STATES OF JERSEY

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FIELD 126, LA GRANDE ROUTE DE LA CÔTE, ST. CLEMENT: CONSTRUCTION OF HOMES (P.17/2003) – COMMENTS

Presented to the States on 18th March 2003
by the Environment and Public Services Committee

STATES GREFFE

COMMENTS

Introduction

The States of Jersey, by virtue of the Island Planning (Jersey) Law 1964, as amended, has delegated the statutory responsibility for making decisions on applications to the Planning and Environment Committee. While the States Assembly has the ability to amend the Law under which the Committee operates, it is unable to alter a decision of the Committee made under Article 6 of that Law. It is the Committee alone that has the responsibility to consider the application, having regard to any material considerations which include, among other things, the designation of the site on the approved development plan, detailed planning considerations and any representations made on the application.

In this case, however, the application was not one made under Article 6 of the Law. It was a non-statutory application to test the principle of development on the site. While the process of consultation and determination is the same, there is no right of appeal to the Royal Court. Were the Committee to accede to a request of the States to reconsider the decision it has made (implicitly with a view to cancelling that decision and refusing development on the site), it is a fairly simple process for the applicant to submit an application under Article 6, the refusal of which would entitle him to appeal to the Royal Court. The Royal Court would no doubt have regard to the earlier non-statutory decision to grant permission in its considerations.

While it is open to the Committee under Article 7 of the Law to revoke (or modify) a permission it has already granted, that Article carries with it a statutory right of appeal to the Royal Court under Article 21 of the Island Planning (Jersey) Law 1964. Were the Committee to reconsider and decide to revoke a permission as a result of a States decision requesting it to do so, the applicant has indicated he is likely to exercise his right of appeal to the Royal Court. In these circumstances, the Committee would need to be able to defend its decision to revoke the permission on the basis of a change in the material considerations since it granted permission. It is doubtful as to how much weight a States decision to support Deputy Baudains` proposition would carry in the Royal Court – particularly if the debate strayed from purely planning factors. Rarely, if ever, do "after the event" debates about planning decisions lead to satisfactory outcomes. The test in the Royal Court would ultimately be one of reasonableness – having granted permission in November 2001 was it reasonable for the Committee to revoke that decision in 2003?

This particular case is further complicated as the Committee originally refused the application, and permission was only granted after representations from the applicant to reconsider the application. So the Committee would have to justify first, why it had refused permission; second, why it had then granted permission; and then, third, why it had subsequently revoked the permission.

The Committee has already considered the representations made by Deputy Baudains, when he attended the Committee on 22nd November 2001 as part of a delegation comprising the (then) Connétable of St. Clement Senator Lakeman and a neighbour. It decided that, despite the representations, no new factors were put forward that hadn't previously been taken into account when the application had been granted permission (the neighbours and parish representatives having consistently opposed the application). The Deputy's projet similarly contains no new material planning factors which cause the Committee to alter its view that the decision to grant permission was correct.

Detailed points in the Deputy's projet (projet references)

The Deputy appears not to appreciate the importance that the view the Royal Court may take is material in the determination of an application. The ultimate test of a sound and reasonable decision is whether or not it would stand up to scrutiny in the Royal Court, either as an Appeal under Article 21 of the Law, or through judicial review.

It is the Committee's view that the Royal Court would be likely to find the Deputy's reasons for disallowing the development to be unreasonable having regard to all the circumstances of the case. The points are explained in the order put by Deputy Baudains in his projet.

(a) Whilst there is a zoning discrepancy between the drawings in the draft Island Plan and the States approved Island Map, which is most likely a draftsman's error, we cannot be sure that is the reason. The developer, the Committee and the officers were entitled to rely on the designation of F.126 on the map approved by the States in November 1987, and would have done so rather than rely on drawings contained in the "Island Plan – Volume 2– Plan and Policies". This was a consultation document published in July 1986, the content of which was later modified by IDC projet 126/87.

The Royal Court would therefore be likely to find that the site, on the date of the submission of the application, is located in the Built-Up Area, notwithstanding that it may have been in error.

(b) Public Services did not report that visibility splays were unsatisfactory. On the contrary, Public Services advised that they could be achieved although expressing concern that they would pass over land not in the applicant's ownership. Hence the condition placed on the permit which makes the permission entirely contingent on the applicant agreeing visibility rights over the adjoining neighbour's land. (This seems to be unobtainable at this moment in time and explains the reason why a new application is submitted showing an alternative means of access.)

(c) Public Services advise that there is no public surface sewer available therefore soakaways must be considered. If they had considered soakaways to be unacceptable they would have stated this. Notwithstanding this, drainage is a matter which is regulated at the detailed planning application stage.

(d) The number of objections is of itself not a material planning consideration. Rather, it is the substance of the objections. Objectors need to raise sound planning grounds in their representations to warrant refusal of an application. In this case the proposal satisfied all policy considerations and met with the Committee's standards in terms of siting, access and design, albeit that the access is conditional.

(e) The siting relationship of the proposed units to the neighbouring properties is no different to that found throughout the Island and it is therefore considered that the proposed dwelling units would not impact unduly on the neighbouring properties.

(f) The proposal does not represent an overdevelopment of the site. The actual residential density of the scheme is 65 habitable rooms per acre which fits comfortably within the acceptable range (65 hra to 75 hra) suggested for this type of site in the Committee's adopted guidelines.

(g) As stated previously, Public Services only concern related to ownership issues relating to visibility splays. This was overcome by the condition referred to in paragraph (b) above. No other safety issues were raised.

In light of these considerations and the degree of "encouragement" given by the Department to the developer, and the designation on the Island map 1/87, it considered that on balance that it would be difficult to sustain a refusal were the matter to end up in the Royal Court. If the Committee was at fault in any way, then it was in refusing permission too hastily in October 2001 and not giving sufficient attention to the Solicitor General's advice and the assumptions and qualifications contained in it.

The Deputy suggests that the discrepancy in zoning should have been referred to the States for correction. Whilst this could have been an option, it must be understood that policy cannot be applied retrospectively and any change in zoning by the States at that point would not have altered the consideration of the application, as at the time of submission the formal zone was Built-Up Area.

Contrary to what Deputy Baudains says, the Committee is not liable to pay compensation to persons affected by development. Article 6(11) of the Island Planning (Jersey) Law 1964 makes this point absolutely explicit. **"No compensation shall be payable in respect of injurious affection to any estate or interest in any land by reason of the operation of this Article."**

However, under Article 7(4) of the Island Planning (Jersey) Law 1964, the Committee is liable to pay compensation to persons who sustain loss which is directly attributable to the revocation. The applicant has advised that he would appeal against any revocation notice.

The likely outcome, therefore, is that the Royal Court would consider that the intervention by the States is not a material planning consideration and therefore, because of the other material planning considerations referred to above, find favour with the case made by the applicant and award substantial legal cost against the States and allow the development to take place.

Deputy Baudains refers to the proposed dwellings as "luxury" houses. There is no evidence to suggest that the specification of these dwellings will put them in the luxurious category. It is, however, a fact that it is this type of three-bedroom houses for which there is greatest demand in the Island.

In considering this response to Deputy Baudains' proposition, the Environmental and Public Services Committee has already "reviewed" and "reconsidered" the decision taken by the previous Committee. We found that it was a valid decision, based on careful consideration of the material planning considerations.

Finally, as Members may know, there is a current application which will be considered on its merits having regard to the Island Plan and other material considerations, including previous decisions.