

# STATES OF JERSEY

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## **FIELD 126, LA GRANDE ROUTE DE LA COTE, ST. CLEMENT: CONSTRUCTION OF HOMES**

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**Lodged au Greffe on 18th February 2003  
by Deputy G.C.L. Baudains of St. Clement**

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**STATES GREFFE**

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

to request the Environment and Public Services Committee to review the decision of the former Planning and Environment Committee to allow the construction of 9 houses on part of Field 126, La Grande Route de la Côte, St. Clement (PP.2000/2083).

DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT

## REPORT

The Committee is asked to reconsider its decision of 8th November 2001, when it overturned a previous decision of 2nd October 2001 relating to a planning application for Field 126, situated near Brig Y Don in St. Clement.

Field 126 has a somewhat chequered history, having been subject to several planning applications over the years.

Several issues are involved, possibly the most important being that this field is listed in the 1987 Island Plan in two mutually exclusive Zones; both maps apparently approved by the States. In one map it is zoned as Built-Up, in the other, Agricultural.

Field 126 is now, in the new Island Plan, in the new Countryside Zone.

I contend that as a result of this anomaly the Committee should have proceeded with the utmost caution; indeed I would suggest that the Committee, as soon as it was aware of the zoning confusion, should have brought a Proposition to the States to clarify the issue by amending whichever of the two maps it considered to be defective. It did not and I believe the Committee was remiss in not doing so, because there was bound to be argument and uncertainty surrounding any application regarding this land whilst ambiguity remained.

I have appended a map of the area and relevant extracts from Committee minutes for Members' convenience.

In the legal advice contained in the minutes of 2nd October, Members will note that H.M. Solicitor General advises that the zoning discrepancy "would provide sufficient ground for rebutting the presumption in favour of the development".

I believe the reasons for disallowing development are overwhelming. They include –

- (a) anomaly in zoning (with advice as above);
- (b) unsatisfactory visibility displays, as reported by Public Services;
- (c) lack of surface water drainage, as reported by Public Services;
- (d) a possibly unprecedented number of objections (38);
- (e) impact on surrounding properties;
- (f) over-development of the area (with impact on traffic, schools and other infrastructure);
- (g) danger to road safety, given that the entrance is opposite the busy Brig Y Don children's home.

The above is not an exhaustive list. Some of the issues were used by the Committee in refusing applications for this field in 1981, 1986, 1999 and lastly in 2001 (the application to which this Proposition relates). The Committee also listed various 'contrary to Policy' reasons.

From the available evidence, it would seem that the Committee's volte-face of 8th November was based not on any material change of application circumstances, but rather the fear of being taken to Court by the applicant as a result of a letter received from them. This fear was apparently based on the encouragement given to the developer by the Department, something I consider inappropriate in normal circumstances, but especially so in this case where the site in question has the possibly unique aspect of being allocated to two different zones simultaneously.

I therefore submit the Committee's decision of 8th November 2001 was flawed, inconsistent and unreasonable.

The Committee should be fully aware of all factors when determining an application. Given that planning permission has the effect of turning fields worth perhaps less than £5,000 in agricultural terms into £1 million as building plots (not including a similar profit for the developer) it would be unsurprising if developers and landowners did not exert pressure. In this case, apart from pressure applied by the applicant (which one would expect the Committee to be used to dealing with) there is also the unique situation of a zoning ambiguity.

I believe the Committee got itself into a difficult position by issuing a perfectly legitimate refusal on 2nd October which may not, through negligence, have been robust. They then took the easy way out by reversing that decision on 8th November.

Unfortunately, everyone except the applicant are the losers. The repercussions with regard to safety, infrastructure overload, neighbours enjoyment of their environment etc. are immense. There have been indications that those affected by the Committee's U-turn may seek compensation as a result, so the Committee has not done anyone, least of all itself, any favours.

I maintain that when a Committee makes an error, it is immoral and unfair to extricate itself by unloading the problem onto others.

The decision to refuse permission can be justified, the decision to reverse that decision cannot.

It is not as if the application was for 9 first-time buyer homes – those planned would be in the luxury category, well out of the reach of those desperate for homes.

### **Financial/manpower implications**

It is possible that compensation may be payable if the proposition is adopted, but it is not possible at present to determine –

- the basis of any claim and whether such claim would be well-founded or accepted by a court; or
- if found due, the quantum of a compensation.

There are no manpower implications.



PLANNING AND ENVIRONMENT COMMITTEE

APPLICATIONS SUB-COMMITTEE

13th June 2001

<p>Field No. 126, La Grande Route de la Côte, St. Clement: proposed new dwellings/ formation of access. 1070/2/1/2(231) PB/2001/2083</p>	<p>A9. The Sub-Committee received a report dated 31st May 2001, from Mr. M. Stein, Principal Planner, in connexion with an application to construct nine, three bedroom houses with integral garages and parking on Field No. 126, La Grande Route de la Côte, St. Clement and to demolish the property known as Fairlea, La Grande Route de la Côte and form a new access with associated landscaping.</p> <p>The Sub-Committee noted that both the above field and the property were situated in the Built-Up Area of the Agricultural Priority Zone. The Sub-Committee was apprised of the details of the scheme. It noted that 40 letters of representation had been received in relation to the scheme. The Sub-Committee also noted the contents of additional correspondence which had been received following the issuing of its agenda papers. It was advised that, due to the size of the field and the fact that it was not attached to an agricultural holding, the Department of Agriculture and Fisheries did not object to the loss of field from agriculture.</p> <p>The Sub-Committee received Deputy G.C.L. Baudains whom, it noted, wished to make representations on behalf of the parishioners of St. Clement. Mindful of the total number of representations which had been received and the level of concern which had been generated as a result of the submission of the application, the Sub-Committee decided to refer the application to the Planning and Environment Committee for determination at its meeting on 5th July 2001. It agreed that a site visit should be conducted during the course of the aforementioned meeting and Deputy Baudains agreed to address the main Committee at that time. The Principal Planner was instructed to liaise with the Deputy with regard to the exact time of the site visit in order that those individuals who wished to attend could do so.</p>
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PLANNING AND ENVIRONMENT COMMITTEE

19th July 2001

<p>Field No. 126, La Grande Route de la Côte, St. Clement: site visit 1070/2/1/2(231)  PP/2000/2083</p>	<p>A1. The Committee, with Connétable S.J. Le Cornu and local residents in attendance, met at the site known as Field No. 126, La Grande Route de la Côte, St. Clement regarding an application for the construction of nine three-bedroom houses with internal garages and parking. It was also proposed to demolish the existing property known as Fairlea and to form a new access to La Grande Route de la Côte with associated landscaping.</p> <p>The Committee received a report, dated 31st May 2001, prepared by Mr. M. Stein, Principal Planner and substantial associated correspondence including 38 letters of objection. It was noted that 17 of these related to originally submitted plans, 13 to subsequent revised plans and eight to the final revised plans. The objections were noted as outlined in the Principal Planner's report.</p> <p>The Committee was advised that the site was located in the Built-Up Area as defined on the Approved Island Plan (albeit zoned as Agriculture Priority Zone on the Built-Up Area Map R which was contained within the document). However, the site was also agricultural land for which there was usually a presumption against loss to alternative uses. The Committee was further advised that the Agriculture and Fisheries Committee did not object to the loss of the site, as it was a small field not attached to any agricultural holding, and that at a recent Review Board test case (namely in respect of Field No. 1514, St. Helier) it had been established that it was unreasonable to resist the loss of agricultural land when it had been zoned as within the Built-Up Area.</p> <p>The Committee was apprised of the situation regarding access and noted that the applicant had purchased a property known as Fairlea which was proposed to be demolished to provide access. Whilst visibility could be achieved to an acceptable standard, it appeared that the splay to the west was over land which was not in the ownership of the applicant and the owner of that land was unwilling to commit to an agreement to enable visibility in perpetuity until a decision regarding this application had been determined. The Committee noted the strong views expressed by the Connétable of St Clement and local residents that the proposed access onto La Grande Route de St Clement was hazardous due to the busy nature of the road, particularly at peak times in the morning, and the speed of traffic passing the area. Furthermore, the proposed access</p> <p>was opposite the Brig Y Don Nursery which already created considerable traffic problems due to parents parking along the</p>
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main road at pick-up times.

The Committee recalled that a previous application for development of the field had been refused, inter alia, on the grounds of overdevelopment of the site. The Committee was advised that the current revised proposal, however, was considered acceptable in terms of design and layout and that the residential density was less than that previously refused. It was pointed out that a covenant precluded the development of Fairlea. The Committee, however, recognised that this was a matter for the developer to settle.

The Committee had regard to the aforementioned discrepancy in the designation of the site in the Island Plan 1987 and noted that the position of the boundary lines had been corrected in the new draft Island Plan which was currently in the process of public consultation and that it was proposed that Field 126 would then be designated as part of the new Countryside Zone. The Committee, recognising the sensitivity of the situation, decided to take legal advice regarding the possibility of compensating the developer in the event of development being refused, prior to taking the matter to the States for clarification, with a view to rezoning the above field within the existing Agriculture Priority Zone.

The Principal Planner was directed to take the necessary action.



PLANNING AND ENVIRONMENT COMMITTEE

2nd October 2001

<p>Field No. 126, St. Clement: construct nine three-bedroom houses 1070/2/1/2(231)  PP/2000/2083</p>	<p>A10. The Committee, with reference to its Act No. A1 of 19th July 2001, recalled that it had deferred an application to construct nine three-bedroom houses with integral garages and parking at the site known as Field No. 126, St. Clement and the demolition of the property known as Fairlea to form a new access. Legal advice had been sought regarding the possibility of compensating the developer of the site in the event of development being refused.</p> <p>In connexion with the above, the Committee received a report from Mr. M. Stein, Principal Planner and associated correspondence dated 3rd September 2001, from H.M. Solicitor General.</p> <p>It was noted that H.M. Solicitor General, whilst advising that the level of encouragement given to the applicant by the Department needed to be taken into account further advised –</p> <p><i>“...in my opinion the fact that the site was rezoned in error (assuming that it was) and that there is on record a discrepancy between two things, both apparently approved by the States, would provide sufficient ground for re-butting the presumption in favour of the development. I am, therefore, of the opinion that the Committee is entitled to refuse development if, on consideration of the matter, it is of the opinion that the development is in an area where development should not take place.”</i></p> <p>Notwithstanding the above, correspondence dated 14th September 2001, from the applicant had since been received to advise that they had been unable to achieve the necessary visibility splays over neighbouring land.</p> <p>The Committee decided to refuse the application due to the following –</p> <p>(a) the application site did not have sufficient highway frontage to provide a suitable access with adequate visibility splays and the proposal would therefore be prejudicial to highway safety;</p>
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	<p>(b) notwithstanding the zoning of the site on the Island Map, the proposed development represented an unacceptable extension of development into the open countryside, contrary to Article 2(c) of the Island Planning (Jersey) Law 1964, as amended;</p> <p>(c) the proposal represented the loss of agricultural land contrary to Policy CO25 of the approved Island Plan; and,</p> <p>(d) the proposed development, by virtue of its siting, would be injurious to the amenities currently enjoyed by neighbouring residential properties.</p> <p>The Principal Planner was directed to advise the applicant of the above prior to issuing a refusal notice to afford the applicant an opportunity to respond, in accordance with advice from H.M. Solicitor General.</p>
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PLANNING AND ENVIRONMENT COMMITTEE

8th November 2001

<p>Field No. 126, La Grande Route de la Côte, St. Clement: appeal – proposed construction of nine houses, demolition of Fairlea and new access. 1070/2/1/2(231) PP/2000/2083</p>	<p>A9. The Committee, with reference to its Act No. A10 of 2nd October 2001, recalled that it had refused an application to construct nine three-bedroom houses with integral garages and parking at the site known as Field No.126, St. Clement and the demolition of the property known as Fairlea to form a new access. It also recalled that it had refused the application in principle notwithstanding that the site was in the Built-Up Area, as a result of which there was a considerable history of officer advice having been given in support of the principle of the development of the site.</p> <p>The Committee received a report dated 30th October 2001, from Mr. M. Stein, Principal Planner, in connexion with revised plans for the construction of the above.</p> <p>The Committee was advised that the officer’s original recommendation of approval had conceded the principle of development on the site on the following grounds –</p> <ul style="list-style-type: none"><li>(a) the site was located in the Built-Up Area as defined on the approved Island Map;</li><li>(b) a Review Board panel had found against the Committee in a case where agricultural land was also zoned as Built-Up Area (Field No. 1514, St. Helier); and,</li><li>(c) the size, scale and design of the proposed development was considered to be acceptable.</li></ul> <p>Notwithstanding the above, approval had only been recommended on the following condition –</p> <p>“Permission is entirely contingent upon legal agreement being reached with adjoining property owners to ensure that visibility splays of two metres by 50 metres onto La Grande Route de la Côte were achieved without obstruction, in perpetuity. This agreement would need to be submitted as part of the detailed planning application.”</p>
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The Committee was also advised that the case made by the appellant in terms of supporting the principle of development on the site was convincing, and furthermore that the appellant was likely to appeal the matter to the Royal Court under Article 21 of the Island Planning (Jersey) Law 1964, as amended, should the Committee maintain its refusal.

The Committee reconsidered correspondence dated 3rd September 2001, from H.M. Solicitor General in which was opined –

“I did, however, advert in paragraph 15 of my previous letter to the potential problem which would arise if an applicant could show that he was in some way encouraged by the previous refusal to think that if he amended his application he might obtain a consent and that he has expended monies in reliance on that encouragement. I note from the letter of 28th April 1999, that the writer of the letter identified a number of issues shown on the sketch scheme. I do not know whether the recipient of the letter then acted in reliance upon the indications which had been given. If it did so, it might well have ground for the argument that because it has acted to its detriment in reliance upon indications in the letter, it would be unreasonable in all the circumstances for the Committee to refuse an application.”

With reference to correspondence dated 16th October 2001, from the appellant, it was evident that, in making the application, it had been heavily relied on the fact that there were no policy reasons given on the previous refusal and also based on continued encouragement from the officers.

The Committee considered the appropriateness of rescinding the reasons of refusal which precluded the principle of development on the site and either –

- (a) approving the application subject to condition which required the necessary visibility splays to be achieved and the application to be submitted as part of a detailed planning application; or,
- (b) refusing the application because the visibility splays at the current time could not be achieved.

In respect of sub-paragraph (b) above, the Committee considered that the Royal Court would be mindful of the condition that had been recommended which might facilitate an agreement between the appellant and neighbour which would have enabled the visibility splays to be achieved.

	<p>Having given the matter due consideration, the Committee decided to approve the application subject to the condition that necessary visibility splays must be achieved and the legal agreement in respect thereof submitted as part of a detailed planning application.</p> <p>The Principal Planner was directed to take the necessary action.</p> <p>Deputies A.J. Layzell and J-A Bridge were absent for this item.</p>
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PLANNING AND ENVIRONMENT COMMITTEE

6th December 2001

<p><b>Confidential:</b> <b>exemption</b> <b>3.2(a)(xi)</b> Field No. 126, La Grande Route de la Côte, St. Clement 1070/2/1/2(231)</p>	<p>B5. The Committee, with reference to its Act No. B16 of 22nd November 2001, received correspondence dated 28th November 2001, from Senator C.G.P. Lakeman, thanking the Committee for accessibility to the file concerning Field No. 126, La Grande Route de la Côte, St. Clement.</p> <p>The Committee also received correspondence dated 22nd November 2001, from Deputy G.C.L. Baudains, in connexion with the above matter.</p> <p>The Committee noted the request of Senator Lakeman to rescind the decision to grant permission for the development of the said field and was advised that the Director, Planning and Building Services was to meet with H.M. Solicitor General to discuss the matter further.</p> <p>The Committee was also advised that the original letter sent to H.M. Solicitor General requesting advice on the matter had included incorrect assumptions upon which H.M. Solicitor General had based the ensuing advice.</p> <p>The Committee was further advised that it was imperative that H.M. Solicitor General was made aware of the detailed technical planning factors and that all facts should be made available prior to the Committee deciding whether it was appropriate to cancel the permit.</p> <p>The answer to the question to be posed to the President in the States on 11th December 2001 was agreed. It was also agreed that the applicant should be informed that the Committee had been requested to revoke its decision and that this would be considered at a subsequent meeting.</p>
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PLANNING AND ENVIRONMENT COMMITTEE

20th December 2001

<p>Field No. 126, La Grande Route de la Côte, St. Clement: consideration of rescindment of planning permission. 1070/2/1/2(231)</p>	<p>A17. The Committee, with reference to its Act No. B5 of 6th December 2001, recalled that it had deferred a decision in respect of the requested revocation of planning permission granted for the development of Field 126, La Grande Route de la Côte, St. Clement, by Senator C.G.P. Lakeman.</p> <p>Having given further consideration to the application and the representations mad on it, the sequence of events which had lead to the granting of planning permission, advice previously received from H.M. Solicitor General and correspondence dated 16th October 2001, from Mrs. Cotillard, applicant, the Committee decided that it would maintain approval.</p> <p>It was agreed that Senator Lakeman, Deputy, G.C.L. Baudains and Mr. S.J. Le Cornu, former Connétable of St. Clement would be informed of the decision prior to the matter being released to the media.</p> <p>Deputy J-A Bridge requested that her dissent from the decision be recorded.</p>
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