

STATES OF JERSEY

Committee of Inquiry Reg's Skips Limited

TUESDAY, 9th FEBRUARY 2010

Panel:

Mr. J. Mills C.B.E. (Chairman)
Mr. E. Trevor M.B.E, F.R.I.C.S.
Mr. R. Huson

Clerk:

Mr. I. Clarkson (States Greffe)

Witness:

Mr. M. Porter (Former Enforcement Officer, Planning and Environment Department:

Mr. J. Mills (Chairman):

I will just begin by declaring open the second public hearing of this Committee of Inquiry into Reg's Skips Limited's planning applications. The format is the same as we did last time before Christmas. We have got several witnesses coming to present to us today. The hearing is open to members of the public and people have already come in there. I hope you can hear all right. I think last time we had a slight problem with the way the microphones worked, but if there is a problem please do indicate and we will adjust chairs and so, so that everyone can hear correctly. The first witness is Mr. Porter, former enforcement officer from the Planning and Environment Department. I would just like you to stand up and you may either take an oath or affirm, which is your preference?

Former Enforcement Officer, Planning and Environment Department:

I will take an oath.

Mr. J. Mills:

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 would answer to your Almighty God at your peril.

Former Enforcement Officer, Planning and Environment Department:

I do.

Mr. J. Mills:

Welcome, Mr. Porter. We are going to start by asking you, and you were quite heavily involved in all the to-ings and fro-ings on the various planning issues concerning Reg's Skips Limited and I would like to start by asking you if you could firstly just briefly summarise who you are and where you have come from, in a sense, and when you became an officer of Planning, and how that came about and the training you had. Then, if you could from that just describe briefly, because we have seen quite a lot of papers from the files, how you viewed your involvement in the case and the sort of key issues. I think that will

then lead us into some questioning. We would like to understand where your sort of background and how you come to this, to start with.

Former Enforcement Officer, Planning and Environment Department:

I joined the Planning Department back in 2002 as an enforcement officer and prior to that, in fact 7 years leading up to that point, I was a police constable with the States of Jersey Police. My training is that of a police officer, if you like, researching, investigating, preparing reports, and by necessary progression any cases up to the courts. It was a fairly rounded experience in enforcement. As far as the Planning Department is concerned, the enforcement officer's role is quite a broad one. It is different from the usual enforcement at the police service, I would say, in that it was not necessarily about trying to find people doing wrong. It was a case of where we have found people that were in breach of any planning infractions that we would work with them and anybody else we could do to try and resolve the issue. It was not primarily about reporting straight to court. It was more a case of resolving issues. The enforcement officer with the Planning Department would work very closely with the planning officers. The planning officers would be considered to be the experts, if you like, in the application of the planning law or indeed the building bylaws. I suppose the enforcement officer's role is to limit where it can any issues there occurring at present and resolve them where it can, and when there needs to be a continued support to resolve issues, maybe through further applications or review with planning officers, then it would be researching and supplying the planning officer with information to help them. In relation to Heatherbrae Farm, I became involved at the end of April 2006 and followed through really until I left the Planning Department in June 2007, the following year. Initially I received a call from a Mrs. Yates of a neighbouring property, in relation to concerns to do with Reg's Skips operating from Heatherbrae Farm and the nuisance that was presenting Mrs. Yates' property. This was also backed up at the time by an e-mail through to Elizabeth Ashworth, a planning officer, from Mr. Yates which described very well a number of issues that they considered were in breach of the original planning permit. My involvement then was to visit the farm and research with the existing planning approvals to see whether the complaint was justified and to see whether there were breaches of the conditions that were attached to that planning approval and then explain those or detail those back to the planning officers to decide what the best course of action would be. Again, referring back to the enforcement officer's role, it is very much one of trying to resolve issues and it is very much working closely with all those involved and certainly with Mr. Taylor who was the owner of the site, the complainants, Mr. and Mrs. Yates, and Reg's Skips, Mr. and Mrs. Pinel. My involvement followed through for a number of weeks in trying to resolve initially what was described as the intensification of use, the difference in the way that the company was operating at St. Peter, as opposed to the intensification or the increase in work that they were now carrying out at Heatherbrae Farm, and that was probably the primary concern and how that may be in breach of the main... I think it is condition 1 of the approval. Other issues were to do with the timings. I believe, from memory, the planning approval was 8.00 a.m. till 6.00 p.m., forgive me if I am not perfectly accurate with this, but in fact the company were starting to work earlier in the morning, probably 7.00 a.m. and working through into the evening. I remember when speaking with Mr. Pinel that there was one particular final job each day which caused a lorry to come in about 7 o'clock, from memory. I discussed those issues with Mr. and Mrs. Pinel and with Mr. Taylor. They were very helpful. They tried their best to reduce the operating hours and to reduce the nuisance however there was a concern, as I say, to do with the intensification and how we might overcome the fact that the company was now employing a mechanical digger to sort the skips, as a direct result of now having more work to do and it was no longer something that was viable by hand. I have here my enforcement notes which I gave to the Planning Department prior to this Inquiry and it is something that I keep, and it is old dog tricks I suppose. As a police officer you would have a pocket notebook, as an enforcement officer I kept a running tag, if you like, of the various involvements that I had. Is it okay for me to refer to that?

Mr. J. Mills:

Please do. We have received that as part of the bundles that we have had and it will become one of the public documents at the end of this inquiry.

Former Enforcement Officer, Planning and Environment Department:

In one of my early discussions with Mr. Pinel in or around 3rd May 2006 we discussed why the company was now having to employ a mechanical digger and it was explained that, I think at La Prairie was the old site, the company had employed Abbey Plant to sort some of their skips and the fact that the La Prairie site was more to do with the storage of skips than sorting. Once the company Reg's Skips had received their own depot, and again this is very much from memory, I think there was an issue with Abbey Plant that they would no longer sort skips for Reg's Skips and for that reason I think that Mr. and Mrs. Pinel were forced to have to find solutions which were to sort their own skips. Mr. Pinel was very helpful and my notes at the time said that he agreed that he had increased his operation from 3 to 4 skips per week to a maximum of 8 skips a day at Heatherbrae. He did say, and I quote from my notes: "We cannot go back to sorting by hand." But that being said, I have to say that Mr. and Mrs. Pinel were very helpful in trying to fall back within the requirements of the planning permit and they did, from that, adjust their operating hours back within that time and also made redundant, I believe at that point or very soon afterwards, the mechanical digger which they had been using to sort the mixed materials. Through the following months I did receive numerous complaints from Mr. and Mrs. Yates, the neighbouring property. It is fair to say, I think, that probably one of the most emotive subjects will be how people's private properties are affected in any way and it was quite clear that Mr. and Mrs. Yates were very upset by the way that they saw that Reg's Skips and their sorting operation was affecting their property, which I think elicited quite a few emails, telephone calls and so on and so forth from them to see what the department was doing to resolve the issues. Again, in trying to reduce the impact and to try and work a way of resolving the issues then we responded as much as we could to Mr. and Mrs. Yates to keep them informed, of exactly what steps the department were taking. That initial intervention, I recall, elicited an application to vary the conditions on the permit. There was concern, of course, from Mr. and Mrs. Yates that this would effectively see a possible approval of any intensification or alteration of timings, increasing times of operations at the site, which again attracted quite a few emails and various correspondence to see what the department was doing. Now, that application to vary the conditions, like any other application, was public in the fact that it would be advertised in the normal way and Mr. Yates was advised as such that an application would be coming forward and he and his wife, should they wish, could raise concerns or their feelings to the Minister for his consideration. I believe at the time Mr. Yates was trying to press the department to stop the work all together on site by way of a stop notice, which the department did not have the authority to do so at that time with the Planning Law 1964. It allowed for enforcement notice but not for an immediately stop notice. I think that was something that Mr. Yates was finding difficult to appreciate. Nonetheless we did ask for his co-operation and you can see it in the various emails that I have asked him to bear with the department and to allow this request for reconsideration to be considered before pressing ahead. There was then an issue of a challenge, I believe, on behalf of Mr. Yates to the original approval of the Minister or the Committee to allow Reg's Skips to move to Heatherbrae Farm, which is separate but it is probably important to cover that because I think it details the sorts of inquiries the department was getting about these issues. It was a challenge by Mr. Yates to the original approval which was taken to the Royal Court and I believe that it was found in favour of the department in that Mr. Yates' request to have that approval rescinded was out of time and it needed to be made within a certain timeframe, I think it was 3 months, again that is just from memory. For those reasons the application was allowed to continue in its present condition and the Pinels were allowed to continue to operate from Heatherbrae Farm. The request to reconsider was delayed for a number of reasons. I do not know that really I am the best person to explain why the request to reconsider was delayed; only that it was.

Mr. J. Mills:

I think we will be able to ask other people about that. I think we are keen on your particular role.

Former Enforcement Officer, Planning and Environment Department:

On 20th September 2006, the Minister visited the sites with Elizabeth Ashworth and I and at that time decided to defer again the decision for a period of 3 months with a number of conditions attached to that 3 month period, if you like. Would you like me to detail what those conditions were or are you happy that ...?

Mr. J. Mills:

I think we have got that on record already.

Former Enforcement Officer, Planning and Environment Department:

The application was deferred for 3 months and it continued within the various conditions applied by the Minister. Again, this was to the annoyance, I suppose is the best way to put it, of Mr. and Mrs. Yates and again we did receive numerous calls, I suppose, or contacts that the company was not quite operating within the guidelines. It is fairly honest, I think to say, that some of the conditions were fairly difficult to enforce unless we were there 8 hours a day as an enforcement team, which of course was quite difficult, but nonetheless I do feel that my communications with Mr. Taylor, certainly Mr. and Mrs. Pinel, showed that there was a co-operation there and that there was no absolute defiance of those conditions, I think is probably the best way of putting it. The application was then dealt with at the beginning of January in a meeting between myself, Elizabeth Ashworth and Paul Nichols, the then Chief Executive of the Planning and Environment Department, and the Minister, Senator Cohen. The Minister decided to refuse the request to vary the planning conditions and it was agreed then that an enforcement notice would be served.

[11:15]

That enforcement notice, which you should have a copy of, detailed the reasoning and the requirements specifically to cease the employment of a mechanical digger in connection with the company's sorting of mixed skips and to cease the said intensification of operations and reduce the quantity of skip sorting to that described within condition 1 of planning permit P/2005/0243 and limit the hours of operation of Reg's Skips Limited to those authorised in condition 4 of the same permit. I took an unusual step, I suppose, in this case in recognition of the circumstances and I invited Mr. and Mrs. Pinel into the Planning Department. They wished to bring with them their advocate, which I believe was Adam Clarke. Myself and Elizabeth met with them the following day on 10th January and I served the enforcement notice there in person by hand, and explained to them exactly what the permits meant, as required by the Planning Law. There was a conversation at the time which challenged, I suppose, why we had insisted there was an intensification in use and I think our position at that point was the discussions I had had with Mr. and Mrs. Pinel back in May of the previous year, that there was now a sorting business which no longer employed a separate company to sort the skips for them and there was an intensification of that use. Mr. and Mrs. Pinel at the time had said that they could prove that that was not the case and they had sorted a similar amount of skips themselves at the St. Peter's site. I had given an undertaking at that time that if that was the case and they could evidence that that was the case then I would take that information back to the Minister because effectively the enforcement notice would be incorrect and I would recommend to the Minister that he withdraw it. I do not know the reasoning why but that information was never forthcoming. Had it been, and had it been suggested or proven that there had not been intensification of use then that enforcement notice would have been withdrawn at that time. As there was no information forthcoming, with the information we received from Mr. and Mrs. Pinel and Mr. and Mrs. Yates I had no reason to deviate from that course of action and continued. Shortly afterwards, the following month, I think I met again with Advocate Clarke and Mr. and Mrs. Pinel who wanted to view the files to the property, which we allowed them access to, and at a time shortly after that, which I do not have written in my notes, but there was, I believe, an appeal to the

Royal Court against that enforcement notice. The process within the Planning Department was at that time that any appeals were dealt with by a separate section of a professional planning officer, let us say, rather than the enforcement team itself. At that point, I suppose, my dealings ended other than updating the other officer, which would have been Roy Webster, a planning officer, with any information that I had gathered through my dealings with this case, and I left the department to move to a different section of the States in June 2007.

Mr. J. Mills:

Thank you very much for that brief introduction. Can I ask a few general questions first about how the enforcement function worked in the Planning Department in your time? You said you worked very closely with the planning officers, did you have any “Chinese walls” between your enforcement function and their planning policy function or were you literally almost in the same office?

Former Enforcement Officer, Planning and Environment Department:

Absolutely, it is a partnership. The function of the enforcement officer is a policing function. It is a police officer’s function, and it is very different from the role of the planning officer and I think it would require the planning officers to be trained in the various requirements of policing and reporting to the various complications of taking cases through to the courts.

Mr. J. Mills:

To whom did you report?

Former Enforcement Officer, Planning and Environment Department:

I reported to the Assistant Director of Development Control who, again, is in charge of the planning officers.

Mr. J. Mills:

Who is that?

Former Enforcement Officer, Planning and Environment Department:

It is Peter Le Gresley in charge of the enforcement section and the planning section. It was one department if you like. One section.

Mr. R. Huson:

He wears 2 hats?

Former Enforcement Officer, Planning and Environment Department:

He wears 2 hats, yes.

Mr. J. Mills:

I am just jumping a bit here, you refer to the conversation you had with Mr. and Mrs. Pinel and Mr. Clarke after the enforcement notice was served and you said if they could provide this information you, you said, would be prepared to advise the Minister to withdraw the enforcement.

Former Enforcement Officer, Planning and Environment Department:

Yes.

Mr. J. Mills:

Would you go straight to the Minister on that or would you have to go through Mr. Le Gresley?

Former Enforcement Officer, Planning and Environment Department:

I would always go through Mr. Le Gresley but certainly in that sort of a case, if we serve an enforcement notice on information which we believe to be correct and other information came forward which shows that it was not then I do not think there would be any hindrance in taking that straight to the Minister.

Mr. J. Mills:

My next general question, what was your access to, and what was the availability of, legal advice in the work that you did as an enforcement officer?

Former Enforcement Officer, Planning and Environment Department:

We were approved persons in the sense that the Law Officers Department, the Solicitor General, the Attorney General, were willing to accept correspondence directly from the enforcement team. It sounds peculiar but there is the approved list, as you know.

Mr. J. Mills:

I understand. But was there a lawyer within the department?

Former Enforcement Officer, Planning and Environment Department:

Not within the department, no.

Mr. J. Mills:

So where did you go for legal advice when you wanted it? You went to the Attorney General?

Former Enforcement Officer, Planning and Environment Department:

We went to the Attorney General. More often than not that would be dealt with by the Solicitor General or one of her team.

Mr. J. Mills:

Did you find that satisfactory that you could get advice when you needed it? I know they are always busy but ...

Former Enforcement Officer, Planning and Environment Department:

There is a huge amount of information within the departments and many of the cases that you come across day to day in enforcement law have always been dealt with in some shape or form in other cases, and I think we rely on information that we have gathered as a professional department. But, yes, I think the relationship with the Law Officers' Department is very good but, yes, they can be very busy from time to time and there are delays.

Mr. J. Mills:

Did you take advice from the Law Officer's Department before you recommended to the Minister that the enforcement notice should be issued?

Former Enforcement Officer, Planning and Environment Department:

No, because we did not think at the time or my impressions at the time is that the information was sound enough to show that there had been intensification of use. That was not just information we had from officers within the department but it was corroborated by Mr. and Mrs. Pinel in their conversations with me at the beginning of May.

Mr. J. Mills:

Were there, to your knowledge, position papers or policy papers within the department that analysed the concept of intensification in relation to any business, not just this business in particular? Is this something which was in your consciousness, the concept of what intensification of a business might

mean?

Former Enforcement Officer, Planning and Environment Department:

This is something I suppose that we would ... it is part of that relationship between the enforcement team and the planning officers that these are the things that we would discuss and more often than not there would be historical cases, let us say, or previous experience of what would be considered to be intensification of use or not. In this particular case it was decided that there had been an increase.

Mr. J. Mills:

It was decided. Who decided?

Former Enforcement Officer, Planning and Environment Department:

This would have been between, I suppose, myself, Elizabeth Ashworth, the then chief executive, Paul Nichols. He was at that meeting to determine the request to reconsider the application or the conditions, and the Minister.

Mr. J. Mills:

Did you have any other case on your desk at that time which raised the same issue about intensification, for example, a shop which had increased its turnover so there were more deliveries and more footfall and so forth or any other business in the Island which was doing very well, at a time when the economy was of course doing very well?

Former Enforcement Officer, Planning and Environment Department:

This is 4 years on obviously, I cannot say. The work loadings within the department were moderate I suppose in that we would normally have something between 30 or 40 cases on the go at any one time. Some of them very, very minor waiting for various applications to come in. Some more serious. I cannot say that I specifically had at that time cases of a similarity but I had dealt with other cases of intensification of use. It was something which did come up from time to time but it was not necessarily ... this was probably one of the only cases that I dealt with in the 5 years at the department that required an enforcement notice to be served.

Mr. J. Mills:

Sorry, can you say that again please.

Former Enforcement Officer, Planning and Environment Department:

I think it is probably the only case that I had in the 5 years that required an enforcement notice to be served to reduce an intensification of use. As I said at the beginning of today, the enforcement officer's role is to resolve issues not necessarily resort to formal action.

Mr. J. Mills:

A couple more questions and then I will turn to my colleagues. You said a few minutes ago that after the Minister had issued the enforcement notice on your advice you then had a meeting at the offices with Mr. Clarke and the Pinels when you went over the ground and you said you actually served the notice at that point. You then said you had this discussion about the question of intensification and you said that if you received the evidence they said they had that it was not intensification you would recommend to the Minister to withdraw the notice.

Former Enforcement Officer, Planning and Environment Department:

Absolutely. Yes, because it would be pointless for me to have information that would suggest that we serve an enforcement notice incorrectly if it was available. It is important that that information go back to the Minister because the enforcement notice would have been defective.

Mr. J. Mills:

Why did you recommend the issuing of the enforcement notice before you had taken that step of talking to the Pinels about the question of intensification?

Former Enforcement Officer, Planning and Environment Department:

I had talked to the Pinels a number of times about the intensification of use. I think I referred to a meeting that I had with them on or around the, let me have a look... It was just after the 3rd, probably 8th May, I believe. I will read my notes: "M.P. visited the farm and met with ..."

Mr. J. Mills:

Sorry, just remind me of the date please.

Former Enforcement Officer, Planning and Environment Department:

This would have been on my notes, 3rd May 2006, if you follow that email down to the next horizontal line you will see a paragraph of my text starting: "M.P. called ..."

Mr. J. Mills:

The clerk will find it.

Former Enforcement Officer, Planning and Environment Department:

It says here that: "M.P. [being myself] visited the farm and met with Reg and Mr. Taylor. Reg explained that his operating hours were from 7.00 a.m. to 6.00 p.m. or 7.00 p.m. at night and sometimes later. M.P. pointed out that the conditions attached to his permit restricted the hours to 8.00 a.m. to 6.00 p.m. Monday to Friday and to 1.00 p.m. on Saturday. It was clear that Reg was not aware of this and instantly promised to reduce his operating hours to suit the permit. M.P. also discussed with Reg the change of his business operations since leaving St. Peter site. He agreed that his operation had increased from 3 to 4 skips a week to a maximum of 8 skips a day at Heatherbrae Farm."

Mr. J. Mills:

Can I just stop you there? What was the date of that discussion please?

Former Enforcement Officer, Planning and Environment Department:

The dates on that email was 3rd May. That was the day that I updated my records, that will have been the day of my visit, which would have been the 3rd.

Mr. J. Mills:

The date the enforcement notice was issued?

Former Enforcement Officer, Planning and Environment Department:

It was the following year. This was January of the following year.

Mr. J. Mills:

I note that, I have seen that in your document now. But when you got to the point of recommending to the Minister that the enforcement notice be issued at the beginning of 2007, you did not go back to the Pinels beforehand to have a further discussion or consideration, an attempt at resolution on the intensification issue, especially this point about their saying that they had evidence to demonstrate that it was not "intensification".

Former Enforcement Officer, Planning and Environment Department:

I mentioned the meeting when we served the enforcement notice and that conversation because it was

completely new. We had had various discussions. I visited the site a number of times and had discussions with both Mr. Taylor and Mr. and Mrs. Pinel. The fact that they had increased the amount of work that they were carrying out as a result of losing the assistance of Abbey Plant, there was no doubt that the work had increased yet at the time of serving the enforcement notice it was then brought to the table that actually: "We are just doing the same amount of work as we always have." This was something that was completely new. They had been spoken to a number of times about the intensification. There was no reason at all for them, if that information had been available earlier, not to have disclosed it earlier or even at that time give that information, as they had promised or they suggested that they would, to us to have the enforcement notice rescinded.

Mr. J. Mills:

You said earlier that you had discussions in the office about the concept of intensification but you were not aware of any particular policy papers or written analyses of the factors that might be taken into account on that?

Former Enforcement Officer, Planning and Environment Department:

This, I would say, is the experience of the Planning Department and this is part of their professional training, I would suppose, research and abilities. Their intensification. Something that they would describe whereas an enforcement officer might describe the various issues such as Judge's Rules, that would be fairly alien to a planning officer, which is part of my remit as an enforcement officer and vice versa.

[11:30]

Mr. J. Mills:

So you tested your proposition about recommending the enforcement notice, you tested that with your planning colleagues?

Former Enforcement Officer, Planning and Environment Department:

Yes, it was a continuing ... my notes would say that the various discussions were with either Elizabeth or Peter Le Gresley as a line manager, and even the chief executive. So there were a number of conversations and while I have referred to those in my notes here I think it is fair to say with this particular case that there were many more discussions that had happened in relation to this case before the department ultimately opted for an enforcement notice.

Mr. J. Mills:

I will hand over to my colleagues.

Mr. E. Trevor:

Can I ask about intensification please? You have referred to it on several occasions, under what legislation is intensification of use banned for planning purposes?

Former Enforcement Officer, Planning and Environment Department:

Again, I am not the best person to ask and I suggest that it may be more appropriate for you to discuss that with one of the planning officers, but my understanding is that an intensification of use is development. It is considered to be development for the purposes of the Planning Law. Development of course would require a planning application or planning approval. The fact that a business intensifies, increases its operation to that which it has approval, would be considered to be development. I think that is the best answer I can give you.

Mr. E. Trevor:

Thank you. Did you ever go to the St. Peter site? You referred to it early on in your evidence?

Former Enforcement Officer, Planning and Environment Department:

No. The St. Peter site was dealt with by a previous colleague. That would have been John Doublet, a former enforcement officer at the site, although Gerald Bisson, I believe he has already given evidence to the hearing, had a working knowledge of that site as well. My involvement came much after obviously when the business was up and running at Heatherbrae.

Mr. E. Trevor:

You have obviously dealt with a number of cases. I think you said you had 30 or 40 going on at any one time, some of which were major and some which were not, in how many cases did you in fact have the sorts of pressures put upon you as appeared to have been put upon you in this particular case?

Former Enforcement Officer, Planning and Environment Department:

By Mr. Yates?

Mr. E. Trevor:

By Mr. Yates indeed.

Former Enforcement Officer, Planning and Environment Department:

It is fair to say, as a police officer, as an enforcement officer of the Planning Department and with my present career that we, in any enforcement rôle, do receive pressure from those that feel affected. Whether that is a criminal offence or whether it is an issue which affects the home in this case. We do receive pressure. Now, I apply an even handed approach. While we may have a complainant who is particularly good at complaining you may describe, in that they exactly know and are willing to research the law down to the last letter. We may find that our responses to them are quite onerous sometimes and we would rather be getting on with the job than responding to concerns and complaints. But I would not say in any way that that would ever influence or change the outcome.

Mr. E. Trevor:

Did you get many complaints from other neighbours?

Former Enforcement Officer, Planning and Environment Department:

There was mention of another neighbour, but I think that it would be hearsay really because I think that came through the primary complainants that another neighbour was concerned. I cannot recall from memory ever receiving another written correspondence.

Mr. E. Trevor:

There was another complaint that was withdrawn according to the papers we have had.

Former Enforcement Officer, Planning and Environment Department:

I cannot say.

Mr. E. Trevor:

Did you not find it surprising that other neighbours really did not complain?

Former Enforcement Officer, Planning and Environment Department:

Not really. Not given the geographical location of what was happening. This was over the back fence of the Yates' family. It was very close to their property and the noise issue, for a start, is going to be heard more by the Yates' property than any other I would have thought purely because of its proximity. Equally the dust I believe was an issue in the dry weather. The clamp where the work was being carried

out to the rear of the old cattle sheds, to the back of there was open fields. So I suppose Mr. Yates, being as close as he was, was going to have borne the brunt of any noise or dust disturbance. So no I am not surprised at all that others did not complain.

Mr. R. Huson:

Can we just clarify exactly what is condition 1 on the original permit please? Can you read it out for us please?

Mr. J. Mills:

This is the 2005 consent for Heatherbrae?

Mr. R. Huson:

Yes.

Former Enforcement Officer, Planning and Environment Department:

“The owner of this site shall notify the department on the commencement of the use hereby approved on this site within 3 months of that commencement of the approved use at Heatherbrae Farm the operator’s existing sites on La Route de Beaumont to the east of the Tile Barn and northwest Field 816 shall permanently cease. The use of this site shall operate in the same way as the current site, as a skip sorting yard and for no other purpose.”

Mr. R. Huson:

What does the phrase “skip sorting” mean to you, Mr. Porter?

Former Enforcement Officer, Planning and Environment Department:

Skip sorting is sorting skips. It is mixing, separating off the various materials for disposal and recycling.

Mr. R. Huson:

Now, Mr. and Mrs. Pinel have said that they occasionally use a mechanical digger out at St. Peter but then we move on to the issue of when they moved to Heatherbrae they then gave up Abbey Plant for various reasons and then they bought their own mini digger to sort it. What I find difficult is that when a person is running a business, if they see an opportunity to move their business forward that they have to grasp that because when you are in business for yourself it is not always easy and this opportunity came along, and I think in their eyes they were not doing anything particularly different for what is actually worded in that thing, which says “skip sorting”. I am finding it hard that the Planning Department would come down on a business that is trying to look after their business, offer a service and then you have got this waste management thing as well to contend with that the States have put upon Reg’s Skips, and various other people, and then you come on to this word “intensification”. I think it is anybody’s right to grow their business. If someone said to me: “I cannot grow my business” I would say: “Well, I may as well sell it now” because the only way in business is, is one way and it is upwards, you never stay the same. For the Planning Department to say that they have to restrict the business... I find it very onerous. I can understand if they suddenly want to encroach on somebody’s land or they are doing something that is stock piling rubbish round the rest of the site or something like that, that is different. But within their square footage of their site they are trying to do the best they can within the hours ... all right, they did overshoot their hours but then they brought them back. They are trying to do the best they can within that thing, I find that difficult to ... it is a balance, is it not?

Former Enforcement Officer, Planning and Environment Department:

It is. I do not think that there is anything that the department is willing to restrict. What the department is there to do, and I may be straying a little bit beyond my professional position, I suppose, with this. But I do not think the department was ever trying to restrict a successful business but what it is probably

asking in this case is, is the site that you are at an appropriate place for you to intensify the use? Now, it was not able to answer that question at the point of my intervention because there had been no request of the department to consider an increase in what the company was doing. He had every right under the Planning Law to make an application to the Minister for him to consider a desire to increase what it is that they are doing.

Mr. R. Huson:

Really, does somebody have to ask to grow their business to the Planning Department?

Former Enforcement Officer, Planning and Environment Department:

I think yes. Again, I am probably overstepping the mark here on what really would be my professional position but let us say, for example, a neighbour at home decided that he wanted to fix a car, and sell a car on at the weekends to earn a bit of extra money. Let us say that he was successful in that and thought: "Crikey, I can earn some more money here, how about now I buy myself a dozen cars and start to ...". At what point does that become unacceptable and I think that is where ...

Mr. R. Huson:

But that is a change of use. That is not intensification. That is a change of use of his garden into a car lot.

Former Enforcement Officer, Planning and Environment Department:

It would be. It would be development but again at what point does there become that crossing the line of a company that is expanding, a company ...

Mr. R. Huson:

In that permit it strictly says "skip sorting".

Former Enforcement Officer, Planning and Environment Department:

Yes.

Mr. R. Huson:

It does not put a limit on it, it does not say you can only sort 20 skips a day. It says "skip sorting". That to me is growing one part of the business.

Former Enforcement Officer, Planning and Environment Department:

"The use of the site shall operate in the same way as the current site."

Mr. R. Huson:

It does not say the same level, it says in the same way.

Former Enforcement Officer, Planning and Environment Department:

No, but as I said from my meetings with the Pinels back in May that they accepted that where Abbey Plant was sorting their skips before they no longer were and that they were now sorting their own skips, and whether they were ... I think it was 3 to 4 a week now looking at 8 a day, or more a day, that is a considerable impact and I think that is the issue. I think, yes, that needed to be determined.

Mr. R. Huson:

That steps over the line?

Former Enforcement Officer, Planning and Environment Department:

I think it did, yes. But again, you are probably better asking the opinion of the planning officer who will

give a much more professional opinion on that.

Mr. J. Mills:

I think it is fair to say it is a little bit grey.

Mr. R. Huson:

I do not think there is any black and white on that one, is there?

Former Enforcement Officer, Planning and Environment Department:

It would be difficult to say. I suppose each case would need to be taken in its own context, I suppose. But with sorting skips it is noisy, it is a mucky business and certainly the impact of 3 or 4 skips a week to 8 a day was considerably noticeable by the complainant, so it is reasonably justified.

Mr. R. Huson:

The level of the other part of the business, that was not a problem for you, the actual skip delivery and all that sort of thing? That really was not a problem for you? It was more just really this thing with sorting the mix loads?

Former Enforcement Officer, Planning and Environment Department:

The complaint was not just limited. It was a very, very broad complaint. There were a number of issues to do with coming and going of the skips and chains on the skip lorries if you like, jingling back and forwards on the gantry. There was a number of various issues, many of which, such as that, were resolved by Mr. and Mrs. Pinel with various plastic sleeves I believe and resurfacing the roads to reduce the noise impact of those.

Mr. R. Huson:

Let us accept that there is an intensification of the skip sorting side of the business, if there is 8 skips a day potentially that is 16 lorry movements over a course of the day up and down that road. I know the site quite well because I go to Mercury Distribution quite a lot, 16 lorry movements in a day is not a lot.

Former Enforcement Officer, Planning and Environment Department:

No, but I think the original complaint had mentioned the noise of the lorries coming and going in the morning starting up and, of course, revving, which I think they need to do, lorries, to prepare the brakes, I think, is the issue. That I think was in addition to the main complaint, which was the noise of the skip sorting and what have you, but I think that those issues to do with the lorries coming and going was resolved by the fact that the road was resurfaced by Mr. Taylor which again meant that lorries were not popping up and down potholes, it was now on a brick surface. But those issues were resolved, I think quite reasonably, but nonetheless the skip sorting issue, the noise, the dust that was coming from that operation was causing considerable discomfort for the neighbouring property, Mr. and Mrs. Yates, and that formed the complaint.

Mr. J. Mills:

I would like to just come back on some of these points if I may. Firstly, the enforcement notice was issued in January 2007. In your enforcement notes you say on 9th October ... are these dates in the right order? On the penultimate page, we have got 09.10

[11:45]

Former Enforcement Officer, Planning and Environment Department:

It is 09.01, that is a typo.

Mr. J. Mills:

Forget that. It is not a relevant consideration. So the Minister took the decision just before you and then you issued the thing. I will not pursue that one. I would just like to go back to the intensification issue again, if I may, because I think this is at the heart of our concerns and I have to own to being slightly surprised by your answer to Mr. Huson's question, or it may have been Mr. Trevor's question, where you said that intensification at a certain level could be "considered to be development". I was quite struck by that. I just wonder if you could read out for the record please a paragraph from a memorandum from another principal planner at the Planning Department dated 27th October 2006 about a different case where he touches on this issue. I would just be grateful if you could read out for the record this paragraph, and it has a couple of lines over the page as well, just so we have it on the record because this goes to the heart of the issue. This was contemporaneous with your action on the Pinels' case.

Former Enforcement Officer, Planning and Environment Department:

Ok. "Intensification. Whether that use has changed to a point where a change of use has taken place through intensification is more difficult to gauge. There is no clear way of assessing this. It is clearly a matter of judgment and fact and degree but the onus in my view is clearly upon the department to demonstrate that such a use has clearly taken place, if it considers any action is justifiable. In my view it is not."

Mr. J. Mills:

That is in relation to the case in question.

Former Enforcement Officer, Planning and Environment Department:

Different case. "We have clearly accepted a long series of commercial uses on this site. It has not been a virgin field for decades. Having accepted these commercial uses we in turn appear to have accepted a recycling use. Once the applicant was aware of that it seems reasonable to me that he allowed his business to expand within the constraints of the authorised area. The definition of a recycling business, if he happens to have the ability to produce material more quickly than he did at the outset. I am not convinced that this can be said to be an intensification of use which constitutes a change of use. If someone operated a shop which at first only had 2 or 3 customers a day but then because they changed what they were selling increased the number of customers to 10 to 20 I would still regard the use of the building as being retail."

Mr. J. Mills:

Thank you very much. I mean the point I really want to get across here, which is that there was clearly within the Planning Department a debate about this. That is the sense I get. Would that be a fair comment?

Former Enforcement Officer, Planning and Environment Department:

Again, I have probably pushed this as far as I can as an enforcement officer, and in my layman's opinion. It is very much a planning issue, but I think in the case of a shop, then yes it is a shop, that is its primary use. But the impact of 10 customers over 2 or 3 is nowhere near the impact that a skip sorting company would have 3 or 4 skips a week to 8 a day. It is just a massive impact and I think that impact is something that needs to be considered, is the impact it was having on the neighbouring properties.

Mr. J. Mills:

I will pursue this with one of your colleagues perhaps, thank you very much. Can I then just turn briefly to the events at the point where the enforcement notice was withdrawn and just sort of ask you about that. Can you just repeat the sequence of events. You called the Pinels and Mr. Clarke came in and you

served the notice, that was on 10th January 2007. Can you just remind us of the immediate events then which led up to the withdrawal of the notice about 2 months later?

Former Enforcement Officer, Planning and Environment Department:

Remind you of the conversations that I had?

Mr. J. Mills:

No, just remind us of the sequence of events. Once you had issued the ... the enforcement notice was agreed, it was issued, you had a conversation with the Pinels about perhaps trying to, on this question of intensification, and you heard nothing more from them you said.

Former Enforcement Officer, Planning and Environment Department:

That is right.

Mr. J. Mills:

So can you just describe what then happened which led up to the withdrawal on 6th March?

Former Enforcement Officer, Planning and Environment Department:

The 10th is the day that I met with the Pinels and Mr. Taylor as well actually, was also present at that meeting. The 22nd, a call from Mr. Taylor to say that he had agreed or arranged for his drawings to be amended in accordance with advice given by Environmental Health. Now this started to stray over into Mr. Taylor exploring ways of reducing the noise impact and I believe, again this is going back some way, that Mr. Taylor had employed representatives to come up with ways of trying to reduce the noise issue. I think it was to do with covering over the roof. So that was that contact. On 6th February I met with Advocate Clarke and Mr. and Mrs. Pinel who wanted to view the files, which again the only difference with that file search was that I had removed the papers of judicial review. I did not think that was pertinent to Mr. and Mrs. Pinel, so I had removed those from the files. That concludes my enforcement notes. I believe at some point shortly afterwards an appeal was made to the Royal Court against the enforcement notice and, at that point, Mr. Webster, planning officer with the Planning Department, dealt with that process. He deals with any Royal Court appeals.

Mr. J. Mills:

So your involvement with the case ended at that point?

Former Enforcement Officer, Planning and Environment Department:

Effectively yes, apart from updating Mr. Webster with my various involvements and any discussions we would have there to satisfy any queries he had.

Mr. J. Mills:

What were your thoughts about the set of arguments which led to the withdrawal of the notice?

Former Enforcement Officer, Planning and Environment Department:

If I remember rightly, we had a challenge from Advocate Clarke and a number of questions were asked. Because we normally would in serving an enforcement notice query whether it was valid or not - the arguments we were putting forward. I do recall writing to the Solicitor General and asking for advice. Before we received that advice back, if I remember correctly, the appeal had been made and I think the response came back directly to Mr. Webster, the answers to my queries and the queries that Mr. Webster had in relation to the appeal.

Mr. J. Mills:

So you approached the solicitor for advice on it before you were notified of the appeal?

Former Enforcement Officer, Planning and Environment Department:

Yes, I think that is the sequence. I believe, again this is ...

Mr. J. Mills:

What were you asking advice on if you had not at that point had an appeal?

Former Enforcement Officer, Planning and Environment Department:

I do not have the correspondence with me, but I believe that there had been a challenge by Mr. Clarke saying that ... it may have been on the intensification issue. It may have been, I cannot recall.

Mr. J. Mills:

At that point you decided that you should seek legal advice?

Former Enforcement Officer, Planning and Environment Department:

I think it was decided, yes, we would ask where we are with that enforcement notice.

Mr. J. Mills:

Your relationship with Mr. Webster, Mr. Webster was the principal planner who dealt with the court?

Former Enforcement Officer, Planning and Environment Department:

He does indeed. He deals with the planning appeals of any shape. In this particular case, obviously, he took that case directly from myself and Elizabeth.

Mr. J. Mills:

At the point when the decision was taken to withdraw the notice, what did you do? Did you have any further involvement?

Former Enforcement Officer, Planning and Environment Department:

I do not believe that I did, no. I do not recall that I had, I may have done. Again, this is going back a few years but I do not think that I had.

Mr. J. Mills:

Did you have communication with the complainants, to your recollection?

Former Enforcement Officer, Planning and Environment Department:

Nothing that is in my notes would suggest that I may not have but there again we did receive quite a few communications from the complainants and I think I may have, but I cannot say that there is anything that would have had any bearing.

Mr. J. Mills:

I just want to explore, this is actually quite important for our investigation. The decision letter on the withdrawal of the enforcement notice was sent to Advocate Clarke by Mr. Webster on 6th March; is that correct, clerk?

Clerk:

Yes.

Mr. J. Mills:

Thank you. The files that we have been given say that on the same day, 6th March, yourself and Mr. Webster went to call on Mr. Yates at Ogier's offices...

Former Enforcement Officer, Planning and Environment Department:

Ah. Yes.

Mr. J. Mills:

... in town to inform him personally of the decision. Does that hit your recollection now?

Former Enforcement Officer, Planning and Environment Department:

Yes, it did. That is right.

Mr. J. Mills:

Can you recollect what you discussed and said?

Former Enforcement Officer, Planning and Environment Department:

It was an explanation ... yes, I remember it now. It was Don Street. I went to his offices to explain to him why the department was rescinding or the enforcement notice had been overturned. I cannot recall exactly which one it was, whether we decided to withdraw it or not. We went to him personally because it was obviously going to be ... I think the idea was to explain to him personally why it was that we could not follow it through any further. Why we had done everything that we could do, and that was on the advice of the Solicitor General. It is coming back now.

Mr. J. Mills:

Sorry, the advice of the Solicitor General was ...

Former Enforcement Officer, Planning and Environment Department:

We had received some advice from the Solicitor General.

Mr. J. Mills:

To withdraw or to go and visit Mr. Yates?

Former Enforcement Officer, Planning and Environment Department:

No, not to visit Mr. Yates, certainly not. This was to do with the enforcement notice. I cannot recall, again you have me at a disadvantage, I do not have the papers in front of me to say exactly.

Mr. J. Mills:

In your opinion would such a meeting be normal practice for an enforcement officer?

Former Enforcement Officer, Planning and Environment Department:

This was a very difficult case. I think this was a very difficult case. Again, it is back to what I said in the first instance. It is about resolving issues. I think on a number of occasions I had attended Heatherbrae Farm and spoken to Mr. Taylor about various issues with Heatherbrae. I do not think that, in this particular case ... it is not something we do on every case but I think this particular one it did warrant that discussion.

Mr. J. Mills:

This was the only enforcement notice case you said that you had dealt with in your time at Planning.

Former Enforcement Officer, Planning and Environment Department:

I had dealt with several enforcement notices, many enforcement notices, but it is the only one in relation to intensification of use.

Mr. J. Mills:

I see. Was this the only case where a withdrawal of the enforcement notice happened in this kind of manner, which might have made it slightly unusual?

Former Enforcement Officer, Planning and Environment Department:

I could not say for sure. I cannot recall that we had ever removed ... no, I cannot say that we had. I cannot say for sure but I cannot recall ever withdrawing the enforcement notice. I cannot be sure, sorry.

Mr. E. Trevor:

I was going to ask, if I may, did you deal with any other skip companies or building companies which sorted skips during your time as an enforcement officer?

Former Enforcement Officer, Planning and Environment Department:

I had had involvement with another skip company, yes. That would have been WP Skips, various issues they come from time to time. I cannot recall exactly what the issues were, but that was to do with Broadlands in St. Peter.

Mr. E. Trevor:

Did you have similar sorts of problems on those occasions or that occasion?

Former Enforcement Officer, Planning and Environment Department:

No, not similar. Well, they are to do with skips obviously. There was always this ... it is never a popular enterprise I suppose but I would not say there was much that we could draw similarities from.

Mr. E. Trevor:

What about intensification in that case?

Former Enforcement Officer, Planning and Environment Department:

With Broadlands there was quite a history. Am I okay to discuss that openly here? There was I recall a long running involvement at Broadlands with that skip company although I believe it was Mike Stein a former principal planner that my dealings were with and that was to do with the way the company was operating, but I think it was agreed through the various approvals, and again this is a very broad explanation, with the various approvals that had been given by previous committees that that use was within the realms of an approved operation.

[12:00]

Mr. E. Trevor:

But even intensification, because earlier you said intensification is development. I do not necessarily agree with you, but you said intensification was development and therefore it needed a planning application.

Former Enforcement Officer, Planning and Environment Department:

I think my response has been that I cannot say it was to do with intensification, only that the sites at Broadlands, and again you have to forgive me, this is a number of years ago, and I cannot be accurate, if you have information that you wish me to read from I am quite happy to, but my knowledge of that was that the use of the site or how the site operated came into question and we found that the approvals that had been given and, for various reasons, had allowed the use that was happening on that site. It was very different to the Reg's Skips business. I am trying to be as helpful as I possibly can but I think that is probably the best answer I can give you, given this is a number of years on.

Mr. E. Trevor:

Thank you, Mr. Chairman.

Mr. J. Mills:

Two final points, and I think we can probably finish. Firstly, can you confirm or otherwise whether you had any acquaintance outside of the work environment with any of the players in this episode?

Former Enforcement Officer, Planning and Environment Department:

I think I had met with Mr. Taylor a number of times through various communications, work related. Mr. and Mrs. Pinel, I would say that I never met with them outside of work other than quite recently, I bumped into them on Sunday, purely coincidentally. Mr. Yates, when he had come into the planning office one day, recognised on my screen saver on the computer a car that I had, an historic car or an old car, which he made comment on and I have spoken to him on one or 2 occasions since then at various car show meetings. It is a small Island and of course we do bump into each other from time to time. But I think that is as far as our relationship would go, a professional one, and one that would be, I think, quite reasonable. Nothing untoward in that whatsoever.

Mr. J. Mills:

Finally, you are no longer in the Planning Department. You have moved on to higher and different things. For our benefit, have you any general thoughts you would like to offer about the way - that is with hindsight here - in which a case such as this was handled and developed, the processes that were brought into play in the department, the pressures and so forth. Is there anything that strikes you with the benefit of hindsight, I am taking this as an example, not necessarily specifically this case?

Former Enforcement Officer, Planning and Environment Department:

I think with this case it is fair to say that, yes, we did receive considerable pressure. Mr. Yates, I think he would probably appreciate me saying, is an informed complainant. That his concerns, his complaints were usually evidenced in some way with references to laws and what have you, and yes that did cause extra communication, more communications than would normally be necessary but that I do not think ever had any influence at all on the outcomes. They were always inevitable. The department with the change in use or the intensification, which again I know is a grey area and one would hope for more discussion, but it was a difficult case, that this did affect somebody's home quite considerably in their opinions. This was a businessman trying to make best use of his facilities and a company that was trying to expand. I think when you put all of those things together it does have the makings of a very difficult case to deal with. But I think the Planning Department is one of those that will always do everything it possibly can to reduce the issue through the compliance section and the enforcement section and to work with everybody, and I think that is exactly what happened in this case. Other than that, I do not think there is more that I can add.

Clerk:

Jim, just for the record, although I am not strictly speaking a party to the case, Mr. Porter will also recall that both he and I served in the States of Jersey Police together so he knows the clerk to your committee.

Mr. J. Mills:

We will dutifully note that. It is a small place, Jersey. Thank you very much, Mr. Porter.

Former Enforcement Officer, Planning and Environment Department:

You are welcome.

Mr. J. Mills:

Thank you for coming. That first session comes to a close.

[12:05]