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# STATES OF JERSEY



**STATES OF JERSEY COMPLAINTS  
BOARD: FINDINGS – COMPLAINT BY  
MR. I. BARETTE AGAINST THE  
MINISTER FOR THE ENVIRONMENT,  
REGARDING THE PROCESSING OF  
THE PLANNING APPLICATIONS  
RELATING TO THE PROPERTY  
KNOWN AS BROUGHTON LODGE  
FARM, ST. MARY**

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**Presented to the States on 23rd August 2018  
by the Privileges and Procedures Committee**

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**STATES GREFFE**

## **REPORT**

### **Foreword**

In accordance with Article 9(9) of the [Administrative Decisions \(Review\) \(Jersey\) Law 1982](#), the Privileges and Procedures Committee presents the findings of the Complaints Board constituted under the above Law to consider a complaint against the Minister for the Environment regarding the processing of the Planning applications relating to the property known as Broughton Lodge Farm, St. Mary.

**Deputy R. Labey of St. Helier**  
Chairman, Privileges and Procedures Committee

**STATES OF JERSEY COMPLAINTS BOARD**

**7th June 2018**

**Complaint by Mr. I. Barette against the Minister for the Environment regarding the processing of the Planning applications relating to the property known as Broughton Lodge Farm, St. Mary**

**Hearing constituted under the Administrative Decisions (Review) (Jersey) Law 1982**

**Present**

**Board members –**

S. Catchpole, Q.C. (Chairman)  
G. Marett  
J. Eden

**Complainant –**

I. Barette  
C. McDonald Barette  
S. Osmand  
M. Neville  
J. Le Bailly (for a time)  
D. Richardson (for a time)

**Minister for the Environment –**

C. Jones, Senior Planning Compliance Manager  
T. Ingle, Historic Environment Officer

**States Greffe –**

L.M. Hart, Deputy Greffier of the States  
K.L. Slack, Clerk

The Hearing was held in public at 10.00 a.m. on 7th June 2018, in the Blampied Room, States Building.

**Note:** Throughout the report, reference to the ‘Planning Department’ is taken to mean the relevant section of the Department for the Environment and, by extension, the Minister for the Environment.

## 1. Opening

- 1.1 The Chairman opened the hearing by introducing the members of the Board and outlining the process which would be followed. He indicated that it was important for the Complainant to have the opportunity to explain his case to the members of the Board such that they would gain a proper understanding thereof. He stated that the Board was familiar with the exterior of Broughton Lodge Farm and that if it subsequently emerged that a site visit would be beneficial, the hearing would be adjourned in order that one could be arranged. He reminded both parties that the Board was an independent body and not a court of law, and that those giving evidence should feel that they could express their concerns openly.

## 2. Summary of the Complainant's case

- 2.1 Mr. Barette explained that his complaint was set out in the paperwork that had been circulated in advance of the hearing and centred, primarily, on the '*bullying tactics*' employed by enforcement officers from the Planning Department and the delays by that Department in considering his planning applications to complete works on Broughton Lodge Farm, which he had inherited and in which he had lived all his life.
- 2.2 Mr. Barette notified the Board that the 2 enforcement officers, who were in part the subject of his complaint, had both previously served as officers with the States of Jersey Police. [It should be noted that they are referred to in this report as Mr. X and Mr. Y respectively, as neither officer was present at the hearing to counter the allegations made against them.] Mr. Barette stated that Mr. X had waged a '*personal vendetta*' against him ever since an altercation between them in 2004, at which time Mr. X had still been a police officer. Mr. Barette had been arrested, but had subsequently been exonerated and had received a letter of apology from the former Deputy Chief Officer, States of Jersey Police.
- 2.3 Mrs. Barette indicated that works to Broughton Lodge Farm were being undertaken in 3 phases and the first 2 phases were complete. The first phase had been to construct stabling to accommodate the horses, and the second phase had been the conversion of granite agricultural outbuildings into 4 residential cottages.
- 2.4 Mr. Barette informed the Board that from as early as 2011, during the first phases of the work, Mr. X had started to make unscheduled visits – as often as every fortnight – to Broughton Lodge Farm. Mr. X lived nearby, at Le Rondin, and would '*drop in*' on his way to, or from, work and at weekends '*appearing to use any excuse to harass [Mr. Barette]*'. The latter cited the example of Mr. X having informed him that he would have to make a retrospective planning application, costing £600, for a chicken-run on an agricultural field, when it subsequently emerged that planning permission was not required. At that time, Mr. X had said to Mr. Barette '*you can afford it*'. Mr. X's attitude was such that it had prompted Mr. Barette to describe it as '*threatening and intimidating*' in a letter of complaint, which he had sent to the Chief Officer of the Planning Department in June 2011. Mr. Barette had not received a response to his letter, but indicated that he had received reassurances from the Department's Director, Development Control, that Mr. X would no longer come to his property.

However, this notwithstanding, Mr. X had continued to visit, usually accompanied by Mr. Y. Mrs. Barette described their attitude as ‘*good cop, bad cop*’, with Mr. X adopting the former of the 2 rôles. When they had been unaware that she had been at the property, she had overheard the way in which they had talked to her husband, which she described as ‘*nasty*’ and ‘*provocative*’.

- 2.5 Towards the end of 2011, Mr. Barette had applied for, and had shortly thereafter been granted, planning permission to undertake certain works to the main farmhouse and to construct a new extension to the rear thereof. The Barettes indicated that it had been their intention to use the same tradesmen to carry out these works that they had used for the conversion of the outbuildings. Mrs. Barette notified the Board that she and her husband intended to refurbish and renovate the main farmhouse in the same sympathetic way that they had converted the outbuildings, which, she indicated, were of the same age as the main farmhouse, according to a date stone.
- 2.6 Mrs. Barette stated that as they had been about to start work on the main farmhouse, ‘*Planning arrived and listed it*’, identifying certain key features, such as the staircase. The couple had been ‘*worried*’ by this, but had been unaware of the full implications. She indicated that they had wished to replicate the works that they had undertaken in the outbuildings in the main farmhouse, to include the installation of double-glazed, wooden, white sash-windows. Mrs. Barette informed the Board that there had been features of historical interest in the outbuildings, such as copper work in the wash room, which had not been ‘*taken into consideration*’ by the Planning Department.
- 2.7 The Board heard from Mr. Osmand, a planning and design consultant who had become involved in the project in approximately 2012, once Mr. Barette had received planning permission to construct the extension to the rear of the property. Mr. Osmand indicated that he had produced detailed drawings to enable Mr. Barette to make a building bye-law application, and for him to pass on to the relevant structural engineer and the builders who would undertake the work. Those detailed drawings had included construction notes, which highlighted the work that would be required to the inside of the main farmhouse in order to bring it up to a good standard *inter alia* the appropriate level of thermal insulation and the replacement of the floor. Once he had prepared drawings such as these, Mr. Osmand would generally have no further involvement with the process, as he did not undertake site supervision. His rôle was to obtain building bye-law permission, rather than planning permission. Mr. Osmand clarified for the Board the difference between planning and building control. The former related to the appearance of the building, amenities, parking arrangements and, if the building were listed, what could and could not be altered. The latter concentrated on the details, to ensure that the minimum standards for such things as fire safety and sound-proofing were met. These would vary, depending on whether the building in question was old, or a new build.
- 2.8 Mr. Osmand informed the Board that he had been familiar with Broughton Lodge Farm since the 1970s, because he had grown up in St. Mary. At that period of time, he described its condition as ‘*liveable*’. During the winter of 2012, he had met Ms. T. Ingle, the Historic Environment Officer and one of the

Planning Officers at the Farm, following a request for pre-application advice and in order to inspect the windows in the main farmhouse. He indicated that he was not an expert on wooden windows, but described the condition of them throughout the main farmhouse as ‘*horrendous*’. Panes of glass had been broken and it had been possible to put one’s fingers through the rotten wood. Ms. Ingle had stated that the windows would need to be repaired, but Mr. Osmand’s view was that whilst it was possible to repair anything, at least 90% of the wood would have had to be replaced, so it did not make economic sense to do so in this case. He was familiar with the process of ‘scarfing’, where new wood was spliced into old wood to replace rotten sections, and indicated that to scarf new timber to wood which was 60 years old would have required further repairs within a short time, because they would have dried out at a different rate, thereby leading to shrinkage.

- 2.9 This opinion was echoed by Connétable J.M. Le Bailly of St. Mary, whose background was as a carpenter/joiner and building contractor of over 40 years’ experience. He informed the Board that he had seen the windows of the main farmhouse whilst they had been *in situ* and had deemed them incapable of being repaired. They had not been the original windows and were box-framed sash-windows, which had previously been repaired by replacing the wooden sill with concrete, which was a common practice in older properties. In his view, it would have been extremely difficult to effect any repair to the window-frames without removing the concrete sill. Moreover, the plasterwork to the inside of the reveals had come away, and there had been evidence of dry rot spores between the 2 sections of plaster to the back of the box-frame windows.
- 2.10 In the view of Connétable Le Bailly, the only potentially serviceable part of the windows, in some cases, had been the ‘head’ (the horizontal part forming the top of the window-frame), as it was not subject to the same exposure to the elements as other parts of the window, but it would have taken a disproportionate amount of time to build these into a new frame and, in any event, once the window had been painted, it would have been impossible to tell whether it had been constructed of old or new wood. He indicated to the Board that the state of repair of the windows had been the worst that he had ever seen, and he would have had no hesitation in removing them and replacing them on a like-for-like basis.
- 2.11 In relation to the staircase in the main farmhouse, Mr. Osmand stated that the first few risers were rotten, because the stairs had rested on a wooden floor, which had sat on joists affected by dry rot. Mr. Barette informed the Board that the staircase had been retained at the property, but the bottom section would need to be replaced before being re-installed. The Board queried whether the outbuildings had contained staircases, but was informed that there had been none, as access to the first floor areas had been gained via ladders.
- 2.12 Mr. Barette indicated that he had believed the detailed drawings prepared by Mr. Osmand (referenced in paragraph 2.7 above), to be the planning permission to proceed with the works to the interior of the main farmhouse. When asked what he had understood that the planning permission would enable him to do, he stated that he had assumed he could carry out similar work to that undertaken in the outbuildings, whilst retaining key features. He informed the Board that he and his wife had moved into one of the cottages in 2013, because the main

house had become uninhabitable. The roof had been leaking, the window-frames crumbling, and the property infested with flies, ants and rats.

- 2.13 At this juncture, Mr. Barette had started work to remove the windows from the main farmhouse in order to check their condition, and had stored them on site. Mr. X and Mr. Y had continued to make unscheduled visits every 2 weeks to Broughton Lodge Farm *‘as they were passing’*. They had not entered the property, but, according to the Complainant, would have been able to see what work was being carried out. In approximately 2014, Mr. Barette had been issued with an enforcement notice, requiring him to remove lorries which his son had parked on the site. Messrs. X and Y had delivered the enforcement notice, and would have been aware that the windows had been removed, but they had made no comment in relation thereto.
- 2.14 The Board asked Connétable Le Bailly whether, in his years of experience in the building trade, he had encountered a situation where an employee from the Planning Department would attend a site every 2 weeks. He said that he had not, and in his view, it was often the case that there would only be one single visit. Mr. Osmand indicated that once planning permission for works had been obtained, it was unusual for officers from the Planning Department to make site visits, because the Department was under-resourced and the employees had a heavy workload, so would be unlikely to visit unless there had been a complaint, or an issue had arisen. The Building Inspectors would attend the site at various stages of the build until such time as the work was completed. These opinions were echoed by Mr. M. Neville, who indicated that he had spent 40 years developing property in the Island and had rarely seen officers from the Planning Department attend building sites, unless a retrospective application for planning permission had been made during a development. He informed the Board that he too had encountered difficulties with Mr. X and Mr. Y, and stated that they had ruined the lives of both himself and the Complainant.
- 2.15 Mr. G. Marett opined that the legislation relating to planning matters allowed for Planning Officers to be afforded reasonable access to properties, which one would normally expect to be within office hours, but that the legislation did not prescribe how often such visits should occur.
- 2.16 Mrs. Barette informed the Board that many of the visits made by Mr. X had fallen outside normal working hours. They had often occurred in the evening, at approximately 5.30 or 6.00 p.m., as he had been travelling home to Le Rondin, or at the weekend. She stated that Mr. X had been in the habit of driving, unannounced, into the yard, and had told her husband: *‘I’ll be watching you’*. The Board asked Mr. Barette if he had confronted Mr. X over his conduct, to which he replied: *‘you don’t want to be rude. He’s from Planning.’*
- 2.17 Mr. Barette indicated that, in November 2015, Ms. Ingle had made a site visit to Broughton Lodge Farm and had instructed him to repair the windows, which had been removed from the main farmhouse. When he had challenged this, on the basis of the poor state of repair thereof, Ms. Ingle had allegedly replied: *‘you will do as I say’*.

- 2.18 Messrs. X and Y had subsequently attended at the Farm, had served an enforcement notice on Mr. Barette, and had cautioned him. The Complainant indicated that he had said nothing in reply, because he had been in shock and had sensed that it was inevitable that he would be taken to court, because that was the clear intention of Mr. X and Mr. Y, and he had been '*fed up with it*'. In his view, anything he had said would have been repeated in court. Mr. Barette stated that he had simply been handed the enforcement notice and had not been told that he could appeal against it. In the light of the undertaking that had been given by the Director, Development Control, (see paragraph 2.4 above), Mrs. Barette had queried why Mr. X had been present, to which Mr. Y had responded, '*we come as a pair*'. Mr. Barette notified the Board that his understanding was that the Planning Department had taken action because he had removed the windows and the floor-boards from the main farmhouse, all of which he described as '*rotten*'. Some of them had been stored internally, once removed, but it was conceded that '*unfortunately*' one of the workmen had started to burn them, as it was clear that they were incapable of being repaired.
- 2.19 The Panel asked Mr. Barette if he thought it would have been sensible to endeavour to resolve the issue with the Planning Department before the matter came before the Royal Court. Mr. Barette said that he had been asked to attend a meeting at the Department and had wished to be accompanied by Connétable Le Bailly, as he was familiar with Broughton Lodge Farm and the works that the Complainant had undertaken; however, he had been told that he could only be accompanied by a lawyer, and Mr. Y had said to him '*I'd advise you not to come*', without explaining why.
- 2.20 In August 2016, before the Royal Court hearing, retrospective applications had been submitted for planning permission to replace 18 timber windows within the property, and to refurbish the ground and first floors thereof. The application for the windows had sought to replicate the style that had been approved for use in the extension to the main farmhouse, namely double-glazed, double-sash, Georgian, six-over-six windows (with 6 panes of glass in the upper sash and 6 in the lower sash). As part of the consultation on the applications, the Historic Environment Team ('HET') had requested a high level of detail of all the proposed works *inter alia* the cupboards, the windows, the doors and the skirting-boards, before it could consider indicating its approval therefor. Mr. Osmand stated that detailed drawings of the staircase had also been requested, although they only wished to replace the 2 rotten treads at the bottom, and they had also been asked for particulars of a cupboard on the ground floor of the building, notwithstanding that it had clearly not been original, because a door had been located behind it. Moreover, full details had been sought, in large scale, of every one of the 18 windows. In Mr. Osmand's opinion – admittedly in an ideal world – he should have been able to provide the details of one window, setting out the level of workmanship and the materials that were to be used, accompanied by a schedule which made it clear how the sizes of the various windows would vary.
- 2.21 By this point in time, Broughton Lodge Farm had been designated as a Grade 3 listed building. Mr. Osmand explained that the lower the grading, the more historically significant the building. He informed the Board that, despite having worked on other listed buildings and properties dating from the same period as the Farm, he had never before been asked to provide such detail. In his view, it

would have been extremely time-consuming to prepare such detailed drawings and, as a consequence, very expensive for the owner of the property, without any guarantee that the planning application would, ultimately, be approved. He estimated that the preparation of such drawings could have cost in the region of £15,000. He had discussed the matter with Mr. Barette, and they had agreed that it was too much information to provide at that juncture.

- 2.22 Mr. Osmand indicated that he and the Complainant had reached the point where they had known what the Planning Department had wanted and what they had wished to provide. There had been no formal meetings with the Department at this time, and they had felt that the '*ball was in [the Department's] court*'. He had held a few brief, informal, discussions with Mr. C. Jones, the Senior Planning Compliance Manager in an attempt to seek a resolution to the impasse, but Mr. Jones had usually indicated that he would need to confer with Ms. Ingle. Accordingly, Mr. Osmand and Mr. Barette had been of the opinion that they had submitted the broad scheme and had reached a '*stalemate*', because the Department had continued to request excessive detail which they had not had the intention of supplying at that time.
- 2.23 Mr. Osmand stated that he understood why the Planning Department requested such detail, because some individuals might try to '*cut corners*' when working on listed buildings, but he opined that the information should be sought after planning permission had been obtained, to obviate owners spending money on detailed drawings with no certainty that planning permission would be forthcoming. Historically, in his experience, the Planning Department would grant planning permission conditional upon a permit, with details provided at a later point in time. However, over the last 4 or 5 years this had changed, and the Planning Department now sought detailed information before considering an application.
- 2.24 Mr. Osmand indicated that, normally, it was necessary to achieve a certain U-value (effectiveness at preventing heat from transmitting between the inside and outside of a building) at a property, to the satisfaction of the Building Control officer. However, at the Complainant's farm, the HET had stipulated that there should be no insulation on the walls and that the plasterwork should be replaced, potentially with thermal plaster. The HET demands overrode Building Control in these cases, but the latter required a thermal upgrade at the property, which meant that additional insulation needed to be incorporated elsewhere, to counter the lack of insulation in the walls. Mr. Osmand opined that this could prove problematic.
- 2.25 In September 2016, the Complainant had appeared before the Royal Court, had pleaded guilty, and had been fined £50,000 for contraventions of the [Planning and Building \(Jersey\) Law 2002](#). The Chairman made it clear to Mr. Barette that, whilst the Board members accepted that he wished to express his views on this matter to them, they could not comment on the outcome of the prosecution, and it was not within their remit to challenge the findings of the Royal Court. However, part of the value of the process of a Complaints Board hearing was that it afforded members of the Public a forum in which to express openly how they perceived they had been treated by the government.

- 2.26 Mr. Barette indicated that, in his view, he had been seriously misrepresented by his lawyer, who, he alleged, had told him to enter guilty pleas on the basis that the level of fine would be approximately £10,000 and his legal fees £4,000, with these increasing to between £20,000 and £30,000 were he to plead not guilty. In hindsight, Mr. Barette said: *'I should have pleaded not guilty. We were not allowed to say anything. All my evidence was dismissed.'* The lawyers acting for the prosecution had concluded that a fine of £25,000 would be appropriate in his case. However, the Commissioner who had presided over the case had increased it to £50,000 following the lunchtime adjournment. Mr. Barette informed the Panel that on the day of the court case, he and his wife had, at one point, been seated in an empty public gallery. Mr. Y. had entered the court room and had, in an act of intimidation, sat directly next to them. He stated that he had seen neither Mr. X. nor Mr. Y. since that time.
- 2.27 On 17th May 2018, several months after submitting his complaint to the States Greffe, Mr. Barette had been granted planning permission for the retrospective replacement of the 18 windows at Broughton Lodge Farm and the internal refurbishment of the ground and first floors, albeit the high level of detail initially requested by the Planning Department had not been provided to it. Mr. Osmand indicated that the HET had assisted him and Mr. Barette in the preparation of the window schedule, which had been agreed by both parties. With the exception of the dormers, the windows were to be two-over-two windows and were permitted to be double-glazed, when HET had previously demanded that they should be single-glazed. Further concessions had been made by HET, *viz* permitting plasterboard to be installed on either side of the staircase to replace the rotten matchboard, and no longer requiring the installation of lath and plaster. Moreover, it had been agreed that the rotten timber floor could be replaced with an insulated concrete floor, which met modern standards. Mr. Osmand indicated that, in his view, it should have taken a period of between 6 and 9 months for the applications to be resolved, rather than 2 years.
- 2.28 Mr. Barette expressed regret that the £50,000 fine and £17,000 legal fees associated with his court case could have been spent on refurbishing the farmhouse. He stated that he had been deprived of the joy of living in his home for the past 5 years, and drew comparisons with the *'hell'* experienced by his parents, who had lived through the 5 years of the Nazi occupation of the Island. He indicated that the builders whom he had approached to complete the work to the main farmhouse had provided higher quotes than would have been the case 3 years previously. In order to raise the money to refurbish the farmhouse, he was now compelled to sell one of the cottages, and indicated that he would not be able to complete the works to the high specification that he would have wished. He stated that he and his wife felt *'wronged'* and wanted to be able to live in his family home. He intimated that the Department demonstrated double-standards and showed preferential treatment to wealthy residents, who were permitted to demolish their properties, notwithstanding that they were of the same age as Broughton Lodge Farm.
- 2.29 The Complainant and his wife further stated that they could not comprehend how they had been able to refurbish the outbuildings, which were of the same age as the main farmhouse, without issue, and that the latter should then be designated a listed building, resulting in problems for them and delays. They

described the length of time that it had taken the Planning Department to make a decision on their 2016 planning applications as *'unreasonable'*, and indicated that they could not understand the delay, although they suspected that the Department had been awaiting the outcome of the Royal Court prosecution before progressing the applications.

- 2.30 The Chairman asked the Complainant if, in hindsight, he would have changed the way in which he had dealt with the Planning Department, to which he replied: *'no, the arrogance of the Department put my back up. I didn't feel I could talk to them.'* He stated that Mr. X and Mr. Y had conducted a *'vendetta'* against him, *'aided and abetted'* by Ms. Ingle and Mr. Jones.
- 2.31 Reference was made by Mr. Neville to Mr. X and Mr. Y acting as both *'judge and jury'* in his case and that of the Complainant. He drew the attention of the Board to a document, entitled: *'Shaping the Jersey planning and building enforcement system for the future'*, which had been prepared by the Planning Department, following an internal review in October 2013 arising from complaints about the conduct of those 2 enforcement officers, and which had been published on the gov.je website. The Board indicated that it had not had sight of the same, but would consider it.

### **3. Summary of the case of the Minister for the Environment**

- 3.1 Mr. Jones informed the Board that Broughton Lodge Farm had been listed by the Planning Department as a Site of Special Interest ('SSI') in 2009. This had been confirmed in writing to the Complainant on 16th December 2009 and again on 25th January 2010, indicating that it would be unlawful to undertake any works to the property without permission. Ms. Ingle clarified that the listing applied to the whole site, and that a plan would have accompanied the documentation to show the extent thereof.
- 3.2 The Department explained the difference between a planning application and a building bye-laws application. The former would be submitted as a precursor to the latter, as the latter was more intricate and detailed to prepare. Applicants generally preferred to obtain planning permission before instructing their architect or agent – who was usually the same person – to provide the more detailed plans required for the building bye-laws application. The onus was on the applicant to notify the Planning Department if any changes, which would require planning permission, were proposed once the plans had been approved. The letter which accompanied the decision notice issued when planning permission was granted made it clear that any variation from the approved plans, or conditions, should be immediately notified to the Planning Department. Moreover, the application form to obtain building permission specifically asked if the applicant had obtained planning permission.
- 3.3 In respect of Mr. X and Mr. Y, Mr. Jones pointed out that they were not in attendance to defend themselves, counter the allegations being made, and explain the background to the case. Mr. X was no longer in the employ of the Planning Department, having retired to the United Kingdom, and Mr. Y was currently on sick leave. Mr. Jones stated that if the Department had been aware that the conduct of Messrs. X and Y would be the subject of lengthy discussion at the hearing, it might have asked Mr. Y to attend. He continued that the

Department had been of the view that Mr. Barette's complaint centred on the handling of his planning applications, rather than on the conduct of the compliance officers. The Chairman pointed out that the behaviour of Mr. X and Mr. Y was central to the complaint, as was evident from the paperwork provided by Mr. Barette, which had been distributed several weeks in advance of the hearing. Mr. Jones indicated that the Planning Department had not been aware of the issue until it had collected its copy of the paperwork before the hearing. It had never received the letter of complaint which Mr. Barette claimed to have sent to the Chief Officer in 2011, and a search of the complaints files had only identified the letter which had been sent by the Complainant to the Greffier of the States on 17th November 2017. This letter had been sent to the Department by the Deputy Greffier of the States on 23rd November 2017, under cover of a letter which had requested a brief *résumé* of the Department's version of events. Mr. Jones opined that Mr. Barette's letter had '*mainly dealt with the planning permission*'. However, his attention was drawn to the specific complaint on the 2nd page of Mr. Barette's letter about '*the harmful bullying tactics employed by certain key people within the Planning Department against [him]*'.'

- 3.4 Mr. Jones informed the Board that, in the past few years, significant changes had been made to the way in which the Planning Department's compliance team operated. Messrs. X and Y had both been officers with the States of Jersey Police and, as was normal practice for that organisation, they would undertake visits in pairs and approach cases from an enforcement perspective. The compliance team now comprised planning officers, with a senior planning officer involved in the cases. The team sought to engage in a dialogue with people who had carried out unadvised works, with a view to reaching an agreed way forward, rather than taking people to court. However, if the Department felt that enforcement action was necessary, it would act accordingly.
- 3.5 The Board was notified that, in 2017, the Department had dealt with 300 compliance cases and served 9 enforcement notices; in 2016 there had been 334 compliance cases and 7 enforcement notices; and in 2018, to date, there had been 120 cases and 5 enforcement notices. The Board indicated that it would have been useful to be advised of the comparative figures from previous years, but, unfortunately, Mr. Jones was unable to provide the same.
- 3.6 The Board questioned what training Mr. X and Mr. Y had been given, and was informed that the planning team would provide advice to them on planning matters. When asked why they had attended so often at the Barettes' property, Mr. Jones suggested that some complaints may have been received. He indicated that records were kept of the site visits, including the time at which they were made, and informed the Board that by consulting the notes he would be able to confirm whether Mr. X and Mr. Y had attended Broughton Lodge Farm on a fortnightly basis. He stated that it was necessary to spend a lot of time on certain sites for various reasons, but was unable to explain why so many visits had been made to the Complainant's property. Mr. X and Mr. Y had been the only officers on the enforcement team at the time, and Mr. Jones conceded that there had been other complaints made about them. The Department had a procedure in place, and complaints were investigated by the Director of Planning. He indicated that approximately 12 or 13 were investigated in house *per annum*.

- 3.7 Mr. Jones stated that it was incorrect to suggest that planning officers did not undertake site visits. They would do so both prior to and after determination, and might wish to check whether any conditions that had been imposed had been adhered to. They might also visit the site in order to discuss any proposed further changes with an applicant, or to provide pre-application advice. If the Planning Department received a compliance complaint, it took the view that the case officer was the best person in the first instance to visit the relevant site, as they were familiar with the history and details pertaining thereto. If it emerged that there was an issue around compliance, the case officer would then pass the case to a compliance officer. Mr. Jones stated that this was a recent policy, which had only been implemented in the last few years.
- 3.8 The Board was informed that in order for the Department to bring a prosecution against an individual for a breach of planning legislation, it had to seek the views of H.M. Attorney General, who would determine whether or not a case should be progressed. H.M. Attorney General would consider whether the case met a number of tests, *viz* whether the breach of the law was significant; whether the breach was as a result of a conscious action; whether it was in the public interest to prosecute; whether the breach was one of a series of small breaches; and where a perceived trend of minor breaches might act as a warning for others. In the case of Mr. Barette, H.M. Attorney General had decided that there had been a significant breach.
- 3.9 Mr. Jones indicated that he had worked for the Planning Department for 11 years, and was a Planning Officer with a caseload of applications. For the last few years he had been the Compliance Manager. He stated that he was unaware whether the Department had known that an upheld complaint had been made against Mr. X when he was in the States of Jersey Police, in relation to his behaviour towards Mr. Barette. He stated that he did not have a copy of the original complaint, or of the letter of apology from the Police, so was unable to comment on whether it was appropriate that Mr. X, when employed by the Planning Department, should have been involved in dealings with Mr. Barette. However, he accepted that if such a situation were to arise now, it would be handled in a different way, and the officer in respect of whom the complaint had been made would not be involved in a complainant's case.
- 3.10 The Board questioned whether it was normal for such frequent visits to have been made by Compliance Officers over a 3-year period to Broughton Lodge Farm, and asked whether there had been any other similar cases. Mr. Jones stated that the number of visits made would depend on the nature of the site, but he accepted that it was not a normal course of action for there to be fortnightly visits, and he was unable to identify any comparable cases. He was unaware of whether H.M. Attorney General – before sanctioning the prosecution of Mr. Barette – had been informed that Mr. X had been the subject of a complaint when employed by the States of Jersey Police, and of allegations of persistent bullying. The submission to H.M. Attorney General had been verified by the former Compliance Manager, who was still employed by the Planning Department, albeit he no longer dealt with planning applications. Mr. Jones stated that if the Department been aware that the Board would question the conduct of Mr. X, to this extent, it would have arranged for him to be in attendance.

- 3.11 Mr. Jones indicated that he had been the Planning Officer with responsibility for the most recent planning applications by Mr. Barette. Since late 2012, the documentation relating to applications had been stored electronically and was, to an extent, available on the gov.je website. The applications by Mr. Barette had been registered in the normal way and allocated to Mr. Jones, as the case officer, who had consulted thereon with Ms. Ingle. Ms. Ingle's initial consultation response had been provided on both applications on 25th August 2016, which, Mr. Jones stated, countered the inference from the Complainant that the Department had delayed processing the applications until after the Royal Court case, because this had not been published until 3rd October 2016.
- 3.12 The Board was informed that Planning Officers were unable to be specialists in all areas, so sought out expert opinion on certain subjects. In the case of Mr. Barette, the HET had become involved because Broughton Lodge Farm was a listed building. Ms. Ingle, the Historic Environment Officer indicated that there had been a complex protection regime in place since the 1970s, which had been streamlined under delegated powers. As set out in paragraph 3.1 above, Mr. Barette had been written to in 2009 to inform him that it was the intention to list Broughton Lodge Farm because of its special heritage interest, and inviting him to comment on the proposal. In the absence of any comment, Broughton Lodge Farm had subsequently been designated as an SSI. In 2010, the Planning Department had altered the way in which it dealt with SSIs and had introduced a grading system akin to that which operated in the United Kingdom. Grade 1 listed buildings, or places, were those which were of exceptional public and heritage interest to Jersey and of international importance, such as Elizabeth Castle; and Grade 2 listed buildings and places were of special public and heritage interest to Jersey, such as Almorah Crescent. In respect of Grade 3 listed buildings and places, the intention was to protect the external envelope of the property, the internal features and, to a degree, the setting in which they were situated; and in the case of a Grade 4 listing, the focus was particularly on the exterior characteristics and was akin to a Building of Local Interest. After the letter of notification had been sent to the Complainant in 2009, he had had 28 days in which to appeal the decision. Mr. Barette had not done so and, accordingly, Broughton Lodge Farm had enjoyed heritage protection as an SSI since 2009. It was a Grade 3 listed property, the extent of the heritage interest, including the interior, being described in the listing description and shown on a plan, dated 23rd March 2011, which was included in the Department's bundle.
- 3.13 According to Ms. Ingle, the outbuildings at the property were not as old as the main farmhouse and were 19th century, rather than 18th century. She indicated that the HET accepted that there would have to be significant alterations to the inside of the outbuildings in order to transform them into homes. There had not been any particularly valuable internal features, but where things were worthy of preservation they had been retained, and she referenced an interesting forked rafter.
- 3.14 Ms. Ingle stated that a previous application, in respect of the existing sash-windows, had been made by the Complainant in 2012. This had been refused by the Department and, whilst Ms. Ingle could not recall all the details, she indicated that there would have been a good reason for the refusal, which would

have related to the condition of the windows and the level of evidence offered to prove their condition. She was of the view that the application had been ambivalent over repairing, or replacing, the windows, whereas the Department had to give permission for one or the other. Because they were historical windows, Ms. Ingle had seen each one in 2012 and had been '*not entirely convinced*' that they were all beyond repair. She stated she had to start from the premise that the windows could be repaired. She conceded that she was not an expert, and indicated that if a joiner had informed her that this was not the case, she would have accepted that. However, she had not received such a notification. She had been unaware, in 2012, that the windows had dry rot, and accepted that they would not have been salvageable if that had been the case. The Board queried whether the HET would normally ask for the windows to be reviewed ('benched') in order to assess their condition, and was informed that benching was not always required, and that sometimes it was not always evident how damaged a window was. In the case of Mr. Barette's 2012 application, Ms. Ingle had indicated that a condition survey would be required.

- 3.15 After Mr. Barette had been refused planning permission in 2012, Ms. Ingle had presumed that the windows were going to be benched in order to check their condition, and then repaired. When Mr. X and Mr. Y had attended Broughton Lodge Farm in order to serve the enforcement notice (referred to in paragraph 2.13 above), they would have approached the property from the rear, where the drive was located, whilst the windows were at the front of the property. Even if they had noticed that the windows had been removed, it would not have been unreasonable for them to assume that they had been benched.
- 3.16 In 2015, an officer from the Planning Department had been on site in relation to the compliance of the extension with building bye-laws. In later conversation with Ms. Ingle, he had commented that the work had been ongoing for a long time and that the interior of the farmhouse had been stripped out. As a result, she had attended Broughton Lodge Farm and had discovered that internal features had been removed, the walls stripped back to the masonry, and the floor stripped back to the soft floor, whilst the roof and timbers had been intact. Studwork interiors had been created on the first floor, and the staircase had been propped up on breeze-blocks. The windows had been removed and placed in the garden next to a shed, which had prompted her to ask for them to be moved inside the property under cover.
- 3.17 Ms. Ingle informed the Board that she was the only member of the HET and, as such, was responsible for covering the whole Island, and commenting within 3 weeks on between 500 and 600 planning applications each year. Her significant workload meant that she did not have a great deal of time to help applicants, albeit she enjoyed working with them, and in most cases could achieve 90% compliance, whilst acknowledging that applicants wanted their homes to meet the needs of their families and to be warm. In the case of Mr. Barette, it had been clear to Ms. Ingle that the level of work that he had undertaken in 2015 had been in breach of planning legislation. Because the whole interior of the farmhouse had disappeared, it had made it extremely difficult for Ms. Ingle to try and work in a constructive way with the Complainant.

- 3.18 Mr. Jones indicated that following Ms. Ingle's response to the consultation on Mr. Barette's applications, Mr. Osmand had submitted additional information. This information had been sent to the HET and, on 12th October 2016, Ms. Ingle had commented in the following terms in respect of the application for the windows: '*Sadly I remain of the opinion in its current form the application cannot be supported. However with amended drawings taking account of the comments, with joinery details suggested, the proposals are likely to be acceptable*'. In respect of the application relating to the internal refurbishment of the main farmhouse, she had concluded: '*Whilst not supportable at present ... with amendments and further information requested above the application will be acceptable*'. This information had been published on the gov.je website, and the Board was informed that the onus was on applicants and agents to stay abreast of any comments received, mindful that the facility existed to receive electronic mail notifications when any new comment was posted on a particular application.
- 3.19 The Board queried whether anyone had informed H.M. Attorney General that, subject to the receipt of some further information and details, it was possible that Mr. Barette's applications might be acceptable. Ms. Ingle stated that, for the sake of clarity, the works which had been undertaken at Broughton Lodge Farm had been in breach of planning legislation, because the Complainant had removed the windows with no intention of re-installing them. Moreover, on the basis that the property was a Grade 3 listed building, the interior was also subject to protection, but it had been completely removed. She indicated that Mr. Barette had previously undertaken work, so was aware of the requirement to obtain the necessary permission.
- 3.20 Mr. Jones explained that, at this juncture, Mr. Barette had pleaded guilty in the Royal Court and had been fined £50,000 in respect of 2 charges relating to contraventions of the Planning and Building (Jersey) Law 2002. However, at the same time, the Department was very close to being able to support his planning applications. He stated that the Department would be pleased to see the main farmhouse restored and occupied, as it had been in its current state '*for long enough*'. The Department could have awaited the additional information requested by the HET and then approved the applications, or it could have refused them on the basis of insufficient detail. If the applications had been refused under powers delegated to officers, the Complainant could have requested that the Planning Committee reconsidered that decision, or he could have appealed against the refusal, and an independent United Kingdom Planning Inspector would have been appointed to consider the applications. He stated that the Department used to grant planning permission and then '*remove it by conditions*', but that it now, as a matter of best practice, required full details of any application prior to granting planning permission. This aligned with the guidance issued by the United Kingdom Planning Inspectors.
- 3.21 Mr. Jones continued that when imposing conditions on a planning application, it was important to be careful to ensure that they were reasonable, precise and enforceable. In the case of Mr. Barette's applications, insufficient information had been provided to enable the Department to be certain that the works would comply with any conditions. The Department had not been furnished with a structural engineer report, or detailed information in relation to the staircase. In respect of the windows, the Department had only been provided with a standard

one-over-one sash detail for all the windows. However, at Broughton Lodge Farm there were unique windows in the staircase, and the top sashes of the windows had arched tops. Accordingly, Ms. Ingle had required elevation drawings for each window with detailed joinery details which highlighted the subtle nuances. Mr. Osmand had only provided generic details, and whilst these might have sufficed for a St. Helier property, where all the windows were identical, they were unsatisfactory for the farmhouse. Moreover, the 6-over-6 windows proposed by Mr. Osmand, whilst authentic for a building of the farmhouse's age, were different from those which had been removed, and the preference expressed by the HET was to reinstate what had been lost.

- 3.22 In January 2017, Mr. Jones had received electronic mail correspondence from Mr. Osmand, asking what would be required in order for the applications to be finalised. Mr. Jones had referred him to the comments from the HET, which had been uploaded onto the gov.je website in October 2016, indicating that the Department required additional information from the applicant. On 26th February 2017, Mr. Jones had been sent the report from the structural engineer, and this had been the last communication received by the Department in respect of Mr. Barette's applications until the Complainant had written in October 2017, to ask why it had been taking so long to determine them.
- 3.23 In January 2018, Mr. Jones and Ms. Ingle had met Mr. Barette, Mr. Osmand, Connétable Le Bailly and a fourth gentleman on site, with a view to reaching an '*amicable conclusion*' to the applications. At this stage, the officers retained the option to refuse the applications because they had still not received the detailed information that they had requested in relation thereto. Following that meeting, the Department had been provided with additional information in relation to the staircase repair works, but continued to require information on the cupboards and the windows. Between January and May 2018, the Department had been '*drip fed*' information, and Ms. Ingle had assisted by preparing a spreadsheet for the applicant, which had identified what the original configuration of each window would have been, what had been proposed and what the HET felt was appropriate, highlighting the need for the details to be correct. On the basis that the farmhouse dated from the 18th century, it was likely that the windows would have had a small pane pattern, but larger pane patterns were also appropriate for Jersey and 6-over-6 windows were more challenging and expensive to construct than one-over-one, or 2-over-2, which had been suggested by Ms. Ingle.
- 3.24 When asked why this schedule had not been drawn up earlier, Mr. Jones indicated that the onus was on the agent, or applicant, to prepare it. In this particular case, Ms. Ingle had taken the exceptional step of assisting with the additional information, because the Department was conscious that the information was being provided slowly and wanted to encourage and assist the applicant to move forward.
- 3.25 By May 2018, the Department had received sufficient information in order to determine both applications in a positive manner under officer delegated power. A condition had been attached to the application relating to the internal refurbishment of the farmhouse, whereby precise information was requested in relation to the proposed details of the plasterwork in the hallway, to include the arch and cornice and the thermal upgrading of the external walls. This condition

had been minor enough for the Department not to have pursued it further as a request for additional information. In relation to the windows, the Department had not received detailed elevations, but had decided to link to the survey drawing on the application as a pragmatic way to enable Mr. Barette to 'move on'.

- 3.26 The Chairman opined that it was clear that the decisions made by the Department could have a profound effect on people's lives and emotions, and enquired whether any lessons had been learnt from this particular case. Mr. Jones indicated that the Department could have refused Mr. Barette's applications, and a secondary appeal process would have ensued, thereby leading to a more speedy decision. The Department had hoped that, in the light of the Royal Court judgement and the building '*falling into disrepair*', it would have received the requisite information without the need to '*chase*' it. In hindsight, he conceded that the Department could have followed up more promptly. The Department had processes in place which were under constant review, and officers strove to improve performance, whilst balancing this against the quality of the decisions made. Ms. Ingle indicated that Mr. Jones had an extremely heavy workload and, whilst a more junior officer with less pressure on him or her might have pursued the agent for the detailed information at an earlier juncture, there was a limit to what the Department could do.
- 3.27 For the previous 4 years, the Department had offered free pre-application advice, which gave individuals the opportunity to discuss their aspirations with Planning Officers. If an applicant wished to undertake a large, or complex, development, this was a good opportunity to resolve many issues in advance of the submission of a substantive application, but was not a guarantee that the same would be approved. With regard to listed buildings, the Department acted as a regulator and could not approach the owners of listed buildings; it was for the latter to contact the Department. Supplementary planning guidance, which Ms. Ingle considered '*dry*', existed in relation to such matters as the protection of historic windows and doors, and the Department had worked with Jersey Heritage to compile '*This Old House*', which provided salient information to owners of older properties. She opined that it would be easier for the HET to be more pro-active if the team were larger. She agreed that it would be a positive step for people to be provided with more information on the type of practical solutions which might follow best conservation practice, and expressed the view that this might be possible in a digital format. Ms. Ingle stated that whilst she did not have the resources to meet with agents and architects on a daily basis, she was very happy to speak with them on the telephone when site visits could not be fulfilled, and would do all that she could to assist people through the process. She emphasized that she was '*passionate*' about historic buildings, and opined that responsibility for looking after them fell to everyone.
- 3.28 Mr. Jones informed the Board that, although the Department did not currently report on its targets, the target time-frame for dealing with major planning applications was 13 weeks, which was taken from the United Kingdom planning guidance. Minor applications had a target of 8 weeks. The Department was striving to process applications, visit sites, obtain responses, and revert to agents and applicants in a more timely fashion with the aim of speeding up the start of the process, to reduce the urgency come the 12th week of the process.

- 3.29 When asked whether the 2-year delay in relation to the Complainant's applications was acceptable, Mr. Jones indicated that he did not feel that the Department was wholly responsible. He stated that the Department had learnt lessons, was streamlining systems, and was constantly striving to improve. He had hoped that the applications could have been determined within 8 weeks. The Department had commented rapidly on the initial application, Mr. Osmand had responded, and the Department had then submitted further comments before the communication ceased. The Department could have refused both applications within an 8-week period, or, if trying to reach a solution, it could have taken another month to get the detailed drawings and then progressed matters. He emphasized that the Department wished for applicants and agents to submit all the information at the start of the process, rather than the Department registering the applications and then having to revert to the applicants and agents in order to obtain further details. If information was provided to the Department at an early juncture, the officers could progress the applications in a more timely fashion.
- 3.30 Mr. Jones indicated that the Department made '*no excuses*' for seeking adequate information from Messrs. Barette and Osmand in relation to the works at Broughton Lodge Farm, and did not feel the need to justify its actions, because the Royal Court had been of the opinion that there had been such a serious breach of planning legislation by the former that it had doubled the level of the fine suggested by the Prosecution. These sentiments were echoed by Ms. Ingle, who stated that the Department had been seeking the reinstatement of historical features which had been removed and destroyed. Nothing remained, and the details were important, because the farmhouse was Grade 3 listed and had key architectural features which needed to be reinstated to an appropriate level that met the relevant standards. In situations where there was no adverse planning history, and where key architectural features remained intact, Ms. Ingle could work with the applicants and request detailed information at a later point in time. It was noted that in cases where individuals were fined for breaching planning legislation, the Planning Department did not receive the proceeds.
- 3.31 With regard to the prosecution of the Complainant, Mr. Jones stated that the Department had had no option but to prosecute him, because it had obtained a valid enforcement notice against which no appeal had been forthcoming. If Mr. Barette had appealed the enforcement notice, the prosecution would have been stayed until such time as the appeal had been held. Moreover, Mr. Barette could have appealed the level of fine imposed by the Royal Court, but had chosen not to do so. He could also have availed himself of the provisions of Article 21 of the Planning and Building (Jersey) Law 2002, and requested that his planning applications be determined.
- 3.32 In relation to Mr. Barette's complaint about Mr. X and Mr. Y, the Department had been unable to locate the 2011 letter to the Chief Officer, and could find no record of a complaint having been made. Mr. Jones indicated that if the Department had been aware of a complaint, it would have investigated.
- 3.33 Mr. Jones concluded that the Department had now issued Planning permission to Mr. Barette, and hoped that this would act as a catalyst for him to remove a number of signs which had been outside Broughton Lodge Farm since the Royal

Court hearing. He indicated that the signs were unauthorised and, without intending to be heavy-handed, the Department would not permit them to remain indefinitely, particularly as one of the signs referenced candidates from the May 2018 election.

#### **4. Closing remarks by the Chairman**

- 4.1 The Chairman thanked both parties for their time and contributions. He informed Mr. Barette that he had given his evidence with clarity and dignity, and it was clear that the matter had had a profound effect on him, although he was reminded that the Board was constrained within its powers. Irrespective of the outcome of the hearing, the Board expressed the hope that he and his wife could ultimately return to their home, as it was a beautiful property. The Board understood the difficult position of the Planning Department, and was mindful of the tensions that inevitably existed between the Department as regulator and individuals who wished to work on their properties, and recognised that these aspirations might not always align. Further, it noted the comments that had been made in respect of the lack of resources available to the Department.
- 4.2 The Chairman indicated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their input on the factual content. The findings of the Board would subsequently be appended thereto.

#### **5. The Board's findings**

- 5.1 The Board upholds the complaint. It considers this case to be a prime example of how the government interacting with private citizens can have an enormous effect both emotionally and financially on those concerned, especially when communication breaks down, as it did in this instance.
- 5.2 The state of the floors and windows in Mr. Barette's home would have undoubtedly been condemned had they been viewed by Planning Officers. The Historic Environment Officer stated that, had she been advised in 2012 that the windows had dry rot, she would have agreed to their removal and not sought remediation. It would be fair to assume that no enforcement action would have followed. However, the excessive monitoring by the 2 Enforcement Officers, which had created an atmosphere of distrust and conflict, had undoubtedly contributed to the actions taken by Mr. Barette leading up to the removal of the windows. The Board does not condone the fact that he decided to take matters into his own hands and dispose of the windows, but it does understand his rationale for doing so.
- 5.3 It did not hear from the 2 Enforcement Officers and therefore cannot comment on their specific actions. However, the fact that one of them shared a history with Mr. Barette relating to a substantiated complaint of misconduct which the latter had made against that individual when he was a serving police officer, and for which the officer had been disciplined, should have been taken into consideration by Planning, and that officer should not have been involved in Mr. Barette's case in any way. His continued presence in itself was provocative and antagonistic. This was clearly the catalyst for the breakdown in relations with the Department. Every effort should be made to avoid any conflicts of interest in the future by officers, especially in relation to compliance matters. It

cannot be just that someone who was the subject of a substantiated official complaint then occupies a position of power over the complainant, and the Board finds this to have been oppressive and improperly discriminatory.

- 5.4 The Board is heartened that, since this case, the role of staff within the Compliance section has been reviewed and redefined, placing greater emphasis on resolution, and using enforcement only as a last resort. The Board considers it extremely unfortunate that H.M. Attorney General was not provided with the full background to the case, and that attempts were not made to resolve the case informally before enforcement proceedings were pursued.
- 5.5 The Board believes that Mr. Barette was somewhat naïve and had placed too much trust in his agent and the Planning Department, undertaking the wholesale gutting of his property under the mistaken belief that he had permission to do so. There was a process to be followed and he had missed a very important step.
- 5.6 Whilst the Board applauds the changes which were made to the Compliance role, it is of the view that Planning had an obligation to manage the process, and should have made every effort, mindful of the complaints made against its officers by Mr. Barette, to re-engage with him and attempt to resolve the situation. The subsequent delays in dealing with Mr. Barette’s applications were therefore unacceptable, and although it recognises that there was blame on both sides, the Board feels that the Department should have been more proactive. The unwarranted delays have impacted upon Mr. and Mrs. Barette financially as the property has continued to deteriorate, and the costs of building work, especially in the current climate, have increased considerably in the intervening years.
- 5.7 The Board appreciates that there are budget and resource constraints within the Department, but considers that if Regulations are to be imposed, there should be clearer guidance initially as to what would be considered acceptable. Furthermore, if Planning officers consider that they have insufficient information upon which to base a decision, they should make requests early on in the process. The Board recommends that there should be a rigorous procedure implemented to review and monitor potential conflicts of interest in relation to those involved in the planning process, and that a senior manager should be tasked with the responsibility of having such oversight and have the power to intervene, particularly when a complaint is made.

The Board also recommends that Mr. Barette receives a written apology from the Department.

Signed and dated by –

S. Catchpole, Chairman ..... Dated: .....

G. Marett ..... Dated: .....

J. Eden ..... Dated: .....