Treasury and Resources:

Sort of, well, documents ... little car coming in and delivering some papers and leaving again. The description of the activity is important and if there is a need for any lessons to be learned about the description, I think these things have been improved but it is something that, perhaps, should be looked at, that it is very clear that the activity for which the applicant is seeking to use the building must be very clear. At this time I do not even think that there were site notices on the site.

Mr. J. Mills:

No, there were not.

The Minister for Treasury and Resources:

It is a whole new world, now. Planning meetings being held in public. Applications being published in the newspaper. That is something else we dealt with. We advertised applications in the *Gazette*, clearly set out, with a decent description, descriptions being put on site notices. Even if the description is wrong, then a neighbour would ask a question now. The world has significantly moved on from where we were.

Mr. J. Mills:

Yes, we have noticed that and we note it. Anything else?

Mr. E. Trevor:

I think that is it, thank you.

Mr. J. Mills:

Yes, okay. Let us end that public session. Thank you both very much indeed. We are going to break. The next public session will start at 11.00am prompt.