

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

Mr. R. Huson

Clerk:

Mr. I. Clarkson (States Greffe)

Witnesses:

Mr. P. Thorne (Director of Planning, Planning Department)

Mr. P. Le Gresley (Assistant Director of Development Control, Planning Department)

Mr. R. Webster (Principal Planner- Appeals, Planning Department)

Mr. M. Porter (Former Enforcement Officer, Planning Department)

[11:09]

Mr. J. Mills (Chairman):

Just before everyone sits down, if we can just do the duty with the oath. If you could all raise your right hand. 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.

All:

I do.

Mr. J. Mills:

Please, take a seat. Just repeat for the record so we know who is here because there is no camera down there. On our side, it is the Committee, John Mills, myself, Chairman; Mr. Trevor; and Mr. Huson, and if you just each introduce yourself solely for the record, please.

Former Enforcement Officer, Planning Department:

Mike Porter, former Enforcement Officer with the Planning Department.

Director of Planning, Planning Department:

I am Peter Thorne, Director of Planning at the Planning Department.

Assistant Director of Development Control, Planning Department:

Peter Le Gresley, Assistant Director of Development Control at the Planning Department.

Principal Planner, Planning Department:

Roy Webster, Principal Planner, dealing with appeals.

Mr. J. Mills:

Thank you, and thank you all, gentlemen, for coming back. I realise that we have asked you once or twice or even 3 times in some cases but I think what is happening is that we are gradually understanding things a little better and we think there are probably a few points on which you can help us a little further so we will try and go through things in that way. I think what we would just like to start with is just going back to the original planning application in the early part of 2005. This is the application for Reg's Skips to go to Heatherbrae Farm. We have been trying hard to understand the process that led to this and I think we have heard from both Mr. Taylor, who was the applicant, and you, Mr. Le Gresley, as the Assistant Director of Planning, that there was contact from the planning officer at the time, Ms. Baxter, who has now left the Department, with Mr. Taylor who was the owner of the farm to, in a sense, initiate the process of the planning application and that this led to the planning advice, the pre-application advice being given in by the Sub-Committee on 9th March 2005. That is where, I think, we are at the moment but we just want to ask a little bit about the process around that submission, that pre-application advice, because one or 2 things strike as being slightly curious about it. Before I start, is there anything else you want to just say around that at the outset before we go into any questions?

Assistant Director of Development Control, Planning Department:

No, I do not think so, Chairman. We have tried to describe the process that was in place at the time which, as you know, no longer exists and we try to answer every question that you have asked. If you have further questions, I am happy to help.

Mr. J. Mills:

I think if you look at the process of the application, this is P/2005/0423, and it came to the Sub-Committee on 9th March for pre-application advice and we were quite surprised to discover 2 things, really. Firstly, that the minute itself was taken as a part B item in the Committee which seemed, on the investigations we have made, to have been slightly unusual and I would just appreciate your comment on that in a moment. Secondly, there was no mention in the resulting Sub-Committee minute recording this discussion of Reg's Skips Limited themselves as a company. We are also a little unclear about the policy approach which led to the final decision then being taken under delegated authority and not going back to the Committee. So I wonder if you could just take those in, maybe that is not the right sequence. We are trying to understand the process around this decision-making by the Sub-Committee.

Assistant Director of Development Control, Planning Department:

I will kick off on that. The general process question was what did we normally do at the time with these types of inquiries? There was an informal process in place whereby people who did not want to make a formal application at that stage would seek advice of the Department and, on occasion, the Department might feel that it would like the involvement of the Planning Sub-Committee and would refer the matter to that body, which is exactly what we did on this occasion. As to it being a part B item, Chairman, which is a confidential item on the minutes, we did, on occasion, use that device where, clearly, the applicant was not ready to publicise the intention and we just wanted to get a view from the Planning Committee. Hence, we would put it through without the formal consultation and the advertising and representations that we would normally undertake on a planning application, just to get a view from the Planning Committee, and that would usually be recorded as a part B item.

[11:15]

I have to say that there were not very many part B items and, indeed, the thrust of the planning process has always tried to be open and increasingly so since the 2002 Law came into force in 2006. So while it was not a usual process, it was not unheard of.

Mr. J. Mills:

But you are saying there is quite a number of other pre-application advice cases go through on part A?

Assistant Director of Development Control, Planning Department:

I would not know how many but there was some.

Mr. J. Mills:

But was there a particular reason why some were part A or part B or was it luck of the draw, so to speak?

Assistant Director of Development Control, Planning Department:

As far as I am concerned, they should have all been part B. Anything that was not a planning application should have been a part B item.

Mr. J. Mills:

That is a helpful clarification. Now, the second point is how the discussion was recorded because, again, we were slightly surprised that Reg's Skips were not mentioned in the record of the Sub-Committee at all. That is correct, is it?

Mr. I. Clarkson:

Yes.

Assistant Director of Development Control, Planning Department:

Yes, I have the minutes in front of me, Chairman. I cannot say why Reg's Skips Limited, their name, was not in the minutes but, of course, it was in the Department's report which was given to the Planning Sub-Committee as it was quite clear who the operator was going to be. As far as I am concerned it is written into the report and mentioned several times. So there was no surprise, if you like. I am sure that the Planning Sub-Committee would have been entirely aware of which company they were dealing with and, of course, bear in mind also that this was following the background of a refusal for Reg's Skips at the Homestead prior to that.

Mr. J. Mills:

Indeed.

Assistant Director of Development Control, Planning Department:

So I am sure the members would have been fully aware of the circumstances.

Mr. J. Mills:

We had evidence earlier this morning from Senator Ozouf who was President of the relevant Committee at this time before the Ministerial system came in and he expressed a degree of concern at this point about part A and part B and about the way things were recorded, and he also expressed a degree of concern about the fact that in this particular case, the Sub-Committee which took this decision, or took this approach, was a Sub-Committee of 2 because one, Mr. Taylor, had stood down because he said he was conflicted. That just raised a question about good process, really, and I just wondered, perhaps you, Mr. Thorne, if you have any comment on that? Was it normal for the Sub-Committee to have only 2

people present?

Director of Planning, Planning Department:

Well, normally it had 3 people present or possibly even 4. I cannot remember exactly. But no, there was normally more than 2 people. Certainly in that instance, I remember Mr. Taylor having a family interest in a similar company and declared an interest and did not take part. I mean, I do not know ... well, there obviously were only 2 people who made that decision. I cannot remember whether the President of the day was participating in it.

Mr. J. Mills:

No, he was not. It was Mr. Dorey.

Assistant Director of Development Control, Planning Department:

Certainly the Sub-Committee was quorate. If a body of 3 or 4 it was written that they were quorate with 2 members.

Mr. J. Mills:

Would you, as Director, or your staff take any particular steps before these Committees began their proceedings to establish any conflicts of interest among the members or was it really down to the members to make that declaration?

Director of Planning, Planning Department:

I think it was really down to the members to ... I mean, we do not know. There is a register where interests are declared but we do not necessarily know, and this was sort of one family member removed so it was not a direct interest, if you like, but he felt because it was a member of the family he was too close to be involved in making the decision.

Mr. J. Mills:

No, I say it because Senator Ozouf also said to us that his understanding was that when the application for the Homestead was considered the previous year, Mr. Dupré who was then a member of the ... he stood down from that decision because he said he was conflicted but he did not stand down from this decision. He formed the second person on the Committee. Was that something you would have been conscious of at the time?

Director of Planning, Planning Department:

I was not.

Assistant Director of Development Control, Planning Department:

I would have been vaguely conscious of it. I would imagine that Mr. Dupré would have his reasons for standing down on one issue and not another but obviously both the Homestead and Heatherbrae Farm would be in Mr. Dupre's Parish because he was Constable of St. John at the time. He may have had a relationship, a personal relationship with ...

Director of Planning, Planning Department:

He may have known the owner of the premises, possibly.

Mr. I. Clarkson:

Chairman, if I could intervene at that point just to advise you on 20th January 2005, the minute records that the Constable of St. John had not taken part in that Homestead decision because he had previously expressed an opinion on the application.

Mr. J. Mills:

So it would not conflict him for the ...

Mr. I. Clarkson:

Not necessarily.

Mr. J. Mills:

Not necessarily. Okay. All right, thank you. Just also on the minute, now what happened after the pre-application advice was given, and it was sort of favourable advice, is that Ms. Baxter, who was then in your employ, obviously got on to Mr. Taylor, the applicant, quite quickly because a full application followed literally within 24 hours or so and you put that in hand and the decision on that was taken under delegated authority.

Assistant Director of Development Control, Planning Department:

That is correct, yes.

Mr. J. Mills:

Was that, from your perspective, an entirely normal and proper course of action?

Director of Planning, Planning Department:

I think the delegation agreement that we had at the time enabled us to make decisions where the Sub-Committee had already indicated a view, if there were no other issues arising from the application.

Mr. E. Trevor:

Following on from that, if I remember correctly, it was Ms. Baxter who signed the document. Was that counter-signed by anybody else or did she, as a planner, have the right under delegated powers to sign such a document herself without anyone checking? Or did they check?

Assistant Director of Development Control, Planning Department:

The actual permission, the permit itself, if that is what you are referring to, would have been signed by the case officer and the case officers have delegated authority to sign those on behalf of the Director.

Mr. E. Trevor:

Would they check with anyone else before they signed?

Assistant Director of Development Control, Planning Department:

That would be a matter for them at the time. If they are particularly concerned about an issue then they may check it with a senior officer or they may simply issue the permit.

Mr. E. Trevor:

One of the things we have been told, and the Chairman was going to ask you a question on this, was the colour coding. This one was colour coded grey which presumably means it was a bit dodgy. So if my interpretation of the colour coding is correct, and I do not know if it is, then surely ... and it may have happened, surely the consent even under delegated powers should have been checked with somebody else because it is grey. Lots of planning is grey, I would like to say that. You really cannot rely upon one person.

Assistant Director of Development Control, Planning Department:

The colour coding is an ancient referral back to the days when we used to print the Committee's agendas on coloured paper. They used to have recommendations for approval in blue, recommendations for refusal in pink and then delegated decisions which the department had signed either in grey or buff

coloured paper. So the reference to the grey is a reference to the old colour which some officers who have been around for a few years still hung on to, if you like, as an old process. So you cannot read interpretation into the word “grey”, that it was a grey issue.

Mr. J. Mills:

It was a grey colour.

Assistant Director of Development Control, Planning Department:

It was related to the paper we used to use but we have not used those coloured papers for agendas for many years.

Mr. J. Mills:

Were they expensive?

Assistant Director of Development Control, Planning Department:

Yes.

Mr. E. Trevor:

But at that time they were in use?

Assistant Director of Development Control, Planning Department:

No, they were not. No. In fact, some case officers who were around at that time when coloured paper was used still put grey in the little box on the summary sheets.

Mr. J. Mills:

Let us forget colour for a second. Can you just confirm how the delegation levels worked? At officer level, there was obviously things that were completely non-contentious, just small things that you just get on with. Then there is a second tier where there either are objections and/or a policy conflict of some kind and this could not have fallen into the first category, could it?

Assistant Director of Development Control, Planning Department:

No, that is right. .

Mr. J. Mills:

It would have fallen into the second category?

Assistant Director of Development Control, Planning Department:

Yes, correct.

Mr. J. Mills:

Where did the delegation level rest at that category?

Assistant Director of Development Control, Planning Department:

On this specific item it rested with me.

Mr. J. Mills:

So you signed off the permit?

Assistant Director of Development Control, Planning Department:

I signed off the recommendation to approve. I did not sign off or check the actual permit that was produced subsequently.

Mr. J. Mills:

Would that be your normal practice, not to check the actual wording?

Assistant Director of Development Control, Planning Department:

It was at the time, yes.

Mr. J. Mills:

Is it now?

Assistant Director of Development Control, Planning Department:

No.

Mr. E. Trevor:

Does that mean you did not see the first condition?

Assistant Director of Development Control, Planning Department:

I cannot say. I do not believe I saw the precise wording because there is no paperwork within the file that suggests that I saw it and signed it.

Mr. J. Mills:

Hindsight is a wonderful thing but had you seen it, you might have sought to amend it?

Assistant Director of Development Control, Planning Department:

Yes.

Mr. J. Mills:

That is very helpful. So we have the permit agreed. Do you want to ask on that?

Mr. R. Huson:

No, I think I have heard the things I wanted to hear.

Mr. J. Mills:

The next thing is, we will try and take this in sequence now. We roll on a good number of months until the first complaints emerged at the end of April 2006, I think that is right, is it not? There was a complaint to the department from Mr. Yates, the neighbour, about the noise and so forth and I think it went first to Mrs. Ashworth but it came to you very, very quickly and you were involved right from the outset and you have described that quite readily to us. We just want to probe a little bit about how you went about your role in doing this. You told us something about this last time but not a lot. Can I first ask, this might be repeating a little bit of what we did before, Mr. Porter, you were part of a very small enforcement team. What specific training in planning enforcement did you have or were you given or offered by the department when you took up your role?

Former Enforcement Officer, Planning Department:

As I explained at the previous hearing, the idea of an enforcement officer is while you are not an expert in the planning law, that is certainly something for the planning officers, you are there as a representative and an able body, I suppose, that would be able to deal with and report infractions. As I said before, the Planning Department is different to the police service in that it is not there to detect and report. It is there to resolve issues, as an enforcement team, and more often than not it was communication in resolving issues or conflicts between parties. Specific training, I suppose, it is whether you are enforcing planning law or social security law, tax law, it is the same core training values as that of a police officer, able to investigate and report. The law is an extra tool and an enforcement officer could, effectively at the drop of a hat, I suppose, change to any other departments and enforce in a similar way, but through different legislation, a different law.

Mr. J. Mills:

Is the police role always to resolve?

Former Enforcement Officer, Planning Department:

It is always to resolve, but where necessary, where I think infractions are so serious and there was an absolute intent to breach the law, then a decision would be made in line with line managers to push that on to the Law Officers.

Mr. J. Mills:

So on the receipt of complaints, you started from the presumption that there was an infraction of some kind?

Former Enforcement Officer, Planning Department:

It is difficult to say. Often as an enforcement officer you would receive calls directly from the general public asking about a neighbour that is carrying out some work and it may be that a simple visit would show that there is a planning permit in force and it is perfectly above board. On other occasions, work would be directed straight from the planning officers who felt themselves something was not quite right. It was not necessarily that they believed there was an infraction. It may be that something just needed to be checked into, that the files for the property needed to be examined to see if existing permissions were there and refer information back to the planning officer to ...

Mr. J. Mills:

So the issue that cropped up here was the extent or level of activity at Heatherbrae compared to previous place at La Prairie.. What research did you do about the position at La Prairie before you embarked upon the work that you then did embark upon?

Former Enforcement Officer, Planning Department:

Elizabeth Ashworth, a planning officer, had taken the initial complaint from Mr. Yates. I believe I was on leave at the time so when I returned I picked this up as a matter of interest through e-mail from Elizabeth. At the time, I was working alongside a now-retired colleague, John Doublet, a former enforcement officer, who had had dealings with the former site, the La Prairie site. In discussions with him, I think at the time my questions were: "Well, how did the skip operation work from that location? What sort of levels of work were they carrying out?" From that, of course, with the research, the planning file, the planning permissions that were given, including the one we have already referred to today, paid a visit to the farm itself, spoke with Mr. Taylor, and Mr. and Mrs. Pinel. It was creating an overview of exactly what the issue was before any decision to move forward.

[11:30]

Mr. J. Mills:

May I just press you a little bit? So did you rely on any written evidence in the enforcement file about what had or had not been known about La Prairie or were you relying really on what Mr. Doublet recollected.

Former Enforcement Officer, Planning Department:

I think it is fairly safe to say that there was not a huge amount of information on the La Prairie site, on how it operated, but in those initial investigations and my discussions with Mr. Pinel, I think they are in my enforcement notes under 3rd May, his answers to some of my questions helped in my mind secure the fact that the company was operating in a much more intensified way than they had been at La Prairie and, in fact, Mr. Pinel's comments that while they were operating from La Prairie with 3 or 4 skips a week, they were now operating about 8 skips a day from Heatherbrae and, equally, that they had at the La Prairie site an agreement with another skip operation to sort those skips that they did not have the capacity to do or were not able to do at La Prairie and the fact that since moving from the La Prairie site

to Heatherbrae Farm, and forgive me, I believe the comments were along the lines that: "That other company had refused to sort the skips as they had previously for Reg's Skips because they now had their own site." Maybe that was because they were now seen to be a competitor or not, I do not know. But for whatever reason, that company decided that they were no longer willing to sort skips on behalf of Reg's Skips and, therefore, that did offer answers as to why the intensified use as described by the complainants was so evident.

Mr. J. Mills:

Did you speak to your line manager about the concept of intensification? What that might or might not imply?

Former Enforcement Officer, Planning Department:

I had discussions with Elizabeth Ashworth when she was a planning officer and whose professionalism I have great respect for. Equally, I would have had discussions with her line manager.

Mr. J. Mills:

Who was?

Former Enforcement Officer, Planning Department:

Andrew Townsend. We often discussed cases such as this where there were ... talking about degree, I suppose, where I needed that or we needed that extra clarification or opinions to whether there had been greater intensification. I also spoke quite regularly, of course, with my direct line manager, Peter Le Gresley. It was decided through various conversations ... I could not exactly say which conversation was the one that we decided that there had been intensification but I think it is fair to say that it was overarching consensus that the operation at Heatherbrae Farm was over and above that which was previously operating from La Prairie and there was an intensification that it was felt was in breach of the planning permit.

Mr. E. Trevor:

Mr. Chairman, since we have had this inquiry opened we have had in open evidence comments that intensification does not require a new permit. It is not a change of use. Unless there is a change of use, we have been told quite clearly that intensification is not a grounds for saying someone is in breach of their permit.

Principal Planner-Appeals, Planning Department:

Can I? That was me. I was saying that as a general comment. The issue was obviously the intensity. It was in the context of that particular condition which was saying it should be as ... the site should operate as at La Prairie. So the reason intensification of use was an issue, was not because intensification normally ... if it is a legally permitted use, I explained that an intensification does not need permission. Why it was an issue in this instance, because the condition of the permit had referred to the fact that it should operate as at La Prairie.

Mr. E. Trevor:

But nobody in Planning at that time knew what the operation was at La Prairie. We have been told that.

Principal Planner, Planning Department:

Well, exactly. Which is the reason why I explained it was not an enforceable and unreasonable ... unenforceable condition.

Mr. E. Trevor:

Indeed, but we have had evidence that there was skip sorting going on at La Prairie. That is definite.

We have had it from people who were on site so there is no argument about that. Further, if there is sorting, it is immaterial, as I see it, whether a person is using a mechanical sorter or whether they are doing it by hand. The conditions did not say: "You may not change the method in which you do things." It said: "You will do it generally as you did at La Prairie." To intensify, yes, it could mean that you have to change the method, the way in which you do it but if you change it, that is not, surely, requiring a change in the permit?

Former Enforcement Officer, Planning Department:

I do not think I can really comment on what others have said in relation to how the former site operates. I can only really relay the information that I found as part of my investigations and, certainly, my conversations with the party that was carrying out the work, Reg's Skips, and Mr. Pinel himself, was the fact that at the previous site they had been using another company to sort the skips and they were no longer allowed to do that through whatever agreement or whatever discussions have happened with that company and were now having to sort their own skips at Heatherbrae Farm. I really cannot comment on what one of them would have said but, certainly, the evidence I picked up as part of my investigation suggested that the company were not operating as a skip sorting business at La Prairie but were at Heatherbrae Farm.

Mr. E. Trevor:

From the evidence we have had, they were.

Former Enforcement Officer, Planning Department:

Well, I can only say that my notes made at the time, in black and white, certainly said that the company was not sorting skips before and was hiring a company to do so.

Mr. I. Clarkson:

Chairman, can I just invite you to take a 5 minute break? It looks like we have a technical problem with the computer. We are not recording anymore.

Mr. J. Mills:

Okay, 5 minute break.

(A short break)

Mr. J. Mills:

Edward, you were pursuing a line of questioning about ... have you finished that line of questioning?

Mr. E. Trevor:

I think so, yes. Thank you.

Mr. J. Mills:

Do you want to say anything at this point or do you want to wait a moment?

Mr. R. Huson:

To your understanding, was there any mechanical sorting being carried out at La Prairie, on your understanding from your notes or speaking to people?

Former Enforcement Officer, Planning Department:

I recall from my conversations with John Doublet, former enforcement officer, that there was no skip sorting going on at La Prairie. That was ...

Mr. R. Huson:

By hand or mechanical?

Former Enforcement Officer, Planning Department:

No skip sorting at all. My notes made at the time, from my discussions with Mr. Pinel, and it is something I think I need to stand by quite heavily is that my discussions were that there was no skip sorting at La Prairie. They had another company that was carrying out the work for them but when they moved to Heatherbrae Farm, that company refused to carry out this operation and, therefore, that, if you like, proven ... it corroborated, I suppose, what the complainant was saying that, okay, it had been there for some time, not a great deal of time but it had been there for some time as an operation, but it had not been so much of an issue until this mechanical digger arrived and the skip sorting commenced. So it meshed together. It was 2 separate pieces of information which corroborated each other and that, as an investigator, is something that I would look for.

Director of Planning, Planning Department:

Just to add another point. It was not just a question of whether there was any sorting. I think the point is it was not authorised for sorting at the previous site.

Former Enforcement Officer, Planning Department:

I think we have made that clear to the Committee, have we not?

Mr. J. Mills:

We have had a note from you about that, thank you, which your email of 23rd February endeavoured to answer but I have to say, as a barrack room lawyer, that it is slightly obscure in one or 2 areas as to exactly what was 'authorised' or what could or could not or needed to be authorised in a pre-1964 situation. So I think we need to ... we will try and answer that with the benefit of the best possible advice that we can have. I think the thought we are left with here is that there is some room for confusion, some greyness, on these concepts in relation to the pre-1964 site and that is a fact that we need to reflect.

Mr. E. Trevor:

Perhaps I should repeat what I told you, Mr. Chairman, earlier and that is the person who used to run the Tile Barn has told me quite clearly that there was skip sorting there the whole time the Pinels were there but he was not sure how it was done, whether it was mechanical or hand. He said: "It did not worry me. I believed people complained because of the appearance from the road but, yes, there was skip sorting."

Mr. J. Mills:

Nobody is denying that, are they? That there was some sorting?

Assistant Director of Development Control, Planning Department:

We have no evidence of it, Chairman, and we can only report to you on what we knew and what we saw and what we were told at the time. Mr. Porter has quite clearly made a categorical statement and I am happy to make the same categorical statement, and I repeat what I said to you in one of the very first sessions which was that I passed the site regularly because it was on my route at that time when I lived in St. Brelade and I never saw skip sorting at the site. I regularly saw skips but never saw any sorting.

Mr. J. Mills:

Mr. Le Gresley, that is not quite what you said in your deposition to the Court towards the end of 2007 in the *Yates v Reg's Skips* case when you made a witness statement, court file number 2007/136 where you actually said - this is the word you put in before the court, and I think you would have said that accurately to the court: "The department had a view on the level of activity which had occurred at La

Prairie which was regarded as skip storage with some sorting from time to time.” I think we are anxious to understand that there was no absolute certainty on your part - and I mean you collectively - as to what exactly was going on there. You said you think, fairly categorically, there was not. You certainly said before the Royal Court, let alone before us, that there was some and, to the extent that condition 1 of the permit had this language about being used the same as at La Prairie, the permit did include sorting.

Assistant Director of Development Control, Planning Department:

Indeed so, Chairman, and I can only refer you to paragraph 3 of that document that you have just referred me to, my Royal Court statement.

[11:45]

If I can just take you from the second sentence of paragraph 3 where I said: “La Prairie is a longstanding commercial site that has been used for the storage of vehicles and skips for many years. It has only ever been used for storage purposes and no activity has been undertaken from the site.” An issue arose because it came to the attention of the Planning Department that Reg’s Skips was undertaking unauthorised activities at La Prairie. We have a quite clear view that skip storage was allowed but sorting was not allowed and that if there had been sorting, and had we spotted it, we would have clamped down on it, which is what I think Mr. Gerald Bisson gave in evidence to you. There were the occasions where some sorting had been spotted and they had been reminded that that was not authorised, but in terms of a regular authorised use, if I can just clarify that, we were quite clear that that was not permitted.

Mr. J. Mills:

So you brought into play the concept of authorised or unauthorised use in relation to pre-1964 land?

Assistant Director of Development Control, Planning Department:

Yes, and you asked that before, Chairman.

Mr. J. Mills:

Yes, I know. I think we are still struggling with it, in truth.

Assistant Director of Development Control, Planning Department:

Yes. Well, not so much. If I can just try to put it as clearly as I can, the La Prairie site was well known to have been a site for storage and skips over many years and there were no authorised activities other than the storage of those items, and if somebody had tried to operate differently, then we would have said: “That is not authorised.”

Mr. J. Mills:

But I thought that with a pre-1964 situation, the concept of authorisation does not exist because you could do exactly what you think you ought to do.

Assistant Director of Development Control, Planning Department:

Yes, okay. Maybe I used the wrong word, yes.

Mr. J. Mills:

This is where we have got some difficulty, I think. In your note to us a few weeks ago, you say here: “Essentially the point we are trying to get across is that before 1964, permission was not required to change the use of land. When the 1964 Law came into force, permission was required but only when [underlined] a material change occurred to that use. The law did not look back retrospectively [et cetera].” So I just sense there is some greyness here which I ...

Assistant Director of Development Control, Planning Department:

Yes. Of course, the 1964 Planning Law did bring into force the concept of a material change in the use of land, and changes to land use must not just be small changes but material changes by which I think the law meant significant changes.

Mr. J. Mills:

Yes. Ian, could you also just confirm what, if anything, was said in the report to the Sub-Committee for 9th March 2005 on this? You seem to be quicker at looking these things up than me.

Mr. I. Clarkson:

The report that went to the Sub-Committee on 9th March says in a chapter headed Policy Considerations: "The site falls within the countryside zone but already has consent for the dry storage use."

Mr. J. Mills:

Of Heatherbrae?

Mr. I. Clarkson:

That is Heatherbrae. "However, Reg's Skips are slightly different in nature as they process and sort materials on site and are therefore considered a commercial use."

Mr. J. Mills:

Okay. I think we need to form some considered opinion in the light of this slight uncertainty as to exactly what and what was not, but I think what we are left with is this sense that there was a degree of uncertainty. This, of course, came out then when you, Mr. Webster, got on the case at the point when the Enforcement Notice was appealed, where I think you also then felt that the nature of the condition that had been imposed was, in a sense, unenforceable because this knowledge was not there.

Director of Planning, Planning Department:

A general point though. I mean, you are bringing a new provision in law, which we did in 1965 when the law came into force, where there had never been any previous control of the use and therefore there are no records of what use was taking place on sites. So when an alleged change or whatever it might have been - not just in this specific instance but any other that came about - one made best efforts to find out what had happened pre the 1965 law, what had been the use then. Pinning it down to an absolute level of operation, or whatever it might be, would be very difficult, I am sure.

Mr. J. Mills:

Could we just move on then to the enforcement process that began at the beginning of May 2006? I think, from all that we have heard from the various witnesses and all that we have read, we have formed the view that there was quite an intense level of activity, if the e-mail traffic was anything to go by, which suddenly bubbled up once the first complaint had come in. We see from the files that Mrs. Ashworth and yourself, Mr. Porter, were all of a sudden sort of ping-ponging e-mails and conversations back mainly with Mr. Yates who was obviously a strong complainant. It sort of touches on this a bit because the impression comes across, I think, from the file, which is what we are going on, that some of the ways in which the complainant was responded to and dealt with were perhaps a little untoward if you look at enforcement in the round. There was a lot of very, sort of, instant responses and so forth. Before I get on to that, could you just give us your sense of how this process suddenly hit you when you got back from your leave and Mrs. Ashworth told you about it?

Former Enforcement Officer, Planning and Environment Department:

I think we need to look at it that it is good customer service to respond immediately. All civil servants have different ways of fulfilling their duties. I have been in several roles but I think, as a priority, I will always, where I can, respond to e-mails as soon as possible. Others may prefer to leave them 24 hours. I am one of those people who like to respond immediately.

Mr. J. Mills:

I think what I am trying to say, I mean, one or 2 of the e-mails that I see on the file were really very detailed and remarkably comprehensive at such an early point in the proceedings. I am just looking at one in particular. There is an e-mail of yours of 17th May 2006 to Mr. Yates, copied to Mr. Le Gresley and Mrs. Ashworth which must be at least 500 or 600 words long, and this is addressed to Mr. Yates, and I just pick up this paragraph in particular: "With regards to Reg's Skips, yes, I would agree [that is with Mr. Yates] that the use is still of a greater nature to that of St. Peter based on the comments in your e-mail [that is Mr. Yates' email]." There are several other comments a little like that and I think we are left slightly surprised at the level of intercourse, really, that you almost immediately had with Mr. Yates as a complainant, perhaps before you fully had time to understand all these difficult concepts that we have just been talking about around intensification and authorisation and so forth.

Former Enforcement Officer, Planning and Environment Department:

That e-mail was 2 weeks after my first involvement, so I think it is fair to say that within 14 days I had put considerable effort into this case and therefore was in a position to be able to respond. I would hope that any complainant would have a comprehensive response, whether it be an interim one or a final, within at least a week. This is 2 weeks on. So I do not think I was unnecessarily in a position where I was not fully aware or fully understood the case. I think it is fair to say that Mr. Yates was - I agree with what you say - a very strong complainant. Many people would contact the Department with a single phone call and literally say: "I am concerned about my neighbour but please do not come back to me." Others, at the far end of the scale, I suppose, such as Mr. Yates, would be very demanding. I think certainly, regardless of whether it is the Planning Department or any other, it is good customer service to respond as comprehensively as possible in any circumstance that you can as soon as you possibly can.

Mr. J. Mills:

We have already established that there was no enforcement manual within the Department at this time, that the enforcement section of the Department's manual was empty. You have sent us that and we noticed that. So, in a sense, as you said, Mr. Porter, you were doing your job based on your experience as a police officer, which is absolutely fine but what standards did you set yourself in these sorts of cases, in terms, for example, of revealing the position of one party to the other or the passage of papers from one party to another? Would you be, in every case, as open as you possibly could, whether that way or that way, or were there some limits on what you would say to a complainant about, let us say, the position of an applicant or an existing permit holder?

Former Enforcement Officer, Planning and Environment Department:

There are always boundaries that need to be kept in mind, certainly. I would not be looking to give information to another on private activities of another, but certainly in a commercial position such as this one, Mr. Yates could see for himself what was happening. This was right at the end of his garden. He was watching himself, I believe, with various photographs and even cameras at one time. So there was not anything that he was already aware of from that perspective.

Mr. J. Mills:

No, I am thinking of your talking to him and writing to him about your contacts with the Pinels that happened when you got on the case, because that is what you did.

Former Enforcement Officer, Planning and Environment Department:

I think it is important to offer reassurance to any complainant to let them know what it is that the Department is doing to resolve their complaints or their concerns and, where we possibly can do, give information in answer to the elements of the complaint.

Mr. J. Mills:

Okay.

Assistant Director of Development Control, Planning Department:

Can I just make a point, Chairman? It is just a general point about enforcement staff. Since Mr. Porter left the Department, we have employed 2 further enforcement officers: one to replace Mr. Porter and one to replace Mr. Bisson who retired. Both of those enforcement officers were former police officers. One is a gentleman called Keith Bray and the other is Jeremy Bolton. The simple observation I would make is that those officers, with their previous police training, seem to be able to respond extraordinarily quickly to complaints. I am frequently surprised at the speed in which they will react and come back to me, as their line manager, with a comprehensive series of evidence, whether that results in an enforcement notice or otherwise. That is something that I say surprised me because, of course, my previous experience with Mr. Bisson, who was not police-officer trained was that it was somewhat a slower process. That is not to criticise Mr. Bisson, clearly, because he simply did not have that background, but the training that the officers who come to us from the police seems to enable them to get to the nub of the problem very, very quickly. They act very swiftly.

Principal Planner, Planning Department:

Can I just add one comment as well? I have never said this to him before, but ...

Mr. J. Mills:

You are addressing the Chair here.

Principal Planner, Planning Department:

It is just a general point. In the 35 years I have been employed, I can honestly say Mike Porter is the best Enforcement Officer I have seen, literally. When I picked up the case, the root of the problem obviously, in hindsight, is the condition itself which has to be reasonable, precise, enforceable and, as I say, when we look back, in hindsight, those are problems and that is why we had the problem with the appeal, but when I picked that up, I felt for Mike Porter because he is the lad in Enforcement who picks these things up to act on them. The root of the problem was the condition itself, so he had a difficult task on the whole issue.

Mr. J. Mills:

I think we appreciate that. Sorry, can I just keep on on this for a little bit longer because I just want to be really sure about it. When the complaints began, you had a meeting with Mr. and Mrs. Pinel on 10th May which was about 10 or 12 days after the complaint had first come in to Mrs. Ashworth and you wrote to Mr. Pinel on 10th May, which was your first formal enforcement letter where you say in that: "It appears that the company has increased its sorting of mixed skips from hand sorting a few skips each week, now sorts several skips ..." This is the intensification point and you then say: "The use of machinery must cease immediately" and so forth. I just want to press you a bit on the lead-up to that letter because when you saw them, they presumably did not sit there and say nothing. I presume, and we have had evidence of this, effectively, that they asked you: "What is all this about? Where has all

this complaint come from?" and: "We do not quite understand where you are coming from apropos La Prairie." Did you say to them that a neighbour at Heatherbrae - whether you simply named Mr. Yates or not does not really matter - had complained to them that he, the neighbour, had heard from a good friend that the situation at La Prairie was different? Is this in your recollection?

Former Enforcement Officer, Planning and Environment Department:

I remember Mr. Yates - a very resourceful chap, Mr. Yates - and I do recall that he had carried out investigations himself in relation to how the previous site was being operated. He never disclosed to me how he had received that information. That was certainly for his own purposes, and while he would tell me that he knew how things were happening, he was not one ...

Mr. J. Mills:

He did not mention any names?

Former Enforcement Officer, Planning and Environment Department:

... that I can recall that would give any names.

Mr. J. Mills:

So he gave no names to you?

[12:00]

Former Enforcement Officer, Planning and Environment Department:

No, not that I can recall. I think if he had, I certainly would recall.

Mr. J. Mills:

So he might have done but you cannot recall?

Former Enforcement Officer, Planning and Environment Department:

If he had, I think I would remember because my thoughts would be then to approach that person myself, if it was possible to. I know that Mr. Taylor, obviously a businessman that wanted to see a successful business, I think Mr. Taylor, it is fair to say, had feelings about Mr. Yates and the fact that he was speaking to others about previous operations. I recall a conversation, although I could not quite relay the exact content of that conversation. There was a suggestion that he had spoken to people at St. Peter. Again there was nothing of any substance that I could rely on.

Mr. R. Huson:

You did not think to quiz Mr. Yates about where he got his information from? You did not delve deeper and say: "Where did you get this information from?" You just took it as verbatim?

Former Enforcement Officer, Planning and Environment Department:

It was clear to me, I suppose, that Mr. Yates was carrying out his own investigation with his own resources for his own purposes. Certainly his contact with the Planning Department was only one of others he was exploring, I think it is fair to say is my impression. While he suggested that he knew that the site was not operating at anywhere near similar levels to La Prairie, I could not say that he was willing to provide that information to me.

Mr. R. Huson:

You did not think to quiz him?

Former Enforcement Officer, Planning and Environment Department:

I cannot say whether I had quizzed him or not. This is going back some time. Certainly I think if I had and he had provided that information to me, then certainly that was another opportunity for investigation that I would have followed through. It was about building the biggest possible picture that I could, but certainly I think if it was something available to me, I would have.

Mr. R. Huson:

It just strikes us that perhaps that would have been a very pertinent question to ask as to why he seemed to be so knowledgeable about this from, you know, what a normal layperson could get their information.

Former Enforcement Officer, Planning and Environment Department:

I think it is fair to say that Mr. Yates, when he first made contact, right from the very outset, he had researched the planning law, he had researched what permissions had been given and, as I say, he is a particularly resourceful chap, but I could not say with any degree of certainty whether I had asked him or whether he refused to give information. I really cannot say, but no, as a result of my conversations with him, I cannot say that I followed through any of the investigations or the ...

Mr. J. Mills:

You did not put any notes in your own notebook?

Former Enforcement Officer, Planning and Environment Department:

No. There is nothing in my notes that I have read through that I can recall, no.

Mr. J. Mills:

Okay. I think we will move forward. We are building a picture on this. You are alright on that?

Mr. R. Huson:

Yes, yes, I am happy with that.

Mr. J. Mills:

Let us move forward. The next stage in this is, as a result of your letter to the Pinels and their desire to try and regularise things in their eyes, we move into this request for reconsideration phase which began ... Ian, tell me when, please, from our list.

Mr. I. Clarkson:

It appears from the file that it effectively began with a letter from Le Gallais and Luce dated 19th May 2006 to the Minister for Planning and Environment. That was a letter written by Advocate Adam Clarke. An amended letter was sent to the Department so the Department had 2 versions of it, but effectively the letter summarises the present predicament that ...

Mr. J. Mills:

Yes, I have got the letter now: 18th May 2006.

Mr. I. Clarkson:

That is right, yes.

Mr. J. Mills:

I have got it now, yes.

Assistant Director of Development Control, Planning Department:

Chairman, I have got 19th May ...

Mr. I. Clarkson:

Yes, that is what I was saying.

Mr. J. Mills:

I know what happened. They sent a draft by mistake.

Assistant Director of Development Control, Planning Department:

Okay. All right.

Mr. J. Mills:

That is what happened. So it is 19th May. It is the same letter but they forgot to change the date. Okay, so we are clear it is the same letter. Was that an actual request for reconsideration? Can I ask you that question?

Assistant Director of Development Control, Planning Department:

Certainly that is how we perceived it, Chairman. We did deal with that as a request for reconsideration on those issues.

Mr. J. Mills:

That is related to the sorting issue and also the timing issue?

Assistant Director of Development Control, Planning Department:

There was an hours-of-use condition as well, yes.

Mr. J. Mills:

Yes, and when you do a request for reconsideration, do you treat it as a new application? Do you charge a fee and all that kind of stuff?

Assistant Director of Development Control, Planning Department:

No. It is very much on the information that we already have on the file from the planning application. It is dealt with on the same file. We do not start a new file. We simply take it as a next step, if you like.

Mr. J. Mills:

What about the position of the landowner? Le Gallais and Luce were acting for the company, Mr. and Mrs. Pinel of Reg's Skips Limited.

Assistant Director of Development Control, Planning Department:

Yes.

Mr. J. Mills:

Would your process immediately have ensured that the landowner was informed?

Assistant Director of Development Control, Planning Department:

I am not sure that it would have done at that time. I cannot say with certainty.

Mr. J. Mills:

I think that is a "no". That sounds like a "no".

Director of Planning, Planning Department:

I do not think there was a process to notify the landowner. This was made by the applicant.

Mr. J. Mills:

But as we said earlier, a planning permission that was not directed to the land but directed to the tenant of the land was an unusual condition anyway. We had that to start with anyway.

Mr. R. Huson:

Yes, we have had that, have we not?

Mr. J. Mills:

Okay, so what happened after that as the process started rolling? There was quite a lot of to-ing and fro-ing. We have had evidence from Mr. and Mrs. Pinel and indeed Mr. Taylor about the way that process ran on, and eventually you and Mrs. Ashworth produced a request for reconsideration report which appeared in September, was it not? Have I missed anything, Ian?

Assistant Director of Development Control, Planning Department:

11th September, Chairman, I have.

Mr. J. Mills:

Yes. Have I missed anything in that very brief summary, Ian?

Mr. I. Clarkson:

I will just refer to the chronology the Committee is working from.

Mr. J. Mills:

Yes. Just repeat it, just so we are crystal clear.

Mr. I. Clarkson:

Following receipt of that letter, the Committee's understanding is that on 23rd May there is paperwork on Planning's file indicating that they had commenced work on a request for reconsideration of the permit. On 25th May, Mr. Porter exchanges emails with the Minister for Planning and Environment in response to a request for information. By the time it gets to 26th May 2006, Mr. Yates has visited the Planning Department to review the request for reconsideration application.

Mr. J. Mills:

So this process is rolling.

Mr. I. Clarkson:

The process is rolling. The first indication that Mr. and Mrs. Pinel might be aware that this is a request for reconsideration comes after the advertising of that request for reconsideration application on 6th June 2006 in the *Jersey Evening Post*, which prompts a letter from Le Gallais and Luce in which they observed to Planning that the request for reconsideration application has been advertised in terms that caused them concern.

Mr. J. Mills:

Right, okay. We get to the point where there is to-ing and fro-ing here of the representations received from Mr. Yates and various letters from Le Gallais and Luce challenging various representations. The Environmental Health people are brought into the frame and asked to do readings and comment, and this process went forwards and backwards until the paper was eventually put together, as you say, on 20th September or 21st.

Assistant Director – Development Control, Planning Department:

I have the 11th.

Mr. J. Mills:

Oh, 11th; I am sorry. Yes, you are absolutely right. Okay. Now, can I just ask a question here? Obviously this was quite a controversial issue by this point and we got to the point where there was a site visit by the Minister which was September, was it not?

Mr. I. Clarkson:

Yes.

Mr. J. Mills:

What date was the site visit? I am sorry.

Mr. I. Clarkson:

We believe the site visit was either 20th or 21st September 2006.

Mr. J. Mills:

Okay. Do we know for certain which day it was?

Assistant Director of Development Control, Planning Department:

I am looking, Chairman, so I will see if I can help.

Former Enforcement Officer, Planning and Environment Department:

It was the 20th. It is in my enforcement notes.

Mr. R. Huson:

It says the 20th on the chronology, John.

Mr. J. Mills:

Is there usually a Greffe minute of these things?

Assistant Director of Development Control, Planning Department:

Not with a site visit, no, because the Greffier's appointed clerks do not normally attend on site visits. They attend for the public meetings.

Mr. J. Mills:

Okay. So the 20th.

Former Enforcement Officer, Planning and Environment Department:

My notes say the 20th, yes.

Mr. J. Mills:

All right. We do not dispute that. Now, we have got some questions to ask about the site visit itself, but I might come to that in a second. Can I just ask a general question first, really? The report that was produced by Mrs. Ashworth, the request for reconsideration report which starts by saying it is a site visit, to start with, at Heatherbrae and then Les Ormes. What is the status of this kind of report, please, Mr. Thorne and Mr. Le Gresley? Are these confidential? What do you do with these reports? Are they sent in draft to the relevant parties for comment or what?

Assistant Director of Development Control, Planning Department:

They are certainly not sent in draft to anyone other than within the Department. The officer dealing with the case will prepare the report and it will be checked by a senior officer. I think in this case it was myself. Yes, because I have signed the bottom. Those are then circulated, put on to the Department's website usually. So the report is a report to the Minister. They are public documents as far as we are concerned.

Mr. J. Mills:

At what point is it public?

Assistant Director of Development Control, Planning Department:

At the point at which it is put on to the website.

Mr. J. Mills:

At what point is it put on to the website, the moment you have signed it off?

Assistant Director of Development Control, Planning Department:

Usually a week before the meeting is the usual process.

Mr. J. Mills:

So they become public documents at that point?

Assistant Director of Development Control, Planning Department:

Yes.

Mr. J. Mills:

Okay.

Assistant Director of Development Control, Planning Department:

But, in any event, it is not something that we would withhold from any party. It is a public report. It is our summary of the issues involved.

Mr. J. Mills:

Yes. Obviously it goes on the website and the website is full of documents. Do you normally ensure that a specific copy is emailed or sent to the various parties involved?

Assistant Director of Development Control, Planning Department:

On request, we will give them an email copy or even a hard copy if the applicant or their neighbours indeed request a copy of the report. Commonly, that is the process these days. I am struggling to recall whether or not we would have done that at the time. I cannot recall what the process was at the time in 2006.

Director of Planning, Planning Department:

These days we would notify anyone who had made a representation to the advertisement when the meeting is going to take place, so that when it was coming up, they are able to access the website for the report.

Mr. J. Mills:

Yes, but you are not sure whether it was normal at that time to send it around to the parties?

Director of Planning, Planning Department:

It may well have been by that time because, I mean, we are post the introduction of the new law at this stage when the general procedures become more transparent than they had been.

Mr. J. Mills:

Yes, okay. Well, all I know is you, Mr. Porter, sent it on the 21st to Mr. Yates: "Attached is the officer report compiled by Elizabeth Ashworth as requested by you."

Former Enforcement Officer, Planning and Environment Department:

There is a reasoning behind that; that on the day of the site visits, Mr. Yates had requested to have a meeting with the Minister, Senator Cohen. The meeting was scheduled for after the site visit. For whatever reason - I cannot comment on why - the Senator was unavailable to complete that site visit and therefore myself and Elizabeth Ashworth went to see Mr. Yates to explain that Senator Cohen could not visit. From that, of course, he was advised of the outcome of that consideration and that is why the report ...

Mr. J. Mills:

What consideration?

Former Enforcement Officer, Planning and Environment Department:

The site visits. This was the ...

Mr. J. Mills:

Yes, so Mr. Cohen had to get off, so you and Mrs. Ashworth went around the corner, over the fence, wherever, to Mr. Yates at Les Ormes to tell him what had transpired on the site visit?

Former Enforcement Officer, Planning and Environment Department:

Yes, I think the decision at that time was to defer the decision, was it not?

Mr. J. Mills:

Hang on. Let us be clear about this. What is the purpose of a site visit? It is not a decision-making meeting, is it? Can we just be clear about this?

Former Enforcement Officer, Planning and Environment Department:

Let me take you back a little bit. We did not pop over the fence to tell them what the Minister had said. We popped to see Mr. Yates and Mrs. Yates who were waiting and expecting the Minister to visit.

Mr. J. Mills:

Yes, the report says the group will then visit Les Ormes; it says that.

Former Enforcement Officer, Planning and Environment Department:

Yes. With the Minister being unable to make that visit, myself and Elizabeth Ashworth went to see Mr. and Mrs. Yates, and that, I do not think, is untoward at all.

Mr. J. Mills:

No, no, no. It is not untoward. You said you were going to do it, but what I am interested in is was the purpose to hear their side of the argument or was the purpose, as you seemed to be implying a moment ago, to tell them what had transpired while Mr. Cohen was at Heatherbrae Farm, on the site?

[12:15]

Former Enforcement Officer, Planning and Environment Department:

My purpose was not to go tell them what had transpired on the site visit, but this was to pop and meet with Mr. and Mrs. Yates with the Minister, but the Minister was unable to attend that meeting. The meeting was between Mr. and Mrs. Yates and the Minister. Myself and Elizabeth Ashworth were joining the Minister in that meeting. With him not being able to attend, we visited in his stead to apologise that he could not meet, and I have no reason to suspect otherwise, but explain that the decision had been deferred. That, I think, is quite reasonable.

Mr. J. Mills:

So, in other words, at the actual site meeting, when Senator Cohen was at Heatherbrae Farm, he “decided” to defer things for 3 months?

Former Enforcement Officer, Planning and Environment Department:

I believe he had. I stand corrected on that. I think the decision at that time was to defer a decision until a later time.

Assistant Director of Development Control, Planning Department:

This is possibly a question - because I was not at the site visit - that Elizabeth Ashworth, who, for unfortunate reasons, cannot attend today, as you know, may be able to recall.

Mr. J. Mills:

I understand. I am just anxious to know what normally happens on a site visit. I know things have changed with Ministers rather than Committees, but when the Minister goes on a site visit, the purpose is to understand what is going on and get the lie of the land, but does one “take decisions” there? You said a Greffe officer was not there.

Former Enforcement Officer, Planning and Environment Department:

Well the Minister may make a decision in those circumstances, having considered a proposal in the

context of wherever it was, but the system for recording proceedings has changed since Ministerial government came in and the process, which you may be familiar with, is they have to be recorded in a particular form and ultimately signed off by the Minister, but the Minister may have made a decision and it may be a couple of weeks later before he comes to sign off ...

Mr. J. Mills:

But you were there, so when he was going around, looking at the silage clamp and everything, if I get you right, Mr. Porter, you are saying that the Minister had a look around and said: "Oh, this is tricky. Let us have a 3-month pause to see if we can sort it" or words to that effect?

Former Enforcement Officer, Planning and Environment Department:

Looking at my notes, there were several comments, I think, that the Minister had made, or an interim decision, and those were that a period of 3 months shall be allowed in which the applicant company will seek professional acoustic advice. Again, forgive me, this is a long time ago now, but I believe that that was in response to a conversation at a meeting that the Minister had had with Mr. Taylor, that he wanted to seek advice. The reason I recall that particular comment is I think there was a discussion about putting a rubber surface down in the silage clamp, if I remember rightly, and: "The company shall, within that period, display what measures can be taken to reduce the present, unacceptable levels of noise to within more acceptable parameters." He goes on that: "During an interim period, the company may operate mechanical equipment to assist in the sorting of mixed loads in the area immediately to the west of the silage clamp, this in an attempt to reduce impact upon the property of Mr. and Mrs. Yates. The mechanical equipment referred to shall only operate between the hours of 10.00 until 12.30, Monday to Friday and no other time. The proviso exists that the use of mechanical equipment granted may be rescinded at any time should the need arise. Access to the plant and adjacent temporary sorting area ..."

Mr. J. Mills:

Yes.

Former Enforcement Officer, Planning and Environment Department:

Sorry, do you want me to continue?

Mr. J. Mills:

No, no. I have got it written down here because you e-mailed this to Mr. Yates the following day and I have got it all right in front of me here in that e-mail. It is the same words.

Former Enforcement Officer, Planning and Environment Department:

Those were the interim decisions, I believe.

Mr. J. Mills:

You could not have written these at Heatherbrae Farm. You must have gone back to the office to write these down. Who would have written these down, these decisional points?

Former Enforcement Officer, Planning and Environment Department:

Probably Elizabeth Ashworth, I imagine, but I would have made notes as well. It is obviously in my interests to.

Mr. J. Mills:

Yes, but you would have gone back to the office to write them down, presumably?

Former Enforcement Officer, Planning and Environment Department:

Probably, yes. Yes, because I had no facility to, other than taking written notes.

Mr. J. Mills:

No. Would you have put this to the Minister for sign-off or you just assumed that it was decided because that is what he said at the site meeting?

Former Enforcement Officer, Planning and Environment Department:

I do not know.

Director of Planning, Planning Department:

Well, I can only assume because I was not involved in the particular issue, but as I was saying before, there is this procedure for recording Ministerial decisions. Ordinarily, the decisions recorded the reasons for the decision and, in this sort of instance, any particular conditions would ordinarily have been recorded on that ministerial decision.

Mr. J. Mills:

Yes. What you have just read now you sent to Mr. Yates at 9.00 a.m. the following morning, the morning of the 21st?

Former Enforcement Officer, Planning and Environment Department:

Yes, and I also sent it the same day to ...

Mr. J. Mills:

To whom?

Former Enforcement Officer, Planning and Environment Department:

Andrew Lewis.*

**in fact this was sent to Andrew Pritchard at Environmental Health, as later confirmed by Mr. Porter.*

Mr. J. Mills:

Did you send it to Mr. Taylor?

Former Enforcement Officer, Planning and Environment Department:

No. Mr. Taylor would have been advised, I believe. Looking at things from the enforcement point of view, I do not know what other actions would have been taken. More than likely it would have been Elizabeth. That would not normally be my role.

Mr. J. Mills:

Okay. We need to ask Mrs. Ashworth about this, unless you know the answer already.

Mr. I. Clarkson:

The information the Committee has to date is that Mr. Porter also advised Health Protection that the Minister had agreed to 6 interim measures. This was on 20th September. You have it that on the 21st of September Mr. Porter e-mailed Mr. Yates with those 6 conditions. On 27th September, Elizabeth Ashworth writes to Le Gallais and Luce advising of the Minister's decision on the interim measures pending a requirement for the applicant to establish options for noise mitigation. So, yes, the answer is 27th September.

Mr. E. Trevor:

That raises the question, does it not, as to why Yates was told before Pinel when Pinel was the party that

was being affected?

Mr. J. Mills:

Or indeed Mr. Taylor.

Mr. E. Trevor:

Or Mr. Taylor, who was the landowner with the permit.

Former Enforcement Officer, Planning and Environment Department:

The Minister had a site visit on 20th September. The Minister had had discussions at the time with Mr. Pinel and Mr. Taylor. I presume that these discussions would have taken place between the parties then. I do not know.

Mr. J. Mills:

Okay. I understand that point.

Former Enforcement Officer, Planning and Environment Department:

It certainly would not have been an intention to deliberately inform somebody else before the applicant. I think what needs to be recalled in this is that there was a meeting agreed between the Minister and Mr. and Mrs. Yates following that meeting. Myself and Elizabeth Ashworth had to follow that meeting through. So it is naturally reasonable, I think, to advise the complainant that these conditions had been or were being imposed.

Mr. J. Mills:

Yes, I understand the point you are making except that what you have written down here are very detailed, carefully written conditions which would have needed to have been written down on the word processor in the office and checked and thought about, and I think, as you were saying, Mr. Thorne, the proper manner would have been that they would have been signed off formally as "a ministerial decision". That does not appear to have happened. Is that fair comment?

Director of Planning, Planning Department:

I do not know. I was explaining the generality of ...

Mr. J. Mills:

Okay. Well, we think it did not happen and, if it did not happen, that is a failing, but we note the position that we are in. Could I just go back? Of the 4 of you, you were the only one who was at the site visit? Mrs. Ashworth unfortunately is not here.

Former Enforcement Officer, Planning and Environment Department:

I believe so. Yes, I believe so.

Mr. J. Mills:

One of the pieces of evidence we received is that when Mr. Cohen arrived in his motorcar, he was a little bit late, held up or something, or could not find the place. It was alleged that he said, as he got out of his car by the silage clamp where one parks: "We have got a moaner here." Do you recall that being said by him?

Former Enforcement Officer, Planning and Environment Department:

I cannot say that I heard that being said, no; not at all.

Mr. J. Mills:

Okay. That is good. Thank you very much. Edward?

Mr. E. Trevor:

Thank you. I think this is for Mr. Le Gresley. Le Gallais and Luce wrote on 8th June saying that they were surprised at the advertisement relating to reconsideration because it related, as far as they were concerned, to the hours, not to the sorting. Why did the Department proceed with looking into whether there should be mechanical sorting permitted or not when it was quite clear, as far Le Gallais and Luce were concerned, that they were not asking for that?

Assistant Director of Development Control, Planning Department:

I believe, Mr. Trevor, that Le Gallais and Luce did refer to the mechanical sorting in their original letter of 19th May, which we had taken as a request for reconsideration, and you have to remember the position that the Department was in mentally at that time regarding the mechanical sorting, and that we had interpreted that as a request for reconsideration on both counts.

Mr. E. Trevor:

They wrote saying that they did not, so should you not have withdrawn the second one, the mechanical sorting?

Assistant Director of Development Control, Planning Department:

Well, as I say, we felt that that issue was in dispute and felt that it needed consideration.

Mr. E. Trevor:

Okay, thank you. The reconsideration was in the name of Reg's Skips, I believe, from the documents we have got. However, the permit was granted to Mr. Taylor. The 2 do not tie up, do they?

Assistant Director of Development Control, Planning Department:

Not very well, but then Le Gallais and Luce were acting for Mr. Pinel and not Mr. Taylor and that is where the approach had come from.

Mr. E. Trevor:

Thank you. On enforcement, from the paperwork we have had, it appears that you tried to act as a mediator rather than an enforcement officer. Is the job of an enforcement officer not to enforce the conditions - assuming they are enforceable - on the permit and not to try and negotiate alternative conditions with someone who might be complaining?

Former Enforcement Officer, Planning and Environment Department:

I do not think I tried to negotiate alternative conditions with anybody. That certainly is not my role. I think, as I tried to explain at the beginning of today's hearing, the role of a police officer may be one to detect an amount of crimes, and I think that is still an accepted practice at the police station. That is not what the Planning Department as an enforcement team is trying to achieve. It is there to resolve issues wherever possible. Where it is necessary to resort to formal enforcement through the Law Officers' Department, we will, as a Department, but that is a decision that is taken within advice. Wherever possible we are looking to resolve issues. Many of the planning complaints that an enforcement officer would receive are not as absolute as somebody jumping through a red light. More often than not, they are caused by a misunderstanding. People are not quite appreciating the technicalities of the law and are going past what would be acceptable within the bounds of their permit. Now, it would be highly inappropriate as an organisation or civil service, I think, to be reporting as an absolute default anybody who breaches a planning condition. The issue is there to bring it back into line, bring it back within the conditions that were set by the Minister or the Committee for a particular use.

Assistant Director of Development Control, Planning Department:

Can I just give an indication as manager of that team? Back in those days, enforcement inquiries, on an annual basis, could easily be 400, 500 or even 600 enforcement inquiries in any one year, and the number of enforcement notices served by the team during the same period would be in the region of a couple of dozen. So, to give you an idea of the number of inquiries and so forth, one can only draw the conclusion that the vast majority of cases are dealt with by people coming back into line, having been advised by the Enforcement Team.

Mr. E. Trevor:

Or, alternatively, that people complain for whatever reason and it was an unjustified complaint.

Assistant Director of Development Control, Planning Department:

Absolutely.

Mr. E. Trevor:

Surely it could be more likely than what you suggested.

Assistant Director of Development Control, Planning Department:

It could be many, Mr. Trevor, yes.

Mr. J. Mills:

Okay, let us move on because there are a few more things to ask. The end of 2006 is characterised after this to-ing and fro-ing by the judicial review case initiated by Mr. and Mrs. Yates which was then rejected by the High Court, being out of time et cetera, and we know what else that the Court said on that. After all this to-ing and fro-ing, including quite a number of representations from Mr. Taylor when he finally saw the September report, that it was not, in his opinion, accurate, and some further exchanges on that and some further exchanges with health protection, we end up, on 9th January 2007, with the Minister authorising the serving of the Enforcement Notice. We had good evidence from you, Mr. Le Gresley, and you, Mr. Porter, and Mrs. Ashworth about that particular piece of process, and you told us very honestly and openly the nature of that process. So we will not go over that again, but then, Mr. Webster, you come into the frame. You come into the frame almost because as soon as the appeal against the Enforcement Notice, that landed on your desk.

Principal Planner-Appeals, Planning Department:

Correct.

Mr. J. Mills:

Now, you told us in great depth what you did. Can I just ask you again, did you immediately go and talk to all these colleagues here and say: "Gosh, what are we going to do?" or did you stand back on your own, so to speak, and form your considered opinions in conjunction with the lawyers? I think you might have told us this before, but I am just anxious to hear it again.

Principal Planner, Planning Department:

No. I would be there initially to set out the affidavit in response to the notice of appeal. So I would go through the file and what I explained was that, in going through the file, we can get the grounds of appeal and the issues involved.

[12:30]

It became clear to me that it was a lost cause, basically, in terms of the enforceability of the conditions and the fact that there was no reference to use of a mechanical digger on the permit and the issue of operating in the same way when we did not have the details from the other site, et cetera. So what I did, I wrote out my own comments of why I thought we had little chance of success on the appeal. So I did that off my own bat to send off to the Solicitor General, but in so doing, I would have explained it to my colleagues. So I would have done that on my own, without consultation, but I would have informed Mr. Le Gresley of what my views were and that they were sending those comments and seeking the advice of the former S.G. (Solicitor General).

Mr. J. Mills:

Could you just remind us what your reaction to that was? I think again you did tell us, but just so that we are up to date. Was it a surprise when you heard this from Mr. Webster?

Assistant Director of Development Control, Planning Department:

I do not recall the exact date that we had a conversation, but I clearly recall Mr. Webster coming up to my office and saying, in effect: "We have a problem with defending the appeal on the enforcement notice" and he went through his reasoning why that was so and, when he went through his reasoning, I could not fault it and I had to agree with what his view was, that it was not going to be defensible, but having said that, we took the step of getting advice from the Solicitor General to confirm that because clearly it was on a point of law, if you like.

Mr. J. Mills:

It was quite an important point of law though, about a condition that needs to be sufficiently precise if it is going to be enforceable, and this is what you learn at planning school, and I think perhaps we were a little surprised that you were not, in a sense, more surprised, that the line you had been taking about the La Prairie condition and all that was "not enforceable".

Assistant Director of Development Control, Planning Department:

I am not sure if I can recall my degree of surprise at this length of time. I do not know if you want me to go into commenting on the condition because I think, in a way, that is what you were suggesting.

Mr. J. Mills:

No, no, no. We have got enough on that. We have got enough on that.

Assistant Director of Development Control, Planning Department:

I think I have given my comments on that.

Mr. J. Mills:

And you have confirmed to us that you did not yourself sign that condition off.

Assistant Director of Development Control, Planning Department:

I did not see the text of it before it went out.

Mr. J. Mills:

You did not see the text. You signed off the permit but you did not see the text?

Assistant Director of Development Control, Planning Department:

Yes, correct.

Mr. J. Mills:

We have got that on record, thank you. Okay. All right. The enforcement notice then got withdrawn and then Mr. and Mrs. Pinel got into the *voisinage* case and then a new planning permission was rolling for the roofing over, which we have heard about at some length from the various parties. So we can just jump ahead to that, which ran its course during quite a large part of 2007 and into 2008, and I think the thing I am particularly anxious to learn about here - other colleagues want to say other things - is that the point at which Mr. Cohen decided that he ought to step away from this because he thought he was conflicted with Mr. Taylor, is this something that was a surprise to you? Mr. Porter, you were out of it or you had gone by this time.

Former Enforcement Officer, Planning and Environment Department:

I was indeed.

Assistant Director of Development Control, Planning Department:

Well, it is a matter for the Minister when he feels that he is in a position of conflict, for whatever reason, and I think in this case he had been dealing with a matter for some time and then decided that it was becoming too difficult for him to continue. I think he made a statement that he had a relationship with Mr. Taylor which went back over many years. I am not even aware of all of the details.

Mr. J. Mills:

No. We will ask him about that. I just wondered if this was something in your sort of frame of consciousness as you and your colleagues were dealing with this case at length over the course of the summer of 2007. I think you are saying it was not.

Assistant Director of Development Control, Planning Department:

No, we were not aware of that. I think the Minister had previously mentioned at a fairly early stage that he knew Mr. Taylor and he said that he would continue to deal with the matter but he would reserve the right to pull out if he felt that it became too difficult for that reason. So it was on our radar that there was an issue there.

Mr. J. Mills:

Yes. Can I just ask you, Mr. Porter, when you were at the site visit way back in September 2006, there was a discussion about the roofing over. That was the purpose and what do you recall the Minister was saying about that? Was he pretty keen on the idea as a sort of way out?

Former Enforcement Officer, Planning and Environment Department:

The discussions were between the Minister and Mr. Taylor, I believe the majority of the conversations. I do remember this discussion about putting a rubber surface down which I thought was a really quite an odd way of overcoming the issue.

Mr. J. Mills:

A suggestion from the Minister?

Former Enforcement Officer, Planning and Environment Department:

No, it was Mr. Taylor's suggestion. Again, my apologies; it is a long time ago, but I believe that Mr. Taylor had suggested that the roofing over of the silage clamp may do away with some of the issues that

the department was facing, Reg's Skip was facing and equally the complainant, Mr. Yates. I believe that that is the reason that the Minister had suggested putting a decision off for 3 months to allow Mr. Taylor to carry out that research that could prove or evidence reasonably that the approval of an application to roof over the property would, beyond any reasonable doubt, solve the problem. I think that is where we were left.

Mr. J. Mills:

Can you just describe the physical arrangements for the site visit? It is quite a confined area. We have seen it. Mr. Taylor was there and yourself and Mrs. Ashworth and the Minister; just the 4 of you.

Former Enforcement Officer, Planning and Environment Department:

I cannot say. I seem to recall ...

Mr. J. Mills:

Perhaps was Mr. Binet present as well?

Former Enforcement Officer, Planning and Environment Department:

He was certainly suggested ... on the officer's report, it said that Mr. Binet appeared to be there.

Mr. J. Mills:

Yes, I think Mr. Binet from the Health Protection was there as well, so 4 or 5 of you. I think the Code of Practice says that, on site visits, you are all meant to stay in a group. Did you all stay in a group?

Former Enforcement Officer, Planning and Environment Department:

Pretty much. Pretty much. I may have said earlier that Mr. and Mrs. Pinel were there too. I seem to recall they were there, but again it was a long time ago; they may not have been.

Mr. J. Mills:

You are right; I think they were.

Former Enforcement Officer, Planning and Environment Department:

I did visit the site a number of times, but yes, we would have stayed pretty much together but certainly I do recall most of the conversation would have been between the Minister and Mr. Taylor. I think there were a number of things that they discussed.

Mr. J. Mills:

Yes, okay. We have had evidence from Mr. Taylor on that and we will ask the Minister about that later on today, but this was really the start of the process that ended with the refusal of the planning application and the roofing over in the spring 2008, by which time, in a sense, it was after the event almost because of the outcome of the court case, but there are just some process issues there that we remain a little unclear about, a little uncertain about, so we want to pursue those in our report. Richard, do you want to say more at this point?

Principal Planner, Planning Department:

No, I think I am ...

Mr. E. Trevor:

A general question.

Mr. J. Mills:

Yes.

Mr. E. Trevor:

Senator Ozouf told us that the Department was extremely busy. I assume it still is. All planning departments are. I think there is no General Development Order in Jersey. Would that help, because we have got a third part of our terms of reference?

Assistant Director of Development Control, Planning Department:

No, there is a General Development Order.

Mr. E. Trevor:

There is?

Assistant Director of Development Control, Planning Department:

Yes, and there has been since 1965.

Mr. E. Trevor:

Or its equivalent. So you can do certain things without ...

Assistant Director of Development Control, Planning Department:

Absolutely right, yes. You can do several things. I have to say that in 1965 the original Order was quite limited in what you could do and we have extended it significantly and particularly since 2006. That has been a political direction, if you like, to remove control from the lower level of ...

Mr. E. Trevor:

This was in response to the ... whatever it was ... report?

Assistant Director of Development Control, Planning Department:

The Shepley Report.

Director of Planning, Planning Department:

The later changes were, but the 1964 law - it came in 1965 - required permitted development to be covered by regulation, which meant a States debate. Certainly since the new law came in, which gives the Minister the power to do it by Order, it does not have to go through that process, albeit it is taken that it can be challenged but it is far easier now for the Minister to increase the exemptions, if you like, permitted development, and he has taken advantage of that in successive years and we are reviewing it again at the moment. So we have been raising the bar on that.

Mr. E. Trevor:

I think recently the Minister has said that landowners should always be notified of planning applications. Of course, that is very recently.

Director of Planning, Planning Department:

That was a States debate on that 2 or 3 years ago.

Mr. E. Trevor:

Does that mean you are going to initiate something similar to, if I remember, certificate A in the U.K. (United Kingdom)?

Assistant Director of Development Control, Planning Department:

Yes, we already have.

Director of Planning, Planning Department:

We do.

Assistant Director of Development Control, Planning Department:

We have that process in place that we make the applicant make a declaration as part of the application form that he or she has notified the landowner as part of making the application. There has to be a declaration.

Mr. E. Trevor?

So there is no point in the Minister saying what he said then?

Assistant Director of Development Control, Planning Department:

No, I think that has come subsequently, has it not?

Director of Planning, Planning Department:

I think we have to require a signature, do we not?

Assistant Director of Development Control, Planning Department:

Yes, that is right, yes.

Director of Planning, Planning Department:

From the owner as well as the applicant.

Assistant Director of Development Control, Planning Department:

There are 2 signature boxes on the application form, one for the applicant and one for the owner.

Mr. E. Trevor:

Okay. Thank you.

Mr. J. Mills:

Okay. I think we are almost finished, though there might be one or 2 things. There might be one or 2 points we want to ask you about as we now get on with our work, but can I just ask you one final point? You, Mr. Le Gresley, produced this briefing note for the Minister in March 2009. This was ahead of the debate on Mr. Shenton's proposition, and not quite word for word but almost word for word, it turned into this which was the Minister for Planning and Environment's comments on P.29 of 2009 which was the Shenton proposition. I presume you were responsible or you signed off the Minister's briefing note?

Assistant Director of Development Control, Planning Department:

I wrote it, yes.

Mr. J. Mills:

Yes, and I presume that, in a sense, therefore, you wrote this.

Assistant Director of Development Control, Planning Department:

I think the Minister may have edited that, yes, slightly.

Mr. J. Mills:

He may have fiddled with it, all right. I just want to ask you one point. This was now in spring of 2009 after all this business with the Enforcement Notice and the withdrawal of the enforcement notice and the court case and the lengthy deliberations on the roofing-over application and the refusal of that and so forth, and the paper for the States still says, and I quote here, in paragraph 13: "The proposition [that is

Mr. Shenton's proposition] states that Reg's Skips were operating lawfully from the St. Peter site. This is not correct. Empty skips could be stored on that site and had been for several decades, but there was no consent to sort material from those skips on that site. The very reason that Reg's Skips were seeking another site from which to operate was due to the fact that they were not authorised at La Prairie." This goes to the heart again of what we were talking about an hour or so ago and this, of course, is an important document because this was put before the States. Can I ask you very bluntly, are you 100 per cent comfortable with that paragraph in the light of all that we have discussed and all that has happened? I think we are finding that paragraph quite difficult, given the nature of the greyness, if you like, of the discussion that we have been having on the concepts of authorisation and pre-1964 consent and so forth. You have got it in front of you, have you?

Assistant Director of Development Control, Planning Department:

Yes, I do not want to get into a semantic discussion about the use of the word "authorised" which perhaps, on reflection, I have used that word in that statement because "authorised" means, you might indicate, "actively given consent", but I am, sort of, using that word meaning that they were able to do something without challenge, if you like, but I am comfortable with that bullet point.

Mr. J. Mills:

Okay.

Assistant Director of Development Control, Planning Department:

I tried to distinguish in that paragraph the difference between the storage of skips on that site, which we had acknowledged for years, and the move towards carrying out an operation of sorting, a process which you might describe as a light industrial type process, on the site which was different. I would stand by that.

Mr. J. Mills:

In the first sentence of the bullet, where did the word "lawfully" come from? That is not in your briefing note. You say: "The proposition states that Reg's Skips were operating lawfully on the St. Peter site. This is not correct." Did you put that word in? It is quite a strong word, that.

[12:45]

Assistant Director of Development Control, Planning Department:

I thought that that had come from Senator Shenton's proposition. I think I was referring to Senator Shenton's proposition.

Mr. J. Mills:

I mean to say, the bit I am talking about is you are saying this is not correct, in a sense. So by saying it is not correct it means they were not operating lawfully. That is what you are saying.

Assistant Director of Development Control, Planning Department:

When they were carrying out a process of sorting.

Mr. J. Mills:

Okay. That goes to the heart of the matter.

Assistant Director of Development Control, Planning Department:

Yes.

Mr. J. Mills:

It is just that that word was quite strong because in the debate it was prayed in aid by one or 2, including Deputy Pryke when I think she said that in her opinion everything was lawful in all respects or something. It is a strong word that and we need to be thoughtful about that. But I think the way this is written, it still goes to the heart of the set of issues that we are trying to get to the bottom of, where there does, to us, seem to be a fairly significant element of uncertainty rather than certainty about what could be done and could not be done. So we will, no doubt, be dwelling on that in our report.

Assistant Director of Development Control, Planning Department:

Okay.

Mr. J. Mills:

There are many other things we could ask you but I think we have probably had you enough and I think we have learned an awful lot from you and thank you for all your efforts to help us try and make sense of this huge volume of paper and to try and understand the set of issues. You may or may not like what we eventually write. We have not written it so you will have to wait and see. Is there anything else you want to say or want to put back to us?

Assistant Director of Development Control, Planning Department:

No.

Mr. R. Huson:

Can I just ask a question, John?

Mr. J. Mills:

Yes.

Mr. R. Huson:

Ian, can you clarify, when Mr. and Mrs. Pinel gave evidence, what they said about the level of skip sorting at La Prairie, please?

Mr. I. Clarkson:

I could. I will need a couple of minutes.

Mr. J. Mills:

Okay. We will be patient on that one. Do you still have as much paper in the office or do have a bit of an electronic system now?

Assistant Director of Development Control, Planning Department:

We still keep everything on paper. We are hoping to move to a scanning electronic system in the next couple of years but that will need a few pounds of cash, I think, to do and then you get into the issue of back-scanning and whether you go back and record all your other historic data.

Mr. I. Clarkson:

I can help a little bit now, Chairman. If we go back to Home Farm first of all, Mr. Pinel said: "I was not so much involved in that side of things then at the very beginning." But he was referring to: "Say 20 a week, possibly." We then move forward ...

Mr. R. Huson:

Presumably that was by hand at that stage, was it, Ian, or was that some form of mechanical operation?

Mr. I. Clarkson:

Roughly 20 skips by hand.

Mr. R. Huson:

Per week.

Mr. I. Clarkson:

Tipped out, sorted by hand.

Mr. R. Huson:

Okay.

Mr. I. Clarkson:

Then refers to Abbey Plant doing work for Reg's Skips, approximately 50 per cent, at La Prairie.

Mr. R. Huson:

Sorry. Can you just repeat that again, please?

Mr. I. Clarkson:

Yes. It is not mentioned in terms of an actual specific quantity at that point but Mr. Pinel says that he was having Abbey Plant sorting "about 50 per cent" of skips at La Prairie because he did not have the space.

Mr. J. Mills:

We have got this on record, I think. We have got the details written down somewhere.

Mr. R. Huson:

Yes. So the other 50 per cent are then hand-sorted/mechanically-sorted at La Prairie?

Mr. I. Clarkson:

That is right. There was a reference to temporary use of a ...

Mr. R. Huson:

Mechanical digger..

Mr. I. Clarkson:

A temporary digger that was brought in off-site, because they did not own their own digger at that point.

Mr. R. Huson:

Okay. So we are talking roughly 10 skips a week then. Would that be fair to say?

Mr. I. Clarkson:

From the evidence you have, yes.

Mr. R. Huson:

Okay. You said you drove past it regularly but you never saw any diggers there at all, to your recollection?

Assistant Director of Development Control, Planning Department:

No. I have to say, I was also watching what was going on on the road as well.

Mr. R. Huson:

No. But, I mean, obviously a digger is a fairly easy thing to see.

Assistant Director of Development Control, Planning Department:

I was not stopping and observing. It was just an impression as one went past.

Mr. R. Huson:

No. But it is a fairly easy thing to see, is it not?

Former Enforcement Officer, Planning and Environment Department:

With absolute respect to Mr. and Mrs. Pinel, who are here in the room today, I have got to say that the conversation I had with them and I have documented in my notes does contradict that comment. All I can say is that my recollection of the conversation was that Abbey Plant was sorting for them ...

Mr. R. Huson:

Totally.

Former Enforcement Officer, Planning and Environment Department:

Yes.

Mr. R. Huson:

That is what you are saying?

Former Enforcement Officer, Planning and Environment Department:

My understanding is at La Prairie ... and, in fact, going back to the comments and the figures that came from Mr. Pinel, he agreed his operation had increased from 3 to 4 skips a week, to a maximum of 8 skips a day at Heatherbrae. So it indicated to me at Heatherbrae there had been an intensification ... an increase. I will stay away from intensification, but an increase in their work. Now, if they are saying that they increased at Heatherbrae Farm from 3 or 4 skips a week to 8, that is much less than they were carrying out, if that statement is correct, at La Prairie and that I do have a little bit of a concern with. The comment made to me was that, given their own site, they had to carry out their own work and, therefore, they were carrying out more. That comment would suggest that no, they were carrying much more work: 10 skips at La Prairie.

Mr. R. Huson:

At La Prairie.

Former Enforcement Officer, Planning and Environment Department:

That does seem a little bit of a conflict to me. With absolute respect, that is the information that I have here and, therefore, what I must stand by.

Mr. R. Huson:

Sorry. You are saying from 2 to 3, to 5 to 8. Are those the figures you just gave?

Former Enforcement Officer, Planning and Environment Department:

The figures that I was given, he agreed that his operation had increased from 3 to 4 skips a week to a maximum of 8 skips a day at Heatherbrae.

Mr. R. Huson:

Right, okay.

Former Enforcement Officer, Planning and Environment Department:

So 3 or 4 skips a week to 10 skips, you know, is a big difference. So we are looking at it the wrong way around; if that was the case then they were doing more work at La Prairie and less at Heatherbrae Farm. But the argument was always that they now had to carry out more work because Abbey Plant, I believe it was, were not able to sort skips for them.

Mr. R. Huson:

It is not a case they were not able. I think Mr. and Mrs. Pinel took it upon themselves to do because it was also more profitable and I think they have echoed that.

Former Enforcement Officer, Planning and Environment Department:

Absolutely. But I do recall that there was a specific reason why Abbey Plant would not sort for them any more. That sticks in my mind quite firmly. I have not documented it here but it is something that firmly sticks in my mind. There was a reason why Abbey Plant had refused to carry out or why they did not any longer sort the skips for them.

Mr. R. Huson:

Sorry. Did we have that reason on record, Ian? Can you remember?

Mr. I. Clarkson:

No. The information the Committee has been given is that it was Mr. and Mrs. Pinel's intention to do their own sorting at Heatherbrae Farm and that answer was given in relation to the profitability of that particular operation. I think on the actual volumes of skip sorting that were done, I think there are some observations that the Committee will need to consider on evidence it has already got but I would invite the Committee to do that after the hearing and I will explain.

Mr. J. Mills:

When you first briefed the Minister on 25th May 2006 he got on to you, Mr. Thorne, and you passed it to Mr. Porter to brief him. You referred to the increased rate of skip-sorting from 2 to 3 a week at the previous site to 5 to 8 a day at Heatherbrae Farm but you ascribe that to Mr. Yates' evidence, not Mr. Pinel's.

Former Enforcement Officer, Planning and Environment Department:

The comments in my notes under the date 3rd May were certainly my conversation with Mr. Pinel and with Mr. Taylor present as well. So I am not looking to contradict certainly what Mr. and Mrs. Pinel said but only that those are the facts that I have in my details.

Mr. R. Huson:

Those are your notes.

Mr. J. Mills:

Well, we have got quite a lot of evidence on this from all sorts of people and our job is to try and meld all this together and we will see how we go. Are we all right? I think that is the end of the session. Thank you very much for coming and thank you for your patience and your understanding. I expect, as we try and put our report together in the next number of weeks, that we will want to clarify various bits with you and we will address it in the usual manner but I doubt we will need another hearing. So thank you very much for your attendance.

Assistant Director of Development Control, Planning Department:

Thank you.

[12:54]