
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD: FINDINGS – COMPLAINT BY MR. A. LIDDLE AGAINST THE MINISTER FOR THE ENVIRONMENT REGARDING THE LACK OF ENFORCEMENT ACTION RELATING TO THE OPERATION BY AN ONLINE RETAILER WITHIN ST. PETER'S TECHNICAL PARK

**Presented to the States on 6th January 2021
by the Privileges and Procedures Committee**

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 a decision of the Minister for the Environment regarding the lack of enforcement action relating to the operation by an online retailer within St. Peter's Technical Park.

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

STATES OF JERSEY COMPLAINTS BOARD

15th October 2020

**Complaint by Mr. A. Liddle against the Minister for the Environment regarding
the lack of enforcement action relating to the operation by an online retailer
within St. Peter's Technical Park**

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

Present

Board members –

G. Crill, Chairman

G. Marett

S. Cuming

Complainant –

A. Liddle

Minister for the Environment –

C. Jones, Senior Planner, Compliance, Department for Infrastructure, Housing
and Environment

W. Peggie, Director – Natural Environment / Acting Group Director –
Regulation, Department for Infrastructure, Housing and Environment

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 15th October 2020, in the Icho Room,
Mourier House, with limited access, due to COVID-19 restrictions.

Note: throughout the report, any reference to the 'Planning Department' is taken to
mean the relevant section of the Department for Infrastructure, Housing and
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 explained that the hearing would be informal, would not attribute any guilt and that both parties would have the opportunity to be heard.

2. St. Peter's Technical Park – brief background

- 2.1 The site of the current St. Peter's Technical Park ('the Park'), on La Grande Route de St. Pierre, St. Peter had been previously occupied by a knitwear factory, Dronfield, which had been established in 1961. The houses at Ville du Bocage had been built in 1973, the factory had closed in 1982 and the Park had opened in 1984 as a light industrial park, with several warehouse buildings. A one way road system exists around the Park.
- 2.2 The Park comprises a number of units, which are occupied by various companies, with CBRE acting as the managing agent. Different conditions apply to the various units within the Park. The unit occupied by the online retailer at the Park (Unit 2A), in respect of which the complaint had been made to the Planning Department, had been approved by the Island Development Committee on 17th February 1986 as a 'Single storey light industrial unit and car parking'. Various conditions had been imposed on the development, which had included that 'no operations [were] to be undertaken on the site between the hours of 10.00 p.m. to 6.00 a.m.'

3. Summary of the Complainant's case

- 3.1 The Board had been provided with a copy of the Complainant's written submission in advance of the hearing. Mr. Liddle indicated that he had moved into Ville du Bocage in 2015 and that his property was located directly opposite Unit 2 at the Park. It was noted that the Board had briefly visited the site in advance of the hearing, to familiarise themselves with the location. Mr. Liddle informed the Board that he had initially found it to be a 'lovely quiet area' and there had been no working at weekends. However, in June / July 2019 the situation had changed and since that time, he and other residents had 'experienced a significant deterioration in ... [their] quality of life during increasingly expanded operations in St. Peter's Industrial Estate. The noise and disruption [was] significant and almost continuous. There [was] no relief or respite. This disruption [caused] a considerable amount of stress on a daily basis.'
- 3.2 Mr. Liddle stated that in June / July 2019, an online retailer ('the Company'), which occupies Unit 2A in the Park, had substantially increased its external activities and 5 steel shipping containers had appeared on the parking area

associated with the Unit, which were very noisy when opened and closed. The Company's employees moved goods to and from the containers, using pallet trucks and lightweight, aluminium trolleys, which had little damping in the suspension, thereby causing disturbance to the neighbours. In addition to the noise emanating from the containers and trolleys, the location of the former on the hardstanding had had the effect of moving all operations closer to the houses at Ville du Bocage. Because there was no longer any space for the Company to unload at their own premises, 'lots of unloading [happened] at the boundary wall to the houses'.

- 3.3 In August 2019, in the realisation that the issue was likely to continue, Mr. Liddle had made a noise complaint to the Environmental Health Team and had, at their request, completed a nuisance log. He had written to them 'the problem is re-occurring 7 days a week and currently the [Company] business is opening its shutters to start work outdoors between 6.30 and 6.45. Saturdays and Sundays appear to be part of the normal working week. The nuisance is the outdoor operation of their goods handling and storage. Noise includes regular opening and shutting of steel shipping containers, manoeuvring of lightweight aluminium trolleys, manoeuvring of pallets using manual pallet trucks. I believe that the company are unaware of the limitations to their operations to within their premises and not to operate outside, effectively taking up the car parking spaces.'
- 3.4 Mr. Liddle informed the Board that he had made his complaint to the Environmental Health Team because the noise had been ongoing every single day for approximately 12 hours at a time, starting at 7.00 a.m. or earlier, the significant impact of which could not be truly sensed from his written submission. He stated he did not have an issue with the hours worked by the Company – it was the fact that the work was ongoing outside the Unit. 'It's not the end of the world if they're working indoors'. He indicated that he had not been aware of any officers from the Environmental Health Team attending the site in order to monitor the noise levels and said 'when they turn up they are spotted straight away and [the noise] disappears'.
- 3.5 He acknowledged that by starting work early in the morning, the Company was not in breach of the conditions of the 1986 permit, but if action had been taken to require it to remove the containers from the hardstanding area, which was a breach of the conditions, the noise issue would have been addressed. He informed the Board that he could have accepted the outdoor working during the COVID-19 crisis, for a period of 4 to 6 months, as long as there had been an end in sight.
- 3.6 In response, the relevant Environmental Health Officer (Rob Bowditch) had indicated that he would raise the matter with a colleague in the Planning Department and had subsequently written to Mr. Liddle that 'Chris Jones has made contact with [the Company] as well in relation to potential planning issues'. It was noted at the hearing that the Environmental Health Team formed part of the Department for Infrastructure, Housing and Environment. There had then been an initial exchange of emails between the Complainant and Mr. C. Jones, Senior Planner, Compliance, Department for Infrastructure, Housing and

Environment in early September 2019. On 12th September, Mr. Liddle had written to Mr. Jones, copying in the Acting Director General for Infrastructure, Housing and Environment (Andy Scate) 'Although [the Environmental Health Officer] has suggested that [the Company] may try to mitigate noise and disruption, I do not see any signs of this. The additional stacked shipped containers now feel imposing. As they appear to be permanently placed, should they need planning permission? At this stage could I ask you to confirm that you have written to [the Company] to ensure that they are aware of condition 12 and that they are not permitted to store and operate outside of their unit.' On 20th September 2019, the Complainant had contacted Mr. Jones, asking 'Could you respond or acknowledge my email?' and, in the absence of an answer, had made telephone contact with the Planning Department on 1st October, requesting a reply to his messages.

- 3.7 On 9th October 2019, Mr. Jones had written to Mr. Liddle. 'I refer to your recent communications with the Regulation Section to which you have not yet had the courtesy of a response. I would be grateful if you would accept my sincere apologies for this oversight which has been due in part to other workload issues ... the approved drawing for the development indicates that the hardstanding area between the Unit and the residential properties in La Ville du Bocage should be retained as car parking and commercial unloading. Whilst in recent years the operations of the Unit have been fairly low key, my investigations have confirmed that in recent months this hardstanding area has been slowly filled with containers and other paraphernalia to the extent that this area cannot function for its designated purpose. As a consequence of this, I have contacted the Managing Director of [the Company] direct and requested a site meeting this week so that we can discuss the issues raised further. I will report back once this meeting has been held.'
- 3.8 Mr. Liddle had acknowledged the email on 13th October and had requested an update from the aforementioned meeting. No response had been forthcoming, so on 28th October, he had written to Mr. Jones 'Are you able to get back to me? What is happening since your meeting with CBRE and your meeting with [the Company]?'
- 3.9 Having left several messages without a response, Mr. Liddle had lodged a formal complaint (CF154048413) through the E-complaints system portal on 4th November 2019. The acknowledgment, which had been received on the following day, indicated that the complaint had been forwarded to the Director of Development Control (Planning) (Peter Le Gresley) for a response. On 14th November, the latter had written to Mr. Liddle 'I am sorry that you have had to make the complaint, in addition to the disruption you have experienced from the [Company] site earlier in the year ... The Department's officers have been working diligently, and as fast as they can, on the Technical Park this year. Regrettably, we currently have very limited resources for compliance matters and it is fair to say that we have focussed attention on the matter at units 8, 9, 10 and 11 ... As a final aside, we are currently recruiting to our Compliance Team to help with speed of response on cases such as yours.'

- 3.10 Although Mr. Liddle stated that he had appreciated receiving a response, he had been disappointed that no plan of action, or offer of resolution to the issue had been provided. He had responded to the Director's message, with comments, but had received no further correspondence from that individual and indicated that the result of his complaint was not what he would have expected to see. Mr. Liddle informed the Board that he would have anticipated someone in a position of oversight taking overall responsibility for the complaints process.
- 3.11 On 15th November 2019, Mr. Jones had provided the Complainant with an update, setting out details of recent communications between the Planning Department, the Company and CBRE and stating that he would be in contact with the Chief Executive Officer ('CEO') of the Company the following week. Mr. Liddle had responded with comments on 20th November 2019, but that remained the last correspondence that he had received from the Planning Department regarding the Company for several months.
- 3.12 By March 2020, Mr. Liddle had been 'left entirely unsure whether Planning [had] engaged at all with [the Company]', having received no communications from the Department. In the intervening period, Mr. Liddle's experience had been that the Company had been 'allowed to continue to function in a manner that was not permitted, without checks or restrictions and [seemed] to be slowly and steadily increasing their undertaking'. As a consequence, Mr. Liddle had emailed Mr. Jones for a progress update on 22nd March 2020, but had received no reply, or acknowledgment.
- 3.13 On 5th May 2020, Mr. Liddle had contacted the Environmental Health Officer, seeking assurances that his original noise complaint remained active, because it had not been resolved. On the following day he had received an email response, which read 'Unfortunately much of Environmental Health is working on Covid-19 related matters. Therefore I'm afraid I cannot be of more assistance at this time.'
- 3.14 On 5th May 2020, Mr. Liddle had lodged his second complaint (CF2014152782) through the E-complaints system portal, but this had been neither responded to, nor acknowledged, apart from an automated response. This had prompted Mr. Liddle to make a formal complaint under the Administrative Decisions (Review) (Jersey) Law 1982. He had written to the Deputy Greffier of the States, 'I have not had the courtesy of a response to this complaint. Three weeks have now passed. As you can see, this is complaint CF204152782, which is an attempted escalation of CF154048413. This was responded to ... However, the issue was not resolved ... While the current Covid crisis is undoubtedly putting strain on resources across the Island, I would like to think that the Government's escalation processes are robust.'
- 3.15 Mr. Liddle informed the Board that he would have expected there to be independent oversight of the complaints process. 'It's a quality driver, not a punishment' he opined. His second complaint had been either ignored, or missed altogether and he did not believe that there was 'appetite' within the Planning Department to perform better. He suggested that there was a 'defence

mechanism' within the Department to get rid of complaints and stated that he had been asked by the Department on 4 occasions to withdraw his complaint under the Administrative Decisions (Review) (Jersey) Law 1982.

- 3.16 Mr. Liddle indicated that when had had made his complaints, he had anticipated receiving a holding letter, which set out the timeframes within which the complaints would be dealt with, provided a point of contact and clarified how the Department would seek to resolve the issue. Instead, he had been left with no awareness of what actions, if any, the Department was taking and did not feel that there was a clear plan. He suggested that even if officers were busy addressing another issue at the Park, he should have been notified of the reasons for the delay. By April / May 2020 he was 'struggling to find someone [within the Department] to talk to'. He acknowledged that staff might have been working from home at that juncture, but would have expected a response to his communications.
- 3.17 In his written submission to the Board, Mr. Liddle indicated that 'the lack of prompt and assertive enforcement has allowed a significant reduction in the expected conduct performance of the tenants [of the Park] as a whole. I believe that the comments and correspondence from the residents has been consistently and systematically disregarded from the start. It seems that they are tolerated rather than being acted upon. As you can see, the majority of my correspondence is, in fact, escalation. It is a shame that the key performance indicators published do not seem to be monitoring and driving progress. It is also disappointing that the escalation processes in place do not seem to be robust and effective.'
- 3.18 Having heard from Mr. Jones at the hearing, Mr. Liddle stated, 'much of what Chris Jones has said is good feedback, but I didn't get any of that at the time.'

4. Summary of the Minister's Case

- 4.1 The Board had been provided with a copy of the written submission on behalf of the Minister for the Environment in advance of the hearing. As referenced at paragraph 2.2 above, it was noted that the unit occupied by the Company at the Park (Unit 2A) had been approved by the Island Development Committee on 17th February 1986 as a 'Single storey light industrial unit and car parking'. Various conditions had been imposed on the development, which had included that 'no operations [were] to be undertaken on the site between the hours of 10.00 p.m. to 6.00 a.m.'
- 4.2 The hard standing area, on which the containers had been placed by the Company, had been clearly identifiable – with the relevant conditions – in the approved plans identified at the foot of the 1986 permit, which had not been provided to the Board. However, Mr. Jones provided confirmation that these indicated that the area should only be used for car parking and the loading / unloading of vehicles.

- 4.3 The occupancy of the Unit had not caused issues for residents of Ville du Bocage until August 2019, when the Department had started to receive complaints about increased noise and activity from the site, including the location of the steel storage containers externally ‘which prevented the hardstanding area upon which they were sited to be used for the designated purpose of loading / unloading and parking, thus resulting in increased noise nuisance and disturbance from the operations being undertaken’.
- 4.4 Mr. Jones acknowledged that he spent much of his time dealing with the Park and issues associated therewith. He indicated that he was not sure that all of the tenants were aware of the conditions attached to their particular unit, because there was no universal condition which applied to the whole Park and each unit had different permissions. The Planning Department had reviewed the planning history for the units and was compiling a comprehensive list of the conditions associated with each unit. Officers were also working with the managing agent, CBRE, with the aim of reaching a compromise with the tenants over their operating hours. However, Mr. Jones informed the Board that if, as in the case of Unit 2A, the extant permission was that there should be no operations between 10.00 p.m. and 6.00 a.m., the Company was not in breach if its staff started work at 6.00 a.m., so the Department had no powers to enforce different working times.
- 4.5 The Department could only attach different conditions to a unit, to include operating hours, when it granted planning permission and it was the opportunity to ‘rein back some permissions’. However, it was noted that if the applicant did not undertake the approved work (as in the case of the mezzanine floor application by the Company, referenced at paragraph 4.9 below), the conditions did not apply. Mr. Jones indicated that the condition around the operating hours for Unit 2A was ‘generous’. ‘It is not one we would put on now, but we have no facility to change it’, he said. ‘Although we can try and ensure compliance with the conditions, some of the wording is extremely loose and not as tight as we would seek to impose today, but we do what we can to work with the wordings and the tenants’.
- 4.6 Mr. Jones informed the Board that if, in the future, a new site was allocated for light industrial storage, the Planning Department would impose extremely ‘tight’ conditions in the light of what it now knew. He suggested that the Department might issue a development brief, which would inform the size, height and materials used for the buildings in addition to restricting operating hours and use. The Park and the other 7 Technical Parks in the Island had existing valid permits, so he did not envisage the Department being able to impose any unilateral conditions on them.
- 4.7 Mr. Jones explained that when Mr. Liddle had made his complaint to the Planning Department in September 2019, it would have been classed as a possible breach of conditions / approved drawings (due to the siting of the containers on the hardstanding area) and would have been assigned a level of priority from 1 down to 4. Level one complaints were designated immediate priority and were extremely serious (for example the demolition of a listed

building), whereas a level 4 complaint would be low priority and might relate to the erection of a shed without permission. Associated with each level was a timeframe within which an enforcement officer would inspect the relevant site and make a report to the compliance manager. The latter would decide if there had been a breach of planning controls. The timings for the site inspections and decisions were published on the planning area of the gov.je website and Mr. Jones informed the Board that he would have hoped that that the level of priority assigned to Mr. Liddle's complaint would have been communicated to him. Mr. Liddle stated that he had not been told what category his complaint had been allocated, so he had waited until the Department had missed the deadline for all 4 levels before escalating his complaint.

- 4.8 Mr. Jones indicated that when Mr. Liddle's complaint had been received, he had decided to take responsibility for it, because he was well versed in the issues associated with the Park and its history. His principal remit was to handle major planning applications, but he had been involved in the Park for 18 months and envisaged that situation continuing for the future. He had visited the Park and had met with the CEO of the Company to discuss planning permission and with a view to obtaining a clearer understanding of what operations were being undertaken at the site and why the hardstanding area was being used for the purposes of external storage. He had done this within 3 weeks of receiving the complaint, which was the target timeframe for a category 3 complaint. He had brought Mr. Liddle's complaint to the attention of the CEO and had made him aware of the conditions associated with the 1986 permission, on which he had not previously been sighted. The CEO had explained that a new internal shelf racking system was being installed in the Unit, but the parts had arrived sooner than anticipated, so were being stored in some of the containers whilst that work was being finalised. Moreover, the business had recently experienced a significant uplift in the volumes of trade and was unable to store all its goods within the Unit. Mr. Jones had been assured that the use of the containers was a temporary arrangement whilst the Company worked to rationalise the internal arrangements in the Unit.
- 4.9 The Company had subsequently submitted a planning application on 31st October 2019 (P/2019/1371 referred) for the installation of a new mezzanine floor within the Unit. Mr. Jones stated 'Once that was received, we had to take the decision whether to continue with the issue around the containers, or to work with [the Company] to hurry them up to get the shelving done We took the view not to enforce against the breach of the approved plan in relation to the hardstanding'.
- 4.10 The application by the Company had been approved under Officer Delegated Powers on 18th December 2019, subject to certain conditions, including the following –
1. No machinery shall be operated, no processes shall be carried out and no deliveries taken at or despatched from the site outside the following times – 0800-1900 Monday to Friday and 0800-1300 on Saturdays – nor at any time on Sundays or Public Holidays.
 2. No external storage of materials, equipment, waste, goods and / or other products shall take place on site. With the exception of the

gravelled area to the south west side of the building which shall remain as hard landscaping, the external areas shall be retained for the parking of cars ancillary to the use of the building.’

- 4.11 In April 2020, the Planning Department had received a further application (RC/2020/0478 referred) to vary the aforementioned conditions in respect of the hours of operation and the storage requirements for the hardstanding area. The Company had subsequently withdrawn the application and, by the end of June 2020, had removed the storage containers from the site. At the same time, the CEO of the Company had written to all the neighbours, explaining that steps had been taken to reduce the Company’s impact on them by, inter alia, reducing its external operating hours and weekend operations, relocating the 5 steel containers and acquiring quieter pallet trucks with rubberised tyres. The Company had also secured a shared usage of Unit 8 at the Park for storage purposes, until the end of 2020.
- 4.12 The Department had stated in its written submission that it had ‘been balancing up the operational requirements of the Company within a site designated for light industrial use, with the amenities for the adjoining residents and [had] not taken Enforcement Action accordingly as it [sought] to find an amicable solution to the issues.’ As it was entitled so to do, the Company had submitted 2 planning applications during the period between the complaint first having been received by the Department in August 2019 and the removal of the storage containers in June 2020. During that time and until the outcome of the applications had been known, the Department would not have taken any action.
- 4.13 The Board questioned whether, in the light of the limitations of the planning conditions and the narrowness of the breach by the Company, Mr. Jones might have approached the matter in a different way. He suggested that the Company had perhaps not worked as quickly as it could have done to remove the containers from the hardstanding area. He informed the Board ‘we had had enough of being told they would go and we threatened further action, so they removed them’. He acknowledged that lessons had been learned. The Department had endeavoured to allow the Company some leeway because it was internet based and many people had been shopping online during the lockdown period of the COVID-19 pandemic. The Company had also taken on additional staff, so had been keeping people in employment, which benefited the economy.
- 4.14 As a consequence of a planning appeal decision relating to Unit 8 and another company, the Planning Department had instigated mediation – facilitated by a professional resolution group - between the residents of Ville du Bocage, the companies occupying units in the Park and political representatives of the area, in order to seek to resolve issues around permitted working practices, hours of operation, noise and nuisance. The Complainant and the CEO of the Company had participated in initial discussions.
- 4.15 Mr. Jones indicated that Mr. Liddle’s complaint in respect of the Company had been dealt with as ‘part of the wider difficulties’ associated with the Park. Over

the previous 18 months, the Planning Department had been made aware that many tenants of the units had been in breach of the conditions, sometimes unwittingly. Officers had taken action and continued to monitor the site on a regular basis – 3 days per week - to ensure that operations were being undertaken in accordance with the relevant legislation. Mr. Jones informed the Board that these endeavours were resource hungry, but the Department was acting in this way because of the concerns raised by neighbours. He indicated that the Planning Department had ‘expended a huge amount of time working with tenants to get them to think about how they operate their business’ and he hoped that this monitoring was benefiting the nearby residents. Mr. Liddle acknowledged that ‘having Planning there [helped]’ and that he had noticed the difference as a result of their recent presence. Mr. Jones indicated that as a consequence of the discussions that had been held with the tenants, to make them aware of the conditions relevant to their unit and the monitoring work by officers, the Department would not hesitate now to serve an enforcement notice in the event of any breach of planning conditions.

- 4.16 Mr. Jones informed the Board that he had written to the Complainant on 9th October, 4th November and 15th November 2019, in order to keep him abreast of what steps the Planning Department had been taking. ‘It seems that the complaint was then lost in the work we were doing with [the Company] to get them to resolve issues,’ he said. In respect of Mr. Liddle’s complaint in May 2020, Mr. Jones stated that this had ‘coincided directly with issues around COVID-19’. Many staff within the Department had been seconded to the Environmental Health section and had been working as part of the Track and Trace programme, whilst other people had been working from home and had not had the resource or the ability to do much of their work as well as they normally would have hoped to. ‘It’s not an excuse, but it was a determining factor’, he said.
- 4.17 The Board suggested that there appeared to have been little parallel engagement between officers from the Planning Department and the Environmental Health Team between September 2019 and May 2020. Mr. Jones denied that this was the case. He indicated that the officer from the Environmental Health Team had been in possession of the 1986 planning permission for Unit 2A and had discussed the conditions with him. He informed the Board that he and the officer were extensively involved in issues relating to the Park and would provide each other with updates on a daily basis. ‘He would have confirmed to me that he had looked at the complaint and couldn’t do anything about it’, he said. It was noted that the initial complaint to Environmental Health would not have appeared on the Planning Department’s records, as they operated different systems.
- 4.18 Mr. Jones acknowledged that the Department hadn’t responded to the Complainant ‘in the way we would have liked to’ and conceded that he was unaware whether the formal process of handling the complaint had been followed. He informed the Board that he had been unable to locate a paper trail for the first complaint. ‘We didn’t do what we should have. We have apologised. We hold our hands up and say we were distracted by trying to resolve the planning issues. Apologies again.’

- 4.19 With regard to Mr. Liddle's complaint through the E-portal, Mr. Jones informed the Board that there was a formalised, 3 stage, complaints handling process as follows –

Stage 1 was frontline complaint handling and early resolution. This had a timescale of up to 5 working days from the point of escalation;

Stage 2 was the escalation to a team leader, or manager, for issues that required further investigation, or were complex, serious or high risk. This had a timescale of up to 10 working days from the point of escalation; and

Stage 3 was the escalation to a Director General if the issue remained unresolved after stage 2. The Director General could refer the complaint to another Director General, or a third party, if appropriate. This had a timescale of up to 10 working days from the point of escalation.

- 4.20 'I don't know what happened here', admitted Mr. Jones. 'I honestly don't know why Mr. Liddle didn't have any feedback in the time required'. Mr. Peggie indicated that the Complainant's expectation that someone in an oversight position would take overall responsibility for the complaints process was 'a reasonable expectation as a customer'. He suggested that the public should have been made aware of any changes to the Department's working as a result of the unprecedented circumstances. 'We need to improve the situation', he said. 'We don't want people engaging with our Department feeling like they don't matter'.

5. Closing remarks from the Chairman

- 5.1 The Chairman thanked both parties for attending and for providing their input. He stated that a report of the hearing would be prepared in due course, which would be circulated to both parties for their feedback on the factual content. Thereafter, the Board's findings would be appended thereto, including any recommendations and formally presented to the States Assembly.

6. Findings

- 6.1 The Board was disappointed that, yet again, the core element of this case had been poor communication. In the weeks leading up to the hearing, the Department had repeatedly suggested that this case did not warrant a hearing, which was wholly understandable as from their perspective they had responded to the original complaint. However, from Mr. Liddle's perspective, whilst the Department had addressed many of his issues, the lack of contact and the fact that no clear process and timetable was made available to him and on the face of it no such process appeared to have been followed, had inevitably led to him feeling as if his complaint had essentially been ignored and this had been

compounded by the fact that his second complaint had received no response whatsoever.

- 6.2 The introduction of the new feedback complaints system was laudable, but the positive aspects of this new system had been completely undermined by the failure to classify the specific stages which would be followed or to provide notification to the complainant at each and every stage. Furthermore, the complainant would have benefited from having a single point of contact who could have been responsible for ensuring deadlines were not missed and who could have provided adequate feedback throughout the process. Instead Mr. Liddle had been left feeling as if his complaint had fallen into a void and had been frustrated by the seeming lack of response or activity, when in fact the Department had actually worked very hard behind the scenes to address his concerns.
- 6.3 The Board recognised that the issues pertaining to the Planning conditions at the Technical Park were historical and it had been heartened by the efforts taken by the Department to ameliorate the situation, when clearly the use of the site had evolved since the Park's inception. It was evident that the original conditions were no longer fully compatible with the range of operations within the Park and the potential for negatively impacting upon neighbouring residential areas had grown. The Board acknowledged that the Department had been unable to revise the conditions or impose new ones on existing tenancy agreements, but officers had successfully negotiated with the companies concerned to mitigate the working practices which had led to the complaint. Officers were however negotiating from a position of weakness, as they had no power to vary conditions that had been in place for over 30 years. It should be a salutary reminder to the Planning Dept. that planning conditions, like the permit to which they attach, are perpetual, unless modified by a subsequent permit relating to the same land. Planners cannot be expected to see into the distant future, but they should expect that operations and processes within a particular use are likely to change materially over time.
- 6.4 The Board recommends that the Department should consider how it might in future impose conditions relating to the operations within a permitted use of land that may be time-limited or otherwise subject to review, in order that the lessons of hindsight and experience may be carried forward for a further period. In the current case, for example, the operating hours were limited at a time when seven day working was not envisaged, and so no prohibition on weekend operation was imposed. Whilst it is not suggested that "use" conditions should be subject to unilateral amendment (in this case "light industrial unit and car parking"), it is the operation of that use that has caused the problems, and that should be capable of review and amendment, after all interested parties have had the opportunity to be heard, as with a new application.
- 6.5 The Board considered that Mr. Liddle had been a very reasonable and principled complainant and it was grateful that he had maintained his request for the matter to come to a hearing, as it had highlighted a failing in the Department's complaints process which could now be addressed. Clearly the centralised complaints system required some 'fine tuning'; most notably for there to be

someone designated as a point of contact who could support the complainant through the procedure and ensure that there was a regular progress report so that complainants did not have to drive the process themselves.

- 6.6 The Board upheld the complaint in accordance with Article 9(2)(e) of the Administrative Decisions (Review) (Jersey) Law 1982, as it considered that the Department’s actions had been contrary to the generally accepted principles of natural justice. It was of the opinion that Mr. Liddle had a reasonable expectation that his complaint regarding the failings in the complaints process should have been heard and considered, yet no action had been taken at all to respond. The Board recommends that changes are made to the Departmental complaints process to make certain that clear and regular feedback with complainants is an automatic and integral element. Moreover, there should be a designated point of contact who can provide an important link between both parties and ensure the process is robust and that no complainant ever feels like they ‘don’t matter’.

Signed and dated by –

G. Crill, Chairman Dated:

G. Marett Dated:

S. Cuming Dated: