

COMMITTEE OF INQUIRY: BEAUVOIR, TRINITY - REPORT

**Presented to the States on 6th July 1999
by The Committee of Inquiry**



STATES OF JERSEY

STATES GREFFE

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**STATES OF JERSEY
COMMITTEE OF INQUIRY**

**INTO THE CIRCUMSTANCES WHEREBY THE DEVELOPMENT AT BEAUVOIR RUE DE LA CROISERIE,
TRINITY WAS PERMITTED**

Introduction

The decision to establish a Committee of Inquiry

On 7th October 1998 the States adopted a proposition of Senator R. J. Shenton, O.B.E., and approved the appointment of a Committee of Inquiry to investigate fully all the circumstances whereby building development at Beauvoir, Rue de la Croiserie, Trinity, was permitted, and to report back to the States with such recommendations (if any) as the Committee considered to be appropriate. In the report accompanying the proposition Senator Shenton outlined six areas of concern -

that the property had been changed from a traditional agricultural type property to ‘a building of huge proportions, far exceeding the size of the original property’;

that the building was rendered rather than of granite construction;

that the work had proceeded with the minimum of publicity;

that aspects of the development had been undertaken before permission had been sought and, at times, permission had been applied for retrospectively;

that several permissions had been granted by the Planning and Building Services Department without any referral to the Committee;

that some of the development applications had not been advertised and others had been couched in ‘vague, ambiguous and even misleading terms’.

In bringing the report and proposition to the States, Senator Shenton explained that his interest had arisen from contact he had had with owners of neighbouring properties who had approached the Greffier of the States requesting that a Board of Administrative Appeal be established to consider these issues. The Greffier had advised, however, that the issues that the owners wished to raise were not appropriate for review under the Administrative Decisions (Review) (Jersey) Law 1982, as amended, but that it was open to them to seek the support of a politician to pursue the matter in the States on their behalf. In the ensuing States debate Senator Shenton affirmed that he had known the property for some time because his son had considered purchasing it previously.

Membership

1. The Committee of Inquiry appointed by the States comprised -

Senator L. Norman, President
Deputy D.R. Maltwood
Deputy J. Huet
Deputy A. Breckon
Deputy K.W. Syvret, M.B.E.

Terms of reference

The terms of reference of the Committee were:

‘to investigate fully all the circumstances whereby a development at Beauvoir, La Rue de la Croiserie, Trinity, was permitted, and to report back to the States with such recommendations (if any) as the Committee considers to be appropriate’.

In undertaking its task the Committee was mindful of the fact that it could not change nor modify decisions which had already been taken by States Committees. Its role was to report and comment on events and decisions. It did not have the power to change them.

Methodology

As the inquiry focussed on the developments and extensions of a private home owned by a particular family, who had already been the centre of media attention over this issue, the Committee agreed that its meetings should not be open to the public and that all evidence should be considered in private.

1st meeting of the Committee of Inquiry 2nd November 1998

The Committee met on seven occasions. It considered a wide range of written evidence, including a video produced by the owners of Beauvoir prior to the commencement of development work, the files and drawings held by the Planning and Building Department and the files and papers collated by Senator Shenton, neighbours who had made the original complaint, the owners of Beauvoir, their agent and their builders.

The Committee visited the property and viewed its external appearance but was discouraged from viewing the property internally. Out of respect for the privacy of the owners, therefore, the Committee did not enter the house or cottage. The Committee also interviewed, in closed hearing, those persons connected with the events whose names are listed in Appendix 1.

Background information

The Planning and Building Services Department and the roles and responsibilities of its officers

The Director of Planning and Building Services is accountable through the Committee's Chief Executive Officer to the Planning and Environment Committee. In carrying out its application responsibilities, the Department of Planning and Building Services has three sections 'Development Control', 'Building Control', and 'Administration'.

Planning and Building Control are two professional functions, both of which are governed by legislation. Both areas are staffed by appropriately trained professionals whose functions and training are different. The third section, 'Administration', is responsible for progressing the applications and driving the planning and building process forward. Although planning and building control are different disciplines, there is a good deal of overlap between the two functions and close team work is required. For this reason, teams are organised on an area basis. The Parish of Trinity falls within an area served by a team of two planners and two building control officers. During the course of the Beauvoir development there were significant changes in personnel within the area team. Appendix 2 lists those in the area team and others who had an involvement in this development.

Delegated powers

During the 2½ year period from 19th June 1996 to 17th December 1998, when the applications for the development of Beauvoir were submitted, a scheme of delegated powers was introduced as a response to the growing workload of the Committee which at the time was meeting weekly to cope with an increasing number of applications.

The scheme was introduced through the States of Jersey (Amendment No. 5) (Jersey) Law 1996, which was adopted by the States on 7th November 1995 and came into force on 10th October 1996. The Planning and Environment Committee quickly took advantage of the new arrangements and, on 7th November 1996 approved the delegation of certain of its functions under the Island Planning (Jersey) Law 1964, as amended ('the Planning Law'), the Public Health (Control of Buildings) (Jersey) Law 1956, as amended, and the Building Bye-Laws (Jersey) 1996. The terms of the delegation were recorded in an Act of the Committee and published as R.C.34 of 1996. The text of the Act is published as Appendix 3 to this report.

The Committee approved an internal procedures memorandum effective from 11th November 1996 which outlined the administrative procedures whereby decision-making under delegated powers would be exercised. The memorandum has been made available to the public and the text of the memorandum is published as Appendix 4 of this report.

Under the new scheme of delegation, the Director of Planning and Building Services was empowered to take certain decisions himself without referral to the Committee. An Applications Sub-Committee was also established to consider the bulk of applications which fell beyond the powers delegated to him. Currently about 90 per cent of all applications are dealt with by the Director of Planning and Building Services without referral to the Committee or Sub-Committee, and about ten per cent of applications are considered by the Applications Sub-Committee. The full Planning and Environment Committee considers only a handful of major applications each year, and also considers appeals from Application Sub-Committee decisions and decisions delegated to the Director of Planning and Building Services.

This formal system of delegated functions overlays an earlier informal system in which, for minor small works, applications

are considered and approved by the planning officer in the area team.

The application process

When applications for development are received by Planning and Building Services, they are registered by the Administration staff and entered into a computerised system which automatically generates a list of new applications which is sent to a range of organisations, such as the Fire Service, which is automatically consulted either as a matter of practice or in response to the requirements of legislation. The list is also sent to Parish Halls and the Jersey Evening Post, which publishes the information as an unedited news item, not as an advertisement.

On registration, the Administration section identifies any other people or organisations who need to be consulted. This is double-checked later by professional planning officers.

The application is then considered by planning officers who take account of responses from those consulted and representations made by the general public. Planning officers also visit the site, log problems and arrange meetings to address any problems which have been identified. They then determine whether the proposed development can or cannot be accepted in principle, in accordance with States and Committee policies.

At this stage the planning officers may recommend that the application should be approved. Alternatively, they may recommend that the application is sent to the Applications Sub-Committee for consideration.

After consideration by planning officers the application is forwarded to building control officers, who study the details of the application for structural requirements and compliance with the building bye-laws.

The application is then studied by the Director of Planning and Building Services. Under the scheme of delegated powers he is responsible for determining whether it falls within the parameters of his power to approve or to refuse, or whether this is a decision for the Applications Sub-Committee or, in the case of very large developments, whether it is a matter requiring consideration by the full Committee.

Depending on the outcome, the application may be approved with or without conditions, or it may be referred to the next fortnightly meeting of the Sub-Committee.

When permission is given, a permit is issued to the applicant and a set of notices are given to him to be returned to the Department as the building work reaches certain stages. When the commencement notice is received by the Department, the Building Control Officer makes up a working file, photocopies the permit and sends it to the Planning Officer to inform him/her of the commencement of work. This enables the Planning Officer to check that any conditions imposed on the development are met.

The Beauvoir development

Location

Beauvoir is situated on La Rue de la Croiserie in the Parish of Trinity. Prior to 1969 it was a single unit of accommodation comprising a main house with attached barn and outbuildings. In 1969 permission was granted to convert the property into two units of accommodation, and in 1970 permission was given to renovate part of the property - the cottage. The buildings were of granite construction.

The whole property is located within an area designated in the Island Plan as an Agricultural Priority Zone. The policy (CO6) with regard to development in this zone is that -

“Agricultural land and all other land outside the ‘Green Zone’ the defined ‘Built up Area’, the ‘Green Backdrop Zone’ and the ‘Villages’ is designated as an ‘Agricultural Priority Zone’ where:

- (a) *There is a presumption against any new non-agricultural development...”*

The Planning and Environment Committee interprets ‘new... development’ as meaning ‘new buildings’. In this sense, therefore, the Beauvoir development, as an extension, refurbishment and re-build of an existing property, was not affected by the policy.

Development applications

The series of development applications considered by the Committee of Inquiry were made between 1996 and 1998. The first one, to change the use of Field 1202A, took place when the property was owned by Miss E Bichard. Subsequent applications were made while the property was owned by the current owners, who employed an agent to act on their behalf throughout that time.

Application for change of use of Field 1202A (application 6135/B) (12th June 1996) (published in Jersey Evening Post, 24th June 1996)

This field adjoining the western boundary of the property had an area of 1½ vergées. It was significantly lower than the surrounding agricultural land and could not be incorporated into other fields. As a result it was difficult to apply modern farming methods to it and therefore its use as agricultural land was limited. The owner of Beauvoir sought permission to change the use of the field and incorporate it within the garden area of Beauvoir. The Agriculture and Fisheries Committee, whose permission was required for this change of use, was reluctant to release the land initially but, following the placing of advertisements in the Jersey Evening Post, it was clear that no-one wished to take on the field for agricultural purposes. In view of this, the Agricultural and Fisheries Committee withdrew its objections to the change of use. The application for change of use was then discussed by the full Planning and Environment Committee (this was prior to the introduction of delegated powers) and was approved subject to landscaping conditions.

A subsequent application was submitted in respect of Field 1202A on 22nd August 1996, seeking to increase the garden area and reduce the size of the orchard. Once again, approval was given, subject to the submission of a detailed landscaping scheme, prior to the field being given over to domestic use.

Application to demolish the cottage and re-build and to add an extension to the main house (application 6135/C) (5th November 1996) (published in the Jersey Evening Post 8th November 1996)

The present owners had now purchased the property and wished to extend it. The plans for the development were extensive. In addition to a two-storey extension to the main house, the applicants requested permission to demolish and re-build the cottage. The wording of the application was as follows -

‘Demolish existing cottage and buildings and construct new cottage with integral garage and two-storey extension to main house incorporating dining room, kitchen, new entrance, family room, snooker room, utility and garage with bedrooms and bathroom in new first floor.’

This application arrived in the Department three days before the introduction of the scheme of delegated powers, but the scheme was established by the time the consultation process had taken its course. As a result, it was considered by the new Applications Sub-Committee. The Department received no objections to the development following the publication of the application in the Jersey Evening Post.

Despite this, the Sub-Committee minutes of 29th January 1997 record that members were concerned *..’regarding the mass of the proposed development in the Agricultural Priority Zone.’* With regard to the cottage the Sub-Committee stated that *‘It had no objection to the demolition of the cottage and the rebuilding of a similar one with the same footprint’.*

In conclusion the minutes record that - *‘The Sub-Committee decided to reject the application on the grounds that it is an unacceptable design in the countryside and constituted an overdevelopment of the site in a manner which would be detrimental to the amenities of the area’.*

Negotiations and revised applications

Subsequent to the rejection of the application, the Committee requested its officers to negotiate a single storey extension to the property and the services of the Department’s Conservation Architect/Urban Designer, were called upon to offer advice on what might be more acceptable. Several drawings were produced showing an extension to the main property which was lower and less imposing. This was achieved by the incorporation of the second storey within the roof-space to produce an appearance of a single-storey building. It was variously described as a ‘one-storey’, a ‘one-and-a-half-storey’, and a ‘two-storey building’.

In the light of this guidance, the Agent submitted another application, considered by the Sub-Committee on 12th March 1997. The minutes record that *‘the revised plans showed a single-storey extension which was not appropriate alongside the main house. It suggested that the extension walls and the side wings of the house be rendered leaving the main house in granite.’*

Despite the statement that the single-storey extension was *‘not appropriate alongside the main house’*, the Planning Officer, wrote to the Agent on 14th March 1997 and stated that the *‘Committee discussed the changes depicted on drawing No 1676’*

and were of the opinion that they could now support the extension to Beauvoir... subject to a number of minor changes'

This apparent contradiction was addressed in evidence given by the Director of Planning and Building Services who stated that he had been present at the meeting and that the minutes of the Sub-Committee meeting were inaccurate. In his view, the Sub-Committee on that occasion, *'gave the green light for the project'*. He stated that *'The message that the Department took away was that while there were reservations about the granite, the scheme was now basically acceptable'*. He also confirmed that officers meet together to agree actions after every Sub-Committee meeting and that, if there had been any uncertainty about the intention of the Sub-Committee on this matter, it would have been raised in that discussion. He stated that in this case the view of the Department was clear and that, although the minutes were approved, they are not, in his opinion, an accurate record of the feelings of the Sub-Committee members at the time. He also emphasised that, at that time, minutes were received by the Department a long time after meetings. In his view, *'It would really slow the process down if officers had to wait before acting - there is always a trade off between speed and the accuracy of minutes.'*

Application (6135/D) (21st March 1997) (not published in Jersey Evening Post)

Following the Planning Officer's letter of 14th March 1997 reporting the Sub-Committee's decision to grant planning approval, the Agent submitted a more detailed development application and, remarkably, lodged it with the Department seven days later. The application was cleared by the Planning Officer in May 1997, and was cleared by Building Control in June 1997. The Director of Planning and Building Services approved the development application under delegated powers on 26th June 1997 and it was reported to the full Committee at its meeting of 2nd July 1997.

The permit granted permission for the owners to -

'Demolish existing cottage and substandard building and construct new dormer cottage and two-storey extension incorporating family room, kitchen, dining room, snooker room and double garage with bedrooms and bathroom over. Construct inground concrete swimming pool'.

There were conditions attached however -

'That typical details of doors, windows, dormers, roof features, and other decorative details be submitted for approval before development commences on the site'.

No permit was issued in response to the 'in-principle' application considered by the Applications Sub-Committee on 12th March 1997. The Applications Sub-Committee minutes show that the Sub-Committee was not yet happy with the proposed development, albeit that the minutes are now being challenged. Following that meeting, although the papers considered by the Applications Sub-Committee would have led at most to a planning 'in principle' permit being issued, a development permit was issued on the strength of detailed information received one week after the application was considered by the Sub-Committee. To date therefore, the letter of approval sent by the Planning Officer on 14th March 1997 is the only written indication that approval was given.

Senior officers within the Department take the view that the failure to issue a formal 'in principle' permit following the Sub-Committee meeting was an unfortunate oversight, but the rapid submission of the more detailed information by the Agent, and its subsequent approval, effectively meant that the earlier material considered by the Sub-Committee had been 'overtaken by events'.

It appears that officers within the Department may also have been overtaken by events, or at least confused by the various terms used to describe the development. An undated building bye-law check list, for example, contains the following handwritten comment -

'New Plans Received 17/6/97 2nd storey bed & bathroom arrived!! What's going on?'

Revised Application (6135/D) (18th August 1997) (published in the Jersey Evening Post 22nd August 1997)

Once building work had commenced, the Agent submitted a revised application which sought to retain and re-furbish the cottage rather than demolish and re-build. It was approved on 16th October 1997 by the Director of Planning and Building Services under delegated powers and reported to the full Committee on 29th October 1997.

Further Revisions (6135/D) (13th November 1997) (not published in the Jersey Evening Post)

An application for a further revision was sent to the Department on 13th November 1997. On this occasion, the Agent sought to return to the original scheme of demolishing and rebuilding the cottage. Additionally, however, permission was also sought for the building of a wine store, boiler room and tennis court. On 9th January 1998, as before, the application was approved by the Director of Planning and Building Services under delegated powers. It was reported to the full Committee on 14th January 1998.

Once again the same conditions were placed on the development -

'That typical details of doors, windows, dormers, roof features, and other decorative details be submitted for approval before development commences on the site'

Neither the revised application nor the further revision was considered to be of major importance. According to the Director of Planning and Building Services both were amendments to a permission which had already been granted.

Retrospective Application (6135/D) (27th July 1998) (not published in the Jersey Evening Post)

This application sought retrospective approval for minor changes to the dormer windows of the cottage, the installation of a ground floor utility room door in the cottage and the deletion of two gable windows in the cottage. The changes to the dormers and first floor windows had already been agreed in writing by the Planning Officer, who took the view that they were improvements in the design which also benefited the neighbours. The change in location of the utility door was considered to be of minor importance. This application therefore was dealt with under delegated powers. It was approved by the Director of Planning and Building Services on 10th September 1998 and reported to the full Committee on 23rd November 1998.

During the course of the Inquiry the Committee was informed that that the owners had created an additional unit of accommodation within the main house and extension without seeking the necessary permission under the planning laws. Similarly the owners failed to seek the necessary permission under the Regulation of Undertakings and Development (Jersey) Law 1973, as amended. (see page 17)

No retrospective application was submitted with regard to this development because the owners removed the limited works which had created the additional unit.

Two other applications

There were two other applications both of less significance:

1. application to reposition the driveway (6135/E) (15th April 1998) (published in the Jersey Evening Post 17th April 1998)

This was approved under the earlier informal arrangements (described on page four) whereby planning officers could give approval for small non-contentious items. The officer gave approval on 1st May 1998 and reported it to the Committee on 13th May 1998.

2. application to construct a GRP open porch (6135/F) (22nd May 1998) (not published in the Jersey Evening Post)

Approval for this was given by the Director of Planning and Building Services under delegated powers on 15th December 1998. It was reported to the full Committee on 22nd December 1998. Although a relatively minor application, it generated a good deal of correspondence between the Agent and officers of the Department, who initially insisted that the porch should be constructed in granite. At one stage, the strength of feeling was such that the Agent, contacted Grainger PDC (planning and property development consultants) who wrote to the Department suggesting it had exceeded its authority in law in this matter.

The building process

Having obtained building permission on 26th June 1997, building work began on 17th July 1997, but the conditions specified on the permit were ignored. No details of the doors, windows, dormers, roof features, and other decorative details were submitted for approval before development commenced, and no-one contacted the Agent to enforce the conditions.

The Committee of Inquiry was told by senior managers of the Department that 'conditions are conditions' and that developers are expected to meet the requirements of whatever conditions are imposed. They stated that the building control officers are key players in this matter. They are the 'eyes and ears' of the planners. The Assistant Building Control Officer confirmed that he had followed the correct procedure and notified the Planning Officer when the commencement notice had been received from the agent.

Two senior planning officers who were interviewed, however, used the same phrase to describe their role in ensuring that conditions are complied with. '*In a perfect world,*' they said, on receipt of notification that building work had commenced, they would check the files to ensure all conditions had been met. According to the Senior Planning Officer responsible for this development -

'The correct procedure would be that once I received that note - I would check the file and check if there were any conditions outstanding and if there were - to write to the agent. The pressure of work is such that planners don't do that because we have so many other things to do as well. This is seen as an administrative detail which is often overlooked. Also it is seen as something which can be picked up later as the work develops. In a perfect world it should have been attended to from the outset. In practice though we tend to expect the details to come at some later stage. It is usual that further information arrives from the developer at some stage.'

She also alluded to an informal agreement between officers and developers which allows for a different interpretation to be placed on building conditions -

'There is a very high degree of trust between planners and builders in Jersey - there is a 'Jersey way' - everybody knows everybody and it is important that there is a high level of trust'.

Dormers and windows

It is significant that having correctly notified the Senior Planning Officer of the commencement of the work, the Assistant Building Control Officer then visited the site a further twenty-one times before the lack of information about dormers and roof features became an issue of concern for anyone within the Department. Indeed, it could be argued that the issue of the dormer windows may never have arisen at all, had a neighbour not contacted the Department, requesting to speak to a planning officer about his dormer windows and those at Beauvoir, which seemed large to him. It is also significant that, not only did the Agent fail to comply with the requirement to provide those details prior to commencement, the fact is the details have never been submitted for approval.

According to the Agent this is not unusual. In practice it is allowed to happen on many jobs. Having just completed work on another site on a busy main road where there were 50 dormer windows in that development, he argued that he had no reason to believe that planning would be unhappy with the windows and dormers he had in mind for Beauvoir as they were similar in design.

In view of the neighbour's question, the Senior Planning Officer visited the site, checked what had been built at Beauvoir against the approved plans, and discovered a discrepancy between the two. This, and the fact that the Agent had not complied with the conditions led the Senior Planning Officer to write to the Agent on 25th February 1998 stating -

'The extension is now almost complete and the dormers and windows are unsatisfactory ... the elevations, (and particularly the north elevation) do not now resemble the approved plans in that the dormers dominate the roof planes to the detriment of the overall design'.

'The windows themselves are particularly unsatisfactory since they are top hung uPVC with glazing bars in between the panes of glass and detract from the timber of the main house.'

Subsequently the Senior Planning Officer reported the matter to the Planning and Environment Committee. The Planning and Building Services Department file contains a good deal of correspondence between the Department and the Agent at this time concerning what would and what would not be acceptable windows within the extension and the cottage.

Changes in floor levels

In June 1998, there was a site meeting to determine how the dormer windows on the extension appeared to be located so much higher in the extension roof than the original plans suggested. At this meeting the Agent explained that originally it had been intended that there should be two steps down from the main house into the new extension, but that during the course of building work they had been eliminated. The effect of this was to raise all the floor levels within the entire extension by 400mm. The Sub-Committee had insisted that the ridge of the extension roof should not rise above the line of the gutter of the main house, so it had been necessary to reduce the space within the roof, between the bedroom floor and the ridge of the roof, by 400mm. As a result, the top of the dormers were closer to the ridge.

According to the Agent the removal of the ground floor steps had been agreed at a site meeting between the builder's foreman and the Assistant Building Control Officer. At the Committee of Inquiry, the Agent referred to minutes of a site meeting he had attended between the owners, the builders and himself, in which it is recorded that the foreman reported the outcome of a one-to-one meeting he had had with the Assistant Building Control Officer. For his part, the Assistant Building Control Officer has no recollection or record of any such meeting taking place.

The Agent also told the Committee of Inquiry that he had not realised the impact the removal of the steps would have on the elevations of the extension and so, when he submitted his revised plans, (6135/D/3), the drawings did not take account of the change.

This explanation was discounted in oral evidence by both the Assistant Building Control Officer and the current Senior Planning Officer. They take the view that the plans were flawed from the outset. According to them, they were not drawn correctly in the first place: there were discrepancies between various drawings and, not only did they not comply in the first development, they were not corrected in subsequent drawings.

Consideration by the Planning and Environment Committee

In view of the above, the Planning and Environment Committee visited Beauvoir on 25th June 1998. At this stage, the options available to the Committee were few. At all times, the Committee has to be guided by consideration of what is 'reasonable'. This applies equally to the consideration of applications for permission to develop land under Article 6 of the Planning Law as to measures to enforce planning control under Article 8. Under the later Article, the Committee has power to require action to be taken to rectify any unauthorised development that may have occurred. Such action may include the demolition or alteration of any buildings or works that have been constructed otherwise than in accordance with approved plans or conditions.

Clearly, in this case, it could have been considered 'unreasonable' to require the demolition of a new building in order to correct a discrepancy of only 400mm (18inches) in the location of the dormer windows. The penalty would have been disproportionate to the offence. One Senior Planning Officer summed up the feeling of several witnesses interviewed by the Committee of Inquiry: *'To the lay person's point of view the building does not have a major impact on the environment. A trained person would say that the dormers are too high'*.

The Committee of Inquiry also noted that, even in instances where discrepancies are discovered earlier in the building process, the Planning and Environment Committee's powers are very limited. Similar authorities in the United Kingdom are able to issue 'stop work' notices enforceable until the owners, builders and agents comply with requirements.

In view of the above, the report prepared for the Planning and Environment Committee suggested two options that the Committee could take -

allow the works to remain and admonish the Agent for failing to provide accurate information to the Committee;

or

take enforcement action and require the development to be altered in order to comply with that which was approved.

In these circumstances, the Planning and Environment Committee agreed that the works should be allowed to remain, and the President of the Planning Committee 29th June 1998 sent a letter admonishing the Agent for his actions on.

Other issues

The building deviated from the original plans in two other minor respects. At a site meeting on 29th July 1997, the Senior Planning Officer recorded a minor deviation from the plans in that a 'step in the wall' (a break or a staggering in the wall) which had been included in the original plans had been removed. The file note suggested that the Agent had been told to submit revised plans to take account of the change. In his evidence he confirmed that he was asked to provide revised plans and also agreed that these revised plans were never submitted to the Department. According to him *'the job had already moved on far beyond that'*.

In her evidence to the Committee of Inquiry, the Senior Planner explained that such an alteration would constitute a 'revision' and that this change should have been referred to in 'revised plans'. She found it difficult to say whether the Agent knew that the change should have required a new application.

In August 1997, the Assistant Building Officer also noticed a discrepancy between the drawings and the foundations as they had been laid. He noticed that the footings were incorrect in that a room had been reduced by a couple of metres. In this case however, he contacted the Planning Officer who informed him that the Agent had discussed and agreed this alteration with her.

Regulation of Undertakings

The Regulation of Undertakings and Development (Jersey) Law 1973, as amended, states that no person should carry out any development where the amount of floor space to be created is in excess of 1,500 sq. ft. unless he or she has been granted a licence. An application for a licence was considered by the Finance and Economics Committee on 11th May 1998, and a subsequent telephone conversation between the Acting Manager - Regulations and the Agent confirmed that the building work was already well-advanced, and that the development appeared to be in breach of the Regulation of Undertakings and Development Law. The Agent was therefore asked to provide the Finance and Economics Committee with a full explanation of why the development had commenced without a licence having been obtained.

The Committee received a letter dated 15th May 1998 from Crill Canavan (Solicitors) acting on behalf of the Agent, stating that the failure to apply for a licence at the appropriate time had been an oversight and that a full letter of apology would be sent to the Committee. In mitigation the letter also stated -

- (a) *'no additional units of accommodation were being created;*
- (b) *the accommodation was to be used as a family home every effort had been made to speedily rectify the situation once the oversight was identified;*
- (c) *work on the site was voluntarily halted there appeared to be no process within the planning area to draw attention to the fact that a Part III licence might be required...'*

With regard to the lack of advice about the need to comply with the provisions of the Regulation of Undertakings Law, the Agent told the Committee of Inquiry that, in the past, agents used to receive letters from officers of the Finance and Economics Committee asking them to make applications, but this practice has now ceased. He admitted that as a professional he should have known what to do and acted accordingly. In the past he would have received a reminder, but on this occasion, without a reminder, he overlooked the requirement.

Publication of applications in the Jersey Evening Post

Only on four occasions was information published in the Jersey Evening Post about applications with respect to developments at Beauvoir.

The first (application 6135/B) (published 21st June 1996), referred to the change of use of the field *'Field 1202A - change of use of silage fallow into domestic garden and orchard'*.

The second, (application 6135/C) (published 8th November 1996), referred to the application to demolish the cottage and rebuild and to add an extension to the main house. The entry read *'Field 1202A, Rue de la Croiserie - Demolish existing cottage and buildings and construct new cottage with integral garage and two storey extension to main house, incorporating dining room kitchen, new entrance, family room, snooker room, utility and garage with bedrooms and bathrooms on first floor'*

The third announcement (revised application 6135/D) (published 22nd August 1997) described the change of mind regarding the cottage and the wish to build a swimming pool in the grounds. The entry read *'demolish sub-standard outbuildings and construct two-storey dormer extension incorporating family room, snooker room, kitchen, utility room, double garage with bedrooms and bathrooms over. Modified dormers to existing cottage with extensions to form utility room, conservatory and swimming pool'*.

The final notice (application 6135/E) (17th April 1998), described the intention to *'reposition the vehicle access to the property'*.

Failure to publicise Application 6135/D (21st March 1997)

Notice of this application was not published in the Jersey Evening Post. Subsequent investigation traced the fault to a computer system which had been installed only three weeks previously. This application sought permission to -

'demolish the existing cottage and substandard building and construct a new dormer cottage and two-storey extension incorporating family room, kitchen, dining room, snooker room and double garage with bedrooms and bathroom over. Construct inground concrete swimming pool'

Unaware that the above information had not been published in the Jersey Evening Post, officers compounded the problem by determining that there was no need to publish information concerning the Further Revisions (6135/D) (13th November 1997) or the retrospective application (6135/D) (27th July 1998).

Findings

Having considered a wide range of evidence and opinion, the Committee of Inquiry finds a general lack of rigour in the application of planning procedures with regard to this development. On several occasions, the Agent did not comply with the requirements placed on him by the Planning and Building Services Department and, for its part, the Department failed to enforce the conditions it had established. There was a serious lack of communication within the Department's area team and, at times, it seems as if Planning Officers showed more concern over 'details' which they could not enforce (windows and

porch material) rather than concentrating on more important matters such as compliance with planning consents.

To some extent also, the use of Department officers to produce drawings of design compromises diverted staff from other priorities, and contributed to a building which was thought by the Conservation Architect /Urban Designer to have little architectural merit; a view shared by all Planning Officers interviewed by the Committee of Inquiry.

In the case of Beauvoir, the problems highlighted above were compounded by inadequate public information (described in the JEP as 'Field 1202A' for example - a title which would not suggest alterations and extensions to a domestic property). On some occasions relevant information was not published at all.

This resulted in a general lack of public information and a great deal of alarm, fear and mistrust was felt by the immediate neighbours. The Committee of Inquiry accepts that the concerns raised by neighbours would have carried little weight in planning terms but nonetheless 'justice must be seen to be done'. There was confusion, for example about the meaning of the expression "with the same footprint (which does not mean "within the same footprint")", and how this was interpreted with regard to the cottage. The complaints by neighbours about the development process therefore are justified.

Despite the above, the Committee notes that the discrepancy in plans and buildings which led to the investigation by the full Planning and Environment Committee amounted to only 400 mm (18 inches), and therefore the Committee of Inquiry concludes that the decision taken to allow the building to remain as built was the only reasonable option available to the Planning and Environment Committee at that stage of the development.

The Committee of Inquiry was also pleased to note that since this matter was raised in the States, the Department has taken steps to address several of the issues raised. There has been, for example, a significant improvement in the quality and detail of information submitted to the Jersey Evening Post.

Although the Committee of Inquiry is mindful of the fact that it has investigated only one single development and that it can be dangerous to draw general conclusions from particular examples, it would suggest that the Planning and Environment Committee gives consideration to the following recommendations -

Recommendations

- | | |
|---------------------|---|
| Public information | Greater attention should be paid to ensuring development applications are well-publicised. In particular that information published in the press and sent to parish halls contain the full address of the property to be developed and that consideration should be given to the production of notices to be affixed to properties to draw the attention of neighbours to development applications. |
| Objections | Objectors to proposed developments should have the opportunity to discuss their concerns with planning officers and, in instances where the Committee visits a site, objectors should have the opportunity to discuss their objections with Committee members on site. |
| Consultation | When consulting parish authorities regarding proposed developments, the Planning and Environment Committee should specify the topic(s) on which it wishes to receive parochial comment. |
| Development permits | Conditions imposed on development permits should be clear and unequivocal. If consent is given, subject to further details to be supplied before commencement of work, the requirement should be enforced. If, in particular cases, planners are prepared to allow building work to progress to a certain stage in the development, they should state this clearly on the consent form. |
| Enforcement | Consideration should be given to strengthening the Planning and Environment Committee's powers with regard to the enforcement of planning and building conditions. A range of sanctions should be considered. In particular, the Committee should be empowered to require developers to stop work on a site where planning conditions have not been complied with. |
| Quality assurance | The Planning and Environment Committee should review its policy of using its own staff to assist developers achieve a design compromise acceptable to the Committee. Despite the Sub-Committee Chairman's assertion that this is done to improve the quality of architecture in the Island, in this case it encouraged the creation of a large development which to a trained eye is 'acceptable' but of little merit. Without the support of drawings produced by Department officers, developers may be encouraged to pay closer attention to the qualifications and reputations of architects who they employ. |

The Committee wishes to place on record its appreciation of the support given by its Committee Clerk, Mrs. Anne Harris, and its Executive Officer, Mr. David Greenwood, during its work and in the compilation of this report.

Signed -

Senator L. Norman

Date

Deputy D.R. Maltwood

Date

Deputy A. Breckon

Date

Deputy J.J. Huet

Date

Deputy K.W. Syvret, M.B.E.

Date

Witnesses interviewed by The Committee of Inquiry

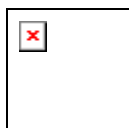
Senator N. Queree	President of the Planning and Environment Committee
Deputy A.J. Layzell	Vice -President of the Planning and Environment Committee, Chairman of the Applications Sub-Committee
Mr. J. Young	Chief Executive Officer Planning and Environment Committee
Mr. P.C.F. Thorne	Director of Planning and Building Services
Miss J. Van Huysen	Senior Planner (March 1997 - September 1997)
Mr. N. Fagan	Senior Planner (September 1997 - present day)
Mrs. K. Wagstaffe	Former Senior Planner (Left the Department in March 1997)
Mr. D. Hallam	Assistant Building Control Officer (Employed throughout the period)
Dr. and Mrs. M.H. Gleeson	Owners of Beauvoir
Mr. J.S. Livingstone	The Owners' Agent
Mr. M. Collins	Foreman of the building firm J F Marett Ltd
Mr. and Mrs. R.J. Astridge	Owners of property neighbouring Beauvoir
Senator R.J. Shenton OBE	Author of the report and proposition requesting the States to establish a Committee of Inquiry
Deputy D.L. Crespel	Deputy of the Parish of Trinity
Connétable P.R. Cabot	Connétable of the Parish of Trinity

**Planning and Building Services officers
involved in the Beauvoir development**

Mr. P.C.F. Thorne	Director of Planning and Building Services
Mrs. K. Wagstaffe	Former Senior Planner - (left the department in March 1997)
Miss J. Van Huysen	Senior Planner - (employed in this post from March 1997 to September 1997)
Mr. N. Fagan	Senior Planner - (employed in this post from September 1997 to present day)
Mr. D. Hallam	Assistant Building Control Officer - (employed throughout the period)

**STATES OF JERSEY LAW 1966, AS AMENDED -
DELEGATION OF FUNCTIONS:
PLANNING AND BUILDING CONTROL**

**Presented to the States on 19th November 1996
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

175

1996

R.C.34

Price code: 50p

Report

On 7th November 1996, the Planning and Environment Committee made an Act delegating certain of its functions under the Island Planning (Jersey) Law 1964, as amended, the Public Health (Control of Buildings) (Jersey) Law 1956, as amended, and the Building Bye-Laws (Jersey) 1996.

The terms of the delegation are recorded in an Act of the Committee in the following terms -

“The Committee, with reference to Act No. 10 of 7th November 1996, and in pursuance of Article 36A of the States of Jersey Law 1966, as amended, delegated to the Applications Sub-Committee and the Director of Planning and Building Services (or in his absence the Assistant Directors of Planning with regard to (a) and the Assistant Director for Building Control with regard to (b)), the following functions -

(a) Island Planning (Jersey) Law 1964, as amended

Article 6 decisions on applications for permission to develop land

Article 10 decisions on applications for permission to display advertisements

Article 19 decisions on applications to import caravans into the Island

Article 20 decisions on requests to erect or station movable structures.

**(b) Public Health (Control of Buildings) (Jersey) Law 1956, as amended
Building Bye-Laws (Jersey) 1996**

Articles 5 and 7 decisions on applications for permission under the Building Bye-Laws and relaxations of the Bye-Laws.

The Committee agreed that the delegation of those functions included the power to grant permission, to grant permission subject to conditions, or to refuse permission. The Committee also agreed that these arrangements should commence from Monday, 11th November 1996.

The Committee also agreed a memorandum^[1] outlining for administrative purposes the manner in which, in practice, the responsibility for decision-making would be exercised between itself, the Applications Sub-Committee, and the Director and his Assistant Directors. The Committee instructed the Chief Executive Officer to make the memorandum available to the public.

The Committee instructed the Greffier of the States to present this Act to the States for information.”

The delegation was effective from 11th November 1996.

PLANNING AND ENVIRONMENT COMMITTEEDELEGATION OF FUNCTIONSInternal Practice and Procedures - From 11th November 1996**PLANNING AND BUILDING APPLICATIONS**

In pursuance of Article 36A of the States of Jersey Law, as amended, the Planning and Environment Committee at its meeting on 7th November 1996 decided to delegate certain of its functions under the following Laws -

Island Planning (Jersey) Law 1964, as amended (IPL)

Public Health (Control of Building) (Jersey) Law 1956, as amended (PHL)

R & O 8982 Building Bye-Laws (Jersey) 1996

This memorandum describes the procedure by which the Committee will make its decisions under the delegated functions which will be exercised respectively by the Committee, the Applications Sub-Committee, and the Director of Planning and Building Services (or in his absence the Assistant Directors of Planning in respect of planning applications and the Assistant Director of Building Control in respect of Building Bye-Laws applications).

.....

The **Planning and Environment Committee** will make decisions on the following matters -

- (a) any application under IPL Articles 6 and 10, PHL Articles 5 and 7 and the Building Bye-Laws referred to it by the Director of Planning and Building Services or the Applications Sub-Committee;
- (b) requests for reconsideration of decisions made by the Director of Planning and Building Services or the Applications Sub-Committee to refuse permission or impose conditions. In such cases the Committee will invite a personal presentation by the applicant and/or his adviser;
- (c) all applications recommended for approval in the Green Zone and the Marine Protection Zone which would require submission of a proposition to the States;
- (d) whether to serve all Notices under the Island Planning (Jersey) Law 1964, as amended, and the Public Health (Control of Buildings) Law 1956, as amended;
- (e) whether to modify or revoke an extant permission (IPL Article 7).

Decisions of the Committee will be recorded as Acts of the Committee.

.....

The **Applications Sub-Committee** will make decisions under IPL Articles 6, 10, 19 and 20, PHL Articles 5 and 7, and the Building Bye-Laws on -

- (a) all applications where a political representation has been made, either for or against the proposal;
- (b) all applications which have become contentious by virtue of the number or strength of representations made;
- (c) all applications which would involve a departure from the Committee's policy but where, in its opinion there are good grounds to consider approving the application.

Decisions of the Sub-Committee will be recorded in the minutes of the Sub-Committee. The Planning and Environment Committee will subsequently be informed of all decisions made by the applications Sub-Committee and of representations made.

.....

The **Director of Planning and Building Services**, or in his absence the Assistant Director (Planning) or the Assistant Director (Building Control) as appropriate, will make decisions under IPL Articles 6, 10, 19 and 20, PHL Articles 5 and 7 and the Building Bye-Laws -

- (a) on the form and content of applications (IPL Article 6.1);
- (b) on small works applications*
- (c) on other applications where that decision is in accordance with the Committee's published policies;
- (d) on applications where there have been representations from the general public, but where those representations -
 - (i) have been accommodated by revisions to the application or by imposing a condition;
 - (ii) raise objectives which are of a non-planning nature, or;
 - (iii) are not of sufficient weight to influence a decision on the application in accordance with the Committee's policies.
- (e) on all Building Bye-Law application, including relaxation of Bye-Laws;
- (f) on all applications made under the Advertisement Regulations conforming to the Committee's published policy (IPL Article 10);
- (g) on all development applications which follow a previous planning permission;
- (h) on request to vary permissions, where such variations are of a minor, non-contentious or straightforward nature;
- (i) on the content of notices served under the Island Planning (Jersey) Law 1964, as amended, (IPL Articles 5, 7, 8, 9, 9a, 12, 13, and 22) and the Public Health (Control of Buildings) Law 1956, as amended (PHL Article 6);
- (j) on applications to undertake surgery to, a tree covered by a Tree Preservation Order (IPL Article 16).

Decisions of the Director of Planning and Building Control and Assistant Directors of Planning and Building Control will be recorded in a register.

The Planning and Environment Committee will subsequently be **informed** of all decisions made by the Director of Planning and Building Services and any representations received, under the above delegated functions.

.....
 The **Director of Planning and Building Services**, or in his absence the Assistant Director (Planning) or the Assistant Director (Building Control) as appropriate, also has the delegated authority of the Committee to make decisions -

to disallow requests for reconsideration of a decision made by the Applications Sub-Committee or the Committee where there are no new factors which on planning grounds might cause a different decision to be reached.

.....
 * Small Works applications are defined as applications for small scale building works or development of a non-contentious nature, which does not require public advertisement or consultation with interested parties.

.....
For the avoidance of doubt, a decision under the above delegation agreement includes the granting of permission with conditions and the refusal of permission.

This internal procedure becomes effective on 11th November 1996.

^[1] Copies of this memorandum are available from the Planning and Environment Department, South Hill.