STATES OF JERSEY

PLANNING APPLICATION FOR THE CONSTRUCTION OF OUTDOOR ADVENTURE CENTRE AT LES ORMES, LE MONT A LA BRUNE, ST BRELADE

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Planning Application – Les Ormes, Jersey

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Introduction

I have been asked by the States of Jersey (specifically by the Minister for Planning and Environment,) to carry out an investigation into the procedures surrounding a planning application for the development of an Adventure Centre at Les Ormes Valley, St Brelade, Jersey. The application, by Pure Adventure Ltd, was submitted in November 2007 and approved in January 2008.

I am a Past President of the Royal Town Planning Institute and a former Chief Planning Inspector in what is now the Department for Communities and Local Government in the UK. I have done some work in the past for the States of Jersey, but I am independent and have no other connection with the States or the Department or individuals in Jersey.

I have read a large amount of material about the site and the application, and I visited Les Ormes on 23 April. On that day I also met neighbours Mr A and Mr B, who own properties, adjoining the site. They also showed me views of the site from the Water Lane area. I also met the Deputy of St Brelade, the Director of Planning and the Planning Officer who dealt with the application in the Planning Department, representatives from the National Trust, the Head of Countryside from the Environment Department, and the Minister for Planning and Environment. I have since spoken by telephone to the manager of Les Ormes, and a representative of Pure Adventure. I believe I have a good understanding of what took place, and I have heard all the different points of view about the process and procedures surrounding this case. I have to say that in many cases directly contradictory views and accounts of what happened have been given to me. Views differ widely on key issues, and in some cases it is very difficult to find hard evidence to support a particular point of view. I have done the best I can but I hesitate to accuse any of the participants of misrepresentation (as I have been encouraged to do) unless I have clear evidence to support it.

I will not summarise all the views which have been expressed to me. The Deputy of St Brelade and the Director of Planning have both produced reports on the issue, which are in the public domain; in addition Mr A supplied me with a large amount of information, which I have read, and he has also made his views known widely. I have looked through the information which the Department holds (as have the Deputy and Mr A); this includes the Planning Application itself, Officers' report and decision letter, photographs of the site at various dates, papers and letters from the Head of Countryside, and other background information. I have also looked at the website established by Mr A which sets out his views in some detail and contains a forum section. Some of the remarks on the forum are, to say the least, intemperate.

The essential issue is that Mr A and Mr B are extremely unhappy about the development, for the reasons set out in full on the website and elsewhere. They have made various

allegations about the process and procedures involved and it is these allegations which I have been asked to investigate.

Summary

I believe there is one major issue here, from which most of the other allegations and problems flow. It is the fact that Mr A and Mr B were unaware of the application. They did not see any advertisement, either on site or in the local press. They therefore made no objection to it. It was only when development commenced that they became aware of it.

It was because of this lack of objections that the Planning Department report was written in the way it was (and I think it was flawed), that the Minister for Planning and Environment decided it in the way he did, and that the application was quickly determined. Had the neighbours been aware of the application, and made objections, the process would have been different and there may have been changes made to the decision. I return to all these points later.

There are some other issues, for example in relation to what happened on site before the application was submitted, which I also discuss later.

I have however seen no evidence that there was any kind of conspiracy. I have no doubt this is an issue of process rather than a deliberate attempt by the Department or the Minister to deceive.

In what follows I run through the events broadly in chronological order.

The condition of the site

There is dispute about the condition of the site before the events leading up to the development. It was described by the Department (for example in the Director of Planning's report) as a "dump", and exception has been taken to this.

Certain things are clear. Firstly the site (which is privately owned) had indeed been used for dumping and burning material for many years. It had also been used at times for equestrian events and for motor cycling. It was certainly not in pristine condition and there is obvious evidence – namely its exclusion from the Site of Special Interest (SSI) - that it was not of significant interest from a nature conservation point of view. The SSI includes the slopes on either side of the site but excludes the valley floor – obviously because of the poor condition of the site, and the uses which had been taking place there over the years. I saw photographs from various dates going back to the 1980s which showed quite clearly that material had been deposited in the valley. Other information, including a note from the Head of Countryside, also indicates that material had been piled on the site for a long period.

Although this appears to have been the established use of the valley, it is also clear that parts of it had begun to regenerate and that there was a covering of vegetation, especially

in the upper part of the valley. Parts of this covering remained on site when I visited. So far as I can determine it was not of great interest from a nature conservation point of view, in itself, though it may well have harboured reptiles of various kinds (see below). Of course, as was pointed out to me, had it been left for a long period it would have become of greater interest; that would happen to any site.

My conclusion is that the site had indeed been used for dumping and other activities over many years; that it was regenerating but remained in poor condition - as Mr A himself described it a "rough unkempt natural environment"; that the vegetation on the site was not of significance at the time of the application; but that there may have been wildlife on the site.

Pre-application

During the months leading up to the submission of the application, and during the period of its consideration, activities took place on the site which caused the Environment Department considerable concern. The sequence of events is set out in a letter from the Head of Countryside of 27 December, and very fully in a file note which he also prepared; it is also summarised in the Deputy of St Brelades note and in the Director of Planning's note and I will not repeat it in detail. Essentially the Head of Countryside intervened in response to complaints in November and December 2007. In the first case vegetation had been cleared, material sorted and moved, and banks formed which appeared to relate to the banks which were later to be needed for the adventure centre. The manager of Les Ormes said to me that this would have happened even if the Pure Adventure development had not been in the offing, because in his view the site was in a very poor state. In the second case material on site was burned. The manager of Les Ormes told me that this was a routine matter; at that time of the year, every year for at least the eight years he had been in post, material from the golf course had been burned on the site. The Head of Countryside was concerned that there may have been slow worms and grass snakes on site which may have been disturbed by the first clearance of the site; no survey had been carried out prior to the clearance to establish whether such species were present – it was possible but not certain. However the piles of material which were subsequently burnt could have acted as refugia for any animals which had been disturbed.

The Head of Countryside wrote in strong terms to the manager of Les Ormes: "I am appalled by the apparent callous disregard to the planning process and your treatment of the ecological value of the site. I would ask you to explain to me why you have consistently disregarded the advice and instructions given to you by this Department".

This brief summary leads me to ask a number of questions. Was the work which was carried out illegal? From the questions I have asked to The Head of Countryside and to the Director of Planning, it seems that it was not, or at least that it could not be proved. Was it carried out in the knowledge of the development which Les Ormes and Pure Adventure knew was to be the subject of an application? Yes, it seems from the fact that the banks were placed in the relevant locations that it was. Was it, as has been alleged,

done in such a way as to pre-empt the application – by removing the possibility of important wildlife being found on the site? I don't know. There is no clear evidence and no way of being certain of this. The owners strongly deny it and I have no evidence to show that they are wrong, whatever others may think. Did it affect the planning decision? I do not think it did; but there may have been some delay if the presence of animals on the site had been established. Translocation or other measures may have been needed. But, as I understand it from both the planners and the Head of Countryside, the presence of animals would not have been likely to result (on its own) in a refusal of the application.

My conclusions on this point are these. I would be critical of any developer who commences development before a planning application, or appears to do so. Such action, even though the manager of Les Ormes argues that it was routine, can only invite suspicion or opprobrium. It is at the very least unfortunate that the actions took place which the Head of Countryside so strongly criticised. But in relation to the matter which I am investigating it is in my view not a central issue. So far as I can establish it did not affect the planning decision itself – only (possibly) the timing of the development. I have seen no evidence that this was part of any conspiracy. It does not seem to have been an illegal action; it was one taken unilaterally by the potential developers of the site; it may have been wrong; but it was the next step which was critical.

The application and its advertisement

I have looked at the planning application itself. It has been alleged that it did not contain sufficient information, but in my view the application together with the supporting information did give enough detail for the case to be determined (together obviously with subsequent site visits and consultation responses). The heights and locations of all the equipment were set out and I do not believe anything was hidden or unavailable for public viewing. It was not, as has been alleged, "secret". The Deputy of St Brelade felt that the application was "vague and lacking in detail and…this might have been deliberate". I do not believe this to be so. It was said that the location of the neighbours' houses was not apparent, but in fact they were shown on one of the plans. The problem is not in the information but in the awareness of it.

The application was advertised in accordance with normal procedure in the Jersey Evening Post and on site. The site notice was observed locally, and the Deputy of St Brelade has confirmed that it is his understanding that the notice was present. The manager of Les Ormes told me it was in a prominent location on a tree at the entrance to the site, and he would be prepared to sign an affidavit to confirm that. In addition Pure Adventure issued a Press Release about the submission of the application. This was not picked up by the JEP, but it did appear on the Channel TV website. None of this suggests any attempt, as has been alleged, to keep the matter secret. So far as I can determine the proper procedures, as currently required by the Planning Law in Jersey, were followed.

However, the clear fact is that neither Mr A nor Mr B– even though they pass the entrance to the site on a regular basis – saw the site notice. It is hard to explain this. It

should have been placed in such a way that they could not have avoided seeing it – but clearly this was not the case.

But **everything else follows from their ignorance of the application**. Had they known about it, they could have seen all the details of the application, discussed it with the planners, and objected. Everything which followed would have been different.

Because there were no objections the planners (and, following their advice, the Minister) assumed that the development was uncontroversial. The neighbours believe they should have been specifically informed about it, either by the developer or by the States. The fact is that there was no obligation on either of them to do so. The States process does not involve neighbour notification. It would have been courteous of the developers to speak to the neighbours but their failure to do so does not contravene any requirement. This is the factual situation. At the end of this report I discuss this further and consider whether the process can be improved in future.

It is however extremely regrettable, to say the least, that the neighbours were in this position. And even without an objection I think the officers should have had greater awareness of the possible impact on the properties; I return to this when I discuss the officers' report.

I refer now to a variety of other issues which have been raised with me about the process.

Consultations

The Department carried out consultations as normal with a variety of interested parties.

A list of consultation responses provided by the applicant contains a number of inaccuracies. In particular it refers to support from two people in the Environment Department who had not in fact been consulted on this application (though they had been involved in discussions on an earlier alternative site). This is a mistake, which should not have been made. But it did not influence the decision. The Department were aware that this consultation had not taken place (nor was it necessary in relation to this site), and were not influenced by the statement from the applicant.

The Department consulted the National Trust, who sought further information about the impact of the structures viewed from surrounding areas. The Department felt that they had enough information to assess this, but they did not inform the Trust that this was the case – A representative of the Trust said that he heard nothing until the decision in January. It would have been better if there had been a reply to the Trust, but I understand this is a normal procedure. Most Departments in my experience do not respond to letters from consultees – the amount of work involved over the course of a year would be colossal. The Trust did recognise the pressures on the Department during my very helpful discussion with them.

Parking

Concern was raised over a letter in the file from the Planning Officer (who dealt with the application) asking for more information on parking arrangements. There had been no reply to this letter. The Officer told me that the information had in fact been provided to her during a site visit, and that no reply was therefore needed. I am quite satisfied that this matter was dealt with adequately.

Biodiversity survey

I have discussed the fact that no biodiversity survey had been done before the work which took place in the autumn of 2007. The Head of Countryside asked for such a study to be carried out before the application was considered. He told me that he was happy with the survey be CS Consultants, which was the response to his request. He was not concerned about the delay in providing this information; it reached him in time for his consideration of the application.

The Island Plan

My attention was drawn to various sections of the Island Plan. I have read policies C5, C6, C7, TR3, SO10, SO 32, and para 5.52 (which the representative of the National Trust mentioned). There are also general policies in the Plan which are relevant. It was pointed out to me by the Department that the Island Plan, while important (and mentioned in the Officers' report) is not the only consideration for them. The Rural Economic Strategy and the States Strategic Plan, in particular, require the planners to be aware of the potential benefits of developments such as this.

I know this to be the case because it was an issue which I discussed in my report on the Planning Department in 2005 – see for example section 2.3. The Department was being criticised at that time because it was said that it was not sufficiently taking into account the need for economic growth and development.

Against this background I can see that the Department were in a situation – entirely usual in all such Departments - of having polices and plans which tend to pull in different directions. They had to balance the conflicting arguments. There is an impact on the countryside but there also is a tourism/job creation benefit. Mr A thinks that the scale of the facility is such that it conflicts with policies C6 and SO10 and 32. I can understand his view – but in fact it is only from a small number of dwellings – notably the two houses in Water Lane – and from nearby playing fields that the development is visible or audible. Otherwise it is tucked away in a valley with limited wider impact. It covers a large area, but the structures themselves, with the exception of the tower, are not substantial. I think the issue here is the impact on the neighbours Mr A and Mr B, not the general policy issue. I can understand why, in the context of all the relevant policies and considerations, the Department made the recommendation it did and I do not criticise them for it.

I think I should acknowledge at some point in this report that there are indeed benefits flowing from this development, and that by all accounts it has been popular in the Island during its short life so far. In the interests of balance that should be stated, and it helps to explain the decision if not the procedures leading to it.

Timescale

The Application was processed in 8 ½ weeks. I understand that about 23% of all cases are determined in this timescale; The Planning Officer told me that a higher proportion of her cases were determined in that time. She had worked over the Christmas period and was up to date with her casework, pending a lengthy holiday abroad.

I am much more used to dealing with complaints that planners take too long, rather than too short, a time to deal with casework. Eight weeks is the target for casework in many jurisdictions including Jersey. The key here, once again, is that the planners thought at the time that this was not a controversial case; there had been no objections. We return to my central point. Had there been objections I have no doubt that the time would have been extended. But I do not believe there was anything improper or sinister in the timescale.

The Officers Report

The Officers report was also prepared on that basis – that there were no objections. I have criticisms of the report.

As I indicated earlier, I think the officers should have realised – even in the absence of objections - that the development may have impacts on the nearby properties and explicitly considered this point. The statement in the report that "it is not considered that the use would have an adverse impact on neighbouring residential properties" is not right and should not have been stated in that way. It does have an impact and the question is whether – taking everything into account – that impact is acceptable or not, and whether anything could have been done to mitigate it. I must say that I am unclear as to the full extent of the impact because at the time of my visit there was no activity taking place on the site. But the neighbours are clearly very upset by it. Discussion and negotiation at the time could have lessened the impact of the scheme; it may, for example, have been possible to negotiate the relocation of some of the facilities in the upper valley to a less sensitive spot, or to thicken the landscaping or provide acoustic screening. One can only speculate as to whether consideration of these impacts could have led to the complete refusal of the proposal – but taking all the factors into account I do not think it could. It would, however, probably have delayed the decision.

The neighbours object to a number of other statements in the report. For example it says that the proposal "will not adversely impact on the environment". I think this might have been put much better ("would not have an unacceptable impact…" for example). They argue that the description of the site is inadequate; I think it is indeed imprecise but I understand the Minister looked at the Plans and would have been aware of the total area.

They dispute the interpretation of the Island Plan – I have considered this above. I note all these points, but once again the key issue is the failure to take account of the neighbours' views, which in turn follows from the problems relating to the advertisement of the application.

The Minister's role

I understand that the Minister and the Assistant Minister (who chairs the Planning Applications Panel) consider the list of applications each week and decide the decision route for each case. In this instance they decided he should deal with the application himself because he had dealt with a related case (the holiday chalets) nearby; I understand this is normal practice. It is standard practice too that, when the Minister deals with any application, it does not go before the Planning Applications Panel. I see no evidence of an attempt – as has been alleged – to circumvent the Panel; so far as I can tell normal procedures have been followed.

The Minister was faced with a report from the planners recommending approval, which he considered at a public meeting on 18 January. A public notice of this meeting, including a list of the applications to be considered, had been published in the JEP. So far as he was concerned there were no objections and this was a straightforward case. He accepted the planners' recommendations (subject to some amendments to the appearance of the tower). A number of conditions were attached to the permission, mainly to meet The Head of Countryside's wishes; The Head of Countryside told me he was satisfied with these conditions.

The Minister did not read through the file. I do not criticise him at all for that. It would not be expected. In my experience Ministers or Councillors in the UK would not read through files. It would take an enormous amount of time and should be unnecessary. It is the job of the Officers to summarise and synthesise the evidence – not for the Minister to go through the raw information.

The Minister did not make a site visit either. In hindsight he obviously should have done, and I understand that as a result of the Director of Planning's report it has already been decided to extend the number of cases where such visits take place. However, once again, the Minister was acting on the advice of his Officers. And once again the problem centres on the fact that the neighbours did not see the site notice and did not object; the Officers and through them the Minister thought this was an uncontroversial case; and the decision was made accordingly. I am conscious of repeating this point about the advertisement/lack of objection frequently but it is at the heart of the issue and explains (even if it does not justify) everything else. The Minister told me that, had he been aware of the neighbours concern, he would have invited them and the developer to a meeting to try to reach an agreed solution – and I am sure he would have done so.

I have seen no evidence to support the allegation that the Minister himself mis-handled the case – still less that he was involved in any kind of conspiracy or that he was unduly influenced by any outside party.

The tourism grant

The Minister was not aware that a grant had been given to the Adventure Centre by the Economic Development Department. Thus he could not have been influenced by it. This seems to me to be good news. Had the Minister known, it could have been argued that he was influenced by it; but he did not and therefore he was not.

The Department were aware of the grant but (quite rightly in my view) did not consider that it should influence the way in which the application was to be determined and did not draw the Minister's attention to it. The Minister told me that he did not have any discussions with any other Minister about this grant or about the scheme in general.

Because the grant was not relevant to the Application and did not influence the outcome, I do not pursue other points which were made to me about the make-up and functioning of the Tourism Development Advisory Panel.

Post-application

The development is now largely complete and the Adventure Centre is open for business. The fact now is that the permission cannot be revoked or the development closed down.

A variety of conditions was placed on the permission, mostly to deal with the requirements of the Environment Department in respect of nature conservation. The Head of Countryside told me that he was happy with the way those conditions had been applied and discharged, and the developer has clearly been co-operative in this respect.

An issue has arisen over security; the neighbours believe the site will attract undesirable visitors in the evenings when the facility is closed, and that this could affect them. I was told that there has already been evidence of this, and some vandalism. It has been confirmed that there had been children on the site, though this was something that had happened in the valley before the development too, and it had not so far caused serious problems. Contact had been made with the police and Parish officials and the situation was being monitored. It was intended to plant vegetation such as brambles and hawthorn at key points to make access more difficult, and further steps would be considered if necessary. This is not a matter which appears to have arisen during consideration of the application. It seems to me that the situation needs to be closely monitored – and this is the intention. It may be necessary to strengthen security around the site, though this will not be easy, in the interest both of the operator and the public.

Conclusion

As I have indicated several times I think the failures in this case were as follows:

Firstly, though the correct procedures were followed, the advertisement process failed in that the neighbours were unaware of the application. As a result there were no objections to the application and it proceeded smoothly through the process.

And secondly, the Officers report failed adequately to consider the effects of the development on the neighbouring properties. It should have done this even though there were no objections.

I have seen no evidence of any kind of conspiracy. I do not think there was "contrived manipulative abuse of the planning process for commercial interest", as has been alleged. Various allegations and suggestions are made on the Forum section of the Creepy Valley website. These are mostly speculative and not backed up by any evidence. I do not believe any of them to be true. It is quite natural for those affected by development in this way to look for conspiracies, secrecy, and sinister motives. But in fact I think this is a very simple case, even though the consequences for the neighbours may be significant, and that everything centres on the two points I have made above. I do not think the Minister was at fault in accepting the Officers' recommendations.

What happens now?

There are two areas for further consideration in my view. The first is whether anything can be done to assist the neighbours, Mr A and Mr B. As I have said I have not been able to assess the extent of the effect on their properties because the Adventure Centre was not in use when I visited. Essentially, they explained, it concerns the noise made by excited children using the facility – especially, but not exclusively, in the upper valley area. There is some distance between the facility and the houses and there is vegetation which will reduce but clearly not eliminate this noise. It is an intermittent noise – unlike, say, the rumble of traffic or machinery; and possibly less a very loud noise (in terms of decibels) than a particularly intrusive one when it occurs. Some have expressed doubt to me that the noise problem is a serious one; I cannot give an independent view on this, since I have not heard it, and do not have specialist expertise in this area. But the neighbours are clearly very unhappy about it, as I have said. I **recommend** that an independent assessment of the degree and extent of the noise should be carried out by an expert to establish the facts.

I would expect the developers and operators to be concerned about the effect they are having on their neighbours, and I have discussed the issue with a representative of Pure Adventure Ltd, who helpfully expressed a willingness to consider ways of mitigating the impact. I **recommend** that, once the assessment has been carried out the Planning Department should arrange a meeting with all the parties to see whether there are any measures which can be taken to reduce the impact. This might include moving some of the facilities to another part of the site, or strengthening the landscaping or providing acoustic fencing between Water Lane and the facility. This is not easy because the land slopes steeply into the valley. I have not been able to look in detail at how this could be done but there may be some opportunity to assist. The question of security might also be discussed at the same meeting.

The second issue concerns the advertisement process – too late to assist the neighbours in this case, but relevant to future ones. I dealt with this issue in my 2005 report – before the site notice system had been introduced - and in section 4.4 I wrote:

"I am not convinced that at present the arrangements for consultation with the public are satisfactory though I know that there are proposals to improve them significantly. [This was a reference to the proposed site notices]. *It is a very important issue in terms of the transparency and credibility of the system and the esteem (or lack of it) in which it is held. In moving to the new Ministerial system, it is essential that this process is rigorous, that people really believe that they have an opportunity to involve themselves in the process, and that they are clear about the way to do this. It would appear that the public – and even States Members - are not fully aware of the present system. This is difficult to address, because the information is in fact readily available, but efforts to publicise these processes have to be continuous.*

Currently applications are advertised in the press, and are available in the Parishes and on the internet. It is intended to introduce a system of site notices shortly. Clearly this will improve the position and it would be wise to monitor the effectiveness of this approach. The alternative is a system of neighbour notification, which may be a more thorough approach – and the onus can be put on the applicant to carry it out – but there can also be difficulties in determining who should be notified. The Isle of Man, having recently considered the issue, has also decided to go down the site notice route, but will keep it under review. I recommend that the site notice system is monitored carefully, possibly including in due course surveys of public reaction, and that the idea of neighbour notification is considered further in the future".

In this case the (relatively new) site notice system to which I referred in 2005 has clearly failed. I **recommend** that the States should consider once again the idea of neighbour notification. But in doing this I should acknowledge the difficulties. It is necessary to define who is a "neighbour". A general definition – "neighbours who may be affected" – leaves the whole matter open to opinion and possible legal challenge. A common definition is that it is anybody with a shared curtilage. In an urban area this would mean houses on either side of a development site, or to the rear, but not those on the opposite side of the road. This can be problematic when there the main impact is on houses opposite or, for example, where there is multi-occupation. In a rural area it is even more difficult – and on that definition the houses on the opposite side of Water Lane would not qualify (though clearly they should). There is also the question of who carries out the notification – the Department (who do not have the resources) or the applicant. So there are no easy answers. Though I think they should examine the possibility seriously (and it does work in other jurisdictions), I also **recommend** that as an alternative the States should consider tightening up the site notice system so that the prominence of notices is guaranteed. Perhaps applicants should submit photographs or other proof of the location of notices.

I note that the Department have already extended the number of Ministerial cases where a site visit will be necessary – had they not done so, I would have so **recommended**.