

**STATES OF JERSEY**

**REPORT TO THE MINISTER FOR PLANNING AND THE ENVIRONMENT**

**Appeal by the States of Jersey Department for Infrastructure (DfI) under Article 108 of the Planning and Building (Jersey) Law 2002, as amended, against refusal of planning permission to demolish structures and construct 9 settlement tanks, a sludge plant, an administration building, 2 sludge storage tanks, UV plant and other associated waste treatment facilities, and to alter a vehicular access onto Bellozanne Valley Road.**

**Site Address: Bellozanne Sewage Treatment Works, Bellozanne Valley, St Helier**

**Department for the Environment (DoE) ref: P/2017/0309**

**Date of hearing and site inspection: 7 December 2017**

**Inspector: Roy Foster MA MRTPI**

## **Introduction**

- 1 The appeal concerns refusal of planning permission for redevelopment of the Bellozanne Sewage Treatment Works (STW). This very significant infrastructure proposal will be of strategic importance to Jersey and require commitment of major capital investment.

### **The Issue in this Appeal**

- 2 The development as a whole raises many issues covered comprehensively in the Environmental Impact Statement (EIS). However, there is only one reason for refusal:

*'The proposed development (and in particular the proposed location of 3 primary settlements tanks to the eastern boundary does not include sufficient measures to mitigate the odour concerns raised by local residents in the vicinity of the site. Accordingly, the proposal is contrary to policies GDI; NR3 and LWM4 of the Adopted Island Plan 2011 (Revised 2014).'*

- 3 At the hearing the DoE confirmed that the 'sufficient measures' referred to in the refusal notice concern only the provision of covers for the 3 primary settlement tanks (PSTs). Had the scheme included such covers, planning permission would have been granted. At the Planning Committee meeting on 27 July 2017 the Chairman stated that in practice the full effects of the new infrastructure would not be known until it was in operation. The imposition of a requirement to cover the PSTs would satisfy local residents, but their performance without covers would then remain unknown. The Chairman concluded that the best option would be to review the operation of the completed plant one year after the end of the commissioning period: the application should only be approved on that basis. She was assured that in the event of covers being required at that point, they could be installed within a further 6-12 months subject to the provision of the necessary finance being sourced from within the DfI capital budget available at the time and dependent on re-prioritisation of then current projects. Some other members felt that permission should be withheld unless a condition was imposed to require the provision of covers from the outset. In the event, the committee deferred a decision in order for the option of PST coverage to be put to the DfI. However, as the Department declined to amend the proposal, permission was subsequently refused in September 2017.
- 4 Since no other matter is in dispute the only issue arising in the appeal is whether or not odour emissions from the new STW are likely to be at such a level of concentration as to justify the refusal of what is otherwise an uncontested proposal.

### **Island Plan policies**

#### *Policies quoted in the notice of decision*

- 5 Policy LWM4 (Sewage treatment works and sewage outfall) was adopted at a time when long-term options for future sewage treatment strategy were still under review. No choice had then been made between Bellozanne and La Collette. Policy LWM4 covers Bellozanne by stating that the Minister for Planning and the Environment will support proposals for the development, enhancement and extension of the existing

principal sewage treatment works within the identified operational site for waste management at Bellozanne provided the proposal complies with ‘other relevant policies’ in the plan. Since the adoption of the plan it has been decided not to relocate the works from Bellozanne so the remainder of LWM4 has little relevance here.

- 6 Policy GD1 states as a pre-condition of planning permissions that development should not unreasonably harm the amenities of neighbouring uses, including living conditions for nearby residents, in particular (3c) the health, safety and environment of users of buildings and land by virtue of various types of emissions including odours.
- 7 Policy NR3 states that development with a significant adverse effect on air quality will not be permitted.

*‘Other relevant policies’ of the plan*

- 8 These mainly comprise the following:

SP1, which aims to concentrate development within the defined built-up area. Bellozanne lies mainly within this area except that some areas of the valley side are outside that area and within the Green Zone. Permission for the excavation and ground stabilisation of those areas has already taken place in accordance with permission ref P/2015/1362, such works having been considered to be in the island’s interests.

SP2, which confirms that development should make the best use of previously developed land and buildings to support sustainable forms of development,

SP4, which gives high priority to protecting the natural and historic environment.

SP7, which states that all development must be of high design quality

GD6, which confirms that development will be permitted provided that necessary investigation and subsequent mitigation works are undertaken.

TT2, which requires new development to contribute towards the island’s footpath network. This scheme provides a new footpath to the western boundary of the site adjoining Bellozanne Road.

WM1, which encourages the minimisation of waste generation associated with new developments. The application is therefore accompanied by a Waste Management Plan.

**Principal points for the DfI**

- 9 The Bellozanne works have been in operation for nearly 60 years. Despite various upgrades which have allowed it to operate to a relatively high standard it has not been performing well in recent years. It is inefficient, requires significant maintenance and fails to meet standards for how much nitrogen can be discharged to the sea in the treated effluent. Assessments have shown that major maintenance and improvements to the existing works at a cost of £48m would only have resolved problems in the short to medium term. A new STW is therefore required. This will serve a predicted population up to 2035 of 118,000 (sufficient to provide for the Island’s sustainable economic growth) with capacity to treat an additional 20% above that figure if required. There would also be capacity to include a 4<sup>th</sup> PST if this became necessary at any stage.

- 10 Issues concerning odour are covered in the full Environmental Impact Statement (EIS) at part 9 in the on-line application documents. The summary of the EIS refers to the question of odour at part 1 of the on-line document. Further written coverage of this topic by the DfI are in its Statement of Case for the appeal at part 11.1, the appendix 'response to odour concerns', Appendix A 'Primary Settlement Tanks odour control' (with the accompanying large scale odour contour plans'), Appendices B to D and section 3 of the appellant's final comments in response to the DoE statement of case and the comments raised in third party representations, particularly by Mr O'Halloran and the Bellozanne Action Group.
- 11 Compared with the present STW, the new works would include significant 'designed-in' odour mitigation measures focused on those stages of the process with greatest potential to generate odours. These centre upon the inlet works, where raw sewage enters the site. The parts of the process sited at that point will be covered and odour-controlled, as will the waste skips where rags and grit are separated, collected and removed. The distribution chamber which splits the flows into the PSTs will also be covered because such flows can be turbulent and therefore generate odours. Unlike the present situation the flows into the PSTs will be via underground pipes.
- 12 There are no statutory or other specific Jersey or UK methods or standards against which to assess odour issues. The DFI's consultants (Odournet) used dispersion modelling to assess odour emissions: this technique is a well-established method widely used in the UK and commonly regarded as best practice for assessing impacts at the planning stage. The technique models the predicted levels of odour concentrations resulting from the combination of the various odour-relevant sources and components present at (1) the existing works and (2) in the designed future scheme. Inputs assume the worst case year in a 5-year meteorological dataset and allow for the level of predicted population increase to 2035 plus an additional 20% if eventually required. The SoJ Environmental Health Department agreed this method to be an appropriate approach.
- 13 Levels of odour concentrations can be expressed in terms of European odour units, ie those which occur for a minimum of 2% of the hours in a typical meteorological year ( $c98, 1\text{-hour} \geq x \text{ ou}_E/\text{m}^3$ ). This format is consistent with the broadly accepted understanding that adverse odour impact/annoyance is a symptom that develops as a result of intermittent but regular exposure to odours at a level that the receiving environment considers offensive. The modelling does not provide an exact representation of odour annoyance. This depends on a variety of factors which are difficult to quantify including frequency and duration of exposure, intensity/strength of exposure, offensiveness of the odour and receptor sensitivity.
- 14  $1\text{ou}_E/\text{m}^3$  is the concentration at which odour is just detectable to 50% of a panel of human assessed in controlled conditions. Below  $1.5\text{ou}_E/\text{m}^3$  odour is described as 'virtually undetectable'. It has generally been found that at sites without more offensive odours associated with sludge handling works there are few odour complaints regarding STWs at exposures of  $5\text{ou}_E/\text{m}^3$  which is the level often used as a boundary standard in UK planning cases eg the Leighton Linlade and Haverhill appeal decisions. In a review of wastewater treatment works by UK Water Industry

Research it was found that at modelled exposures of below  $5\text{ou}_E/\text{m}^3$  complaints are relatively rare, that a significant proportion of total registered complaints occur at  $5\text{-}10\text{ou}_E/\text{m}^3$  and a majority occur at modelled exposures greater than  $10\text{ou}_E/\text{m}^3$ .

- 15 In the UK DEFRA guidance states that odour impact criteria are largely based on custom and practice and standards that have been adopted by planning inspectors in public inquiries. The methodology and reference criteria used here have recently been used in the UK in relation to a number of STWs including those at Beckton and Deephams.
- 16 The output from the dispersion modelling undertaken at Bellozanne allows for comparison between baseline conditions at the existing STW and those which would follow the redevelopment, but cannot provide an exact representation of odour annoyance. This will depend on various factors including local variability and receptor sensitivity. Overall, the modelling estimates that odour release from the site under the appeal scheme would fall by 17.6%.
- 17 The modelling has produced maps in the form of odour contours superimposed on an aerial photograph of the area. Since the maps in the EIA are too small for ready interpretation, much larger printed versions of the 3 were produced at my request and made available to me at the hearing. The first map indicates contours for the existing STW, the second for the scheme under appeal, and the third for the appeal scheme if PST covers were to be added to the scheme under appeal.
- 18 The second map (appeal scheme) shows that the areas covered by levels of emissions of  $1.5\text{-}3\text{ou}_E/\text{m}^3$  reduce in overall extent ( $0.6\text{sq.km}$  to  $0.5\text{sq.km}$ ), mainly within the populated area to the south-west (in the St Andrews Road area) and to the west in the rural area beyond Bellozanne Valley Road. To the east there is a limited extension of this zone in the direction of Rue du Podetre. The area covered by the  $3\text{-}5\text{ou}_E/\text{m}^3$  band is reduced from  $0.3\text{sq.km}$  to  $0.2\text{sq.km}$  and the extent of the  $5+\text{ou}_E/\text{m}^3$  band from  $0.2\text{sq.km}$  to  $0.1\text{sq.km}$ .
- 19 Under the appeal scheme 41 properties would move outside the contours altogether. Properties within the  $1.5\text{-}3\text{ou}_E/\text{m}^3$  band reduce by 18% (336 to 275). Those within the  $3\text{-}5\text{ou}_E/\text{m}^3$  band increase by 38% (60 to 83), most of which (20) would move from the zone below, albeit the change (ie, moving into the higher zone) would probably not be discernible to those people. The remaining 3 move out of the higher  $5+\text{ou}_E/\text{m}^3$  zone, representing a decrease of 30% (10 to 7). Overall it is concluded that the scheme would bring about a general betterment of odour experienced by local residents.
- 20 Compared with both the present situation and the appeal scheme, the modelled scheme with added covered PSTs (map 3) indicates further shrinkage of the area within the contours. Under this scenario most of the benefits would be concentrated in removing properties from the  $1.5\text{-}3\text{ou}_E/\text{m}^3$  band. The number there would reduce from 336 as at present to 82 (76%). Those within the  $3\text{-}5\text{ou}_E/\text{m}^3$  band would reduce from 60 as at present to 7 (88%). Those within the  $5+\text{ou}_E/\text{m}^3$  band would be 4 compared with 10 at present and 7 under the appeal scheme.
- 21 Covering the PSTs and treating the air would further reduce (a) the odour released from the site, (b) the extent of the overall area within the contours and (c) the number

of properties lying within the highest contour. However, these benefits are not considered to outweigh the costs of covering the PSTs. Some or all of the small number of most-affected properties are so close to the boundary of highest ( $5+\text{ouE}/\text{m}^3$ ) contour that they may see no benefit in any event. The estimated capital cost of installing covers is £4.12m. Annual maintenance costs of £45,000 would increase the ‘whole life’ capital cost to c£5.5m. It is not evident that expenditure at this level would represent the highest priority amongst infrastructure spending priorities on the Island or represent best value for the Jersey taxpayer.

- 22 Coverage of PSTs also creates significant health and safety risks stemming from the confined spaces beneath them, including toxic chemical build-up. These issues can have dangerous consequences for staff undertaking the essential management and maintenance work which has to be carried out beneath them. Less than 10% of STWs in the UK have covered PSTs, usually only where they are located in densely populated areas or when a particularly odorous effluent is received and processed, which is not the case here. Nonetheless, the PSTs will be designed such that covers can be fitted if the odours released from the site were found to be significantly different from those predicted.
- 23 It is also unclear to what extent all the odour problems experienced in the First Tower/Bellozanne area necessarily stem directly from the STW. The contour maps relate only to emissions from the STW but some odour clouds experienced locally could be related to issues resulting from certain flow conditions in the coastal gravity sewer from St Helier, causing emanations at the pumping station at First Tower. Work is being commissioned to investigate this.
- 24 The ingress of sea water into the sewage network adds to odour problems at primary treatment stage by causing the build-up of hydrogen peroxide. A programme of work is being implemented to investigate, locate and resolve this infiltration problem, which will also benefit water quality in St Aubins Bay.
- 25 Avoidance of odour emissions is a high priority for the DfI and if the Department felt that coverage of the PSTs would solve all the local odour problems it would include them in the scheme and not need to be ‘forced’ to do so.

### **Principal points made by the Department of the Environment**

- 26 Officers recommended approval of the application. However, at the meeting on 27 July 2017 members considered a number of oral and written representations about the odour issue. The minutes of the meeting show that members and the public recognise that issues concerning odours have reduced over recent years due to a number of investments made during that time, including completion of a new sludge treatment facility in 2015, demolition of the old energy-from-waste plant, and relocation of the household green waste and household recycling centre. However, the committee concluded that although the scheme could be said to affect “relatively few” residents, it would nonetheless have a direct impact on those people. Planning permission for the scheme was therefore refused on the basis that without the inclusion of the covers upon the PSTs to reduce the emission of odours from the site, the scheme failed Island Plan policies GD1, NR3 and LMWR4.

### **Principal points made on behalf of local residents**

- 27 A number of people made representations about the proposal in the context of the appeal, either in writing or at the hearing, or both. A number of these raised similar points to those previously made to the Planning Committee. Briefly, they may be summarised as follows:
- 28 Mr T O'Halloran lives in one of the nearest houses in West Hill cul-de-sac above the  $5\text{ouE}/\text{m}^3$  contour and (with Claire Smith of Ogiers) spoke on behalf of the Bellozanne Action Group (BAG). He referred to long-running problems of smells engulfing the valley on warm summer days or still days. At such times it impossible for residents to enjoy their gardens or their houses with the windows open. After a debate in the States Chamber in 2006 it was agreed that 'cover and treat' plans would be employed to deal with the odour emanating from the works but no funds have been made available to implement this approach. Plans for the new STW were widely seen by residents as the opportunity for resolution of the issue but, unfortunately, this has still not proved to be the case.
- 29 The EIA assessed the impact of the new plant on the basis that any increase in the number of properties affected by odour impact would represent an adverse one and that any reduction in the number of properties would be beneficial. However, simply showing a decrease in the total number within the contours is not the whole answer. The new STW would move the new PSTs and odour contours to the east: thus, although there may be an overall reduction in odour emissions and the number of properties within the outermost limits of the contours, residents living to the north-east, east and south-east of the site would be more adversely affected than before, as would the 90-bedroom Westhill Country Hotel and range of other commercial and residential receptors including Haute Vallee School.
- 30 The odour output of the new PSTs would represent 60% of the odour output of the STW compared with 40% generated by the present tanks at the existing works. This is surprising and contrasts with assurances given to residents on 3 previous occasions that all "major odour sources" in the new plant would be covered and controlled.
- 31 Local residents in the Bellozanne Action Group (BAG) commissioned their own independent expertise from (1) Olfasense and (2) Dr Michael Bull (a Fellow of the Institute of Air Quality Management [IAQM], of Arup. Dr Bull was the highly-experienced Chair of the Working Group which produced the IAQM Guidance on the Assessment of Odour for Planning. The views of these two consultants, dated 6 June and 19 May respectively, were included in representations addressed to the Planning Committee by Mr O'Halloran for BAG.
- 32 Dr Bull reviews the odour assessment prepared on behalf of the appellant and includes background advice on odour issues. He summarises the relevant guidance from bodies such as the Environment Agency (EA), the Chartered Institute of Water Management (CIWM) and the IAQM and also reviews the report prepared for DfI by Odournet. In his view it is incorrect for it to be said on behalf of DfI that emissions at  $1.5\text{ouE}/\text{m}^3$  are virtually undetectable and at  $5\text{ouE}/\text{m}^3$  are faint. At a predicted level

of 1.5ouE/m<sup>3</sup> more than 10% of the population would be ‘annoyed’ by odours in an area where such odours are *not* a common feature of the environment. 3ouE/m<sup>3</sup> is not an “arbitrary split” between 1.5 and 5ouE/m<sup>3</sup>. Rather, it is the Environment Agency benchmark for moderately offensive odours in that 10% of the population will be annoyed where odours *are* a common feature of the area. It is incorrect to say that levels of 1.5-3ouE/m<sup>3</sup> are below noticeable levels. Significant annoyance could be expected in the community at that range and there are examples of local residents within BAG testifying that they currently experience smells in their homes even though they are not shown as being within the odour bands.

- 33 Immediate properties within the 5+ouE/m<sup>3</sup> contour may be experiencing much higher levels in excess of 20ouE/m<sup>3</sup> at peak intervals. According to Dr Bull, STWs should aim to have no properties above the 3ouE/m<sup>3</sup> contour (the Environment Agency suggested minimum standard) although this can depend on the relative offensiveness of the odour, sewage works being typically considered to be a moderately offensive smell.
- 34 In the High Court judgement concerning a claim for damages for odour exposure - *Mogden STW (Thames Water v Dobson [2009] EWCA Civ28)* – the judge concluded that ‘...by the time 5ouE/m<sup>3</sup> or above is reached nuisance will certainly be established.’ EA H4 guidance gives benchmarks of 1.5ouE/m<sup>3</sup> for the most offensive odours, 3ouE/m<sup>3</sup> for modestly offensive odours and 6ouE/m<sup>3</sup> for less offensive odours and states that “any modelled results that project exposures above these benchmark levels, after taking account of uncertainty, indicates the likelihood of unacceptable odour pollution”. Applied to a STW this would provide a more stringent benchmark of at least 3ouE/m<sup>3</sup>. Experience in applying these standards frequently presents a problem in determining the most appropriate standard for sewage works. Are the odours “most offensive” or “moderately offensive”? However, even the application of the most stringent standard (1.5ouE/m<sup>3</sup>) could result in 10% of the population being annoyed by odours.
- 35 A proposal for a new sewage works should surely seek to achieve the best environmental standards possible, not simply a minimum standard to avoid complaints or a small improvement over an existing unacceptable situation. In any event complaints and a loss of amenity are not the same thing. The latter can occur at lower concentrations. The IAQM guidance states that “an appropriate criterion could lie somewhere in the range of 1-10ouE/m<sup>3</sup> as a 98<sup>th</sup> percentile of hourly means”, while the same document notes a case where 50 complaints a day arose from a site where odour concentrations were well below 1.5ouE/m<sup>3</sup>.
- 36 The CIWM Policy Position Statement – Control of Odour (2012) notes that at less than 3ouE/m<sup>3</sup> “complaints are unlikely to occur and exposures below this level are unlikely to constitute significant pollution or significant detriment to amenity unless the locality is highly sensitive to odour or the odour is highly unpleasant in nature.” That paper refers to the UK Water Industry Research (UKWIR) study 2001 which is often cited as justification for a less stringent standard of 5ouE/m<sup>3</sup>. There is little information about the sources of the Dutch research behind that recommendation and, like the EA study, it was based on reported annoyance from social surveys in the



community. Evidence suggests that only a very low percentage of the population in a community exposed to odours will complain. In one detailed study in which Arup was involved this was 0.1 - 1.1%.

- 37 Concerning the Odournet report to DfI, the  $5\text{ou}_E/\text{m}^3$  standard is likely to have been derived from a public inquiry decision concerning an appeal at Newbiggin-by-the-Sea. It is believed that the odour concentrations in that case were reported as Dutch odour units which are effectively twice the value of European units.
- 38 The inputs to the Odournet dispersion modelling are not based on true measurements, only upon selections from sometimes very wide ranges for the various components of the works taken mainly from libraries of data. There is only limited information about the choices made in this case: the conclusion that the new works is acceptable because it makes the odour environment no worse is therefore only as valid as the assumptions input to the predictive model.
- 39 In interpreting the Odournet report, a STW of this type would normally be considered to emit moderately offensive odours. Under the EA H4 guidance  $3\text{ou}_E/\text{m}^3$  would therefore be considered the maximum acceptable odour level, although as noted above even at a standard of  $1.5\text{ou}_E/\text{m}^3$  10% of the exposed population would be annoyed by the odours.
- 40 The additional costs of including covers should not be regarded as excessive. If the capital cost of the works would be c£70m, with a whole-life cost of c£112m, the capital cost of PST covers of c£4.12m (and whole-life cost of c£5.5m) does not represent a significant increase in expenditure in the context of addressing concerns of local residents. Covers have been included in STWs in the UK at Wigan, Mogden (near Twickenham), Nigg (Hull), Deephams, Beckton and Meols, so it should be possible in Jersey.
- 41 The option of including PST covers later, if it transpires that they are needed, carries two risks. Firstly there is no guarantee that funds will then be available. Secondly, as recognised in the EIA scoping report, the Island's prevailing winds have the potential to incur detriment to sensitive residential receptors close to the site to the north-east, east and south-east. These include Westhill Country Hotel. The reputation and continued existence of such an enterprise would be seriously jeopardised long before installation of any covers took place.
- 42 The odour scenarios arising from the modelled option including PST covers show what should be expected in rebuilding an essential facility to modern standards for a long-term future. This is the option that should be carried out, not the one under appeal.
- 43 Although a lack of formal complaints is claimed by the appellant, the SoJ Waste Water Strategy 24 March 2014 p13 states that "complaints are regularly received from adjacent neighbours and certain climatic conditions can result in odours permeating down the valley to the south of the plant". As the World Health Organisation recognises, odour annoyance affects quality of life.

- 44 Mr G Ireson lives and works in a house at West Hill overlooking the SWT. The removal of the incinerator and recycling facilities from Bellozanne has reduced noise, traffic and dust. However, the reduction in smells from the new SWT would not be sufficient or proportionate and it is unclear upon what basis it has been calculated or whether it would meet international or UK guidelines. Covers should be installed from Day 1, not deferred on cost grounds, hoping to gain funds to include them later if problems continue.
- 45 Mr B Carpenter living on West Hill within 50m of the site boundary, considers covering the PSTs essential to residents' quality of life, especially now that so much greenery has been removed in connection with the boundary excavations. It is unacceptable to defer a decision on covering them. Meanwhile residents would be left in limbo and some years on would again be subject to discussions and arguments in the face of inevitable denial of the problem. Jersey should have the means to develop a cutting-edge facility of which it would be proud and could advertise to the rest of Europe and beyond.
- 46 Mrs J Beaumont, living in one of the Pomme d'Or flats closest to the site and working at First Tower School, is a long-time campaigner to have the STW upgraded/rebuilt. Although delighted when plans were submitted for rebuilding, she was devastated to discover that the new PSTs would not be covered. Smells from the current tanks often make it impossible to open windows or hang out washing on hot summer days. The DfI's odour contour maps do not correlate with her experience. The diary sheets submitted with her representations record the nature, frequency and duration of strong sewage smells which she experienced on 34% of the days (43 of 127) when she was not off the island during summer/early autumn (4 June to 16 October) 2017.
- 47 The Smale family have owned and run West Hill Country Hotel for over 50 years without experiencing smells from Bellozanne. However, with the PSTs sited nearer to the hotel grounds and the felling of so many trees as part of the boundary excavations, the family fears for the viability of its business if resulting smells were to have an adverse impact on the enjoyment of their holiday guests and the many people attending weddings and corporate functions.
- 48 Mr C Kainauas is a homeowner near West Hill. The DfI should properly address residents' concerns by fitting PST covers from the outset. The existing smells already have an adverse effect on this residential area and should not be allowed to get worse. Jersey is an affluent place and should be able to deal with this issue from the outset.
- 49 Mr S Bourne considers it necessary to fit covered PSTs from the start, not rely on possible retrofitting. The appeal current proposals do not comply with the SoJ's cover-and-treat vote in 2009 and the DfI should not be allowed just do only half of the job. The modelling results do not match local people's experiences. The DfI relies too much on the fact that people do not regularly complain. Most people will just try to cope with such disruptions to their everyday lives but smells from the works affect the liveability of homes and gardens.

- 50 Deputy Jacky Hilton supported Bellozanne residents. Despite improvements in the plant's operation over the years it is disappointing that the scheme fails to produce the best possible result for local residents. This is a once-only opportunity to do so.
- 51 Mr T Vibert, Chair of First Tower Community Association, described the long history of odours associated with the SWT and affecting the First Tower area as far down as the coast, together with community efforts since 2006 to achieve better conditions.
- 52 Mr S Crowcroft, Constable of St Helier, said that if the focus of development is to continue to be at the town, residents should be treated with respect. The DfI is offering an incomplete solution which is an unsatisfactory approach for a strategic development. Retrofitting covers would be a costlier option.
- 53 Mr A Mallet observe that the consultants' modelling is only theoretical. Jersey should do everything possible to achieve the best results, not allow disputes to continue about whether that has been done.
- 54 Mr and Mrs Cottle bought their property on West Hill in 2015 knowing that the incinerator had gone and that the recycling plant was to be relocated to La Collette. Having now refurbished their home they find that the PSTs are to be rebuilt closer to them, so the considerable unpleasant odours they experience will increase. This is a major investment for the next 50 years and it is unthinkable not to include covers.
- 55 Mr & Mrs Audrain and L & Y Audrain consider that a reduction of odours by 18% is insufficient to warrant granting permission unless PST covers are fitted from the start.
- 56 Mr J Sinclair urges rejection of the appeal unless the odour issues can be satisfactorily resolved and the rights of local residents respected.

### **Inspector's consideration of the issue**

- 57 I confine my remarks in this main part of my considerations to the appeal scheme itself, that is, without the provision of covered PSTs.
- 58 The test provided in policy GD1 is that the development should not 'unreasonably harm' the living conditions of neighbours, including by the emission of odours, while NR3 states that development with a significant adverse effect on air quality will not be permitted.
- 59 It would be customary in cases involving the redevelopment of some form of 'bad neighbour' use to judge the above effects by reference to any standards which may exist. At the same time, if the use in question is established at the site, it is usually appropriate to recognise this and therefore weigh any degree of 'improvement' that the redevelopment may bring to local conditions, even if the scheme does not completely meet any standard has been selected.
- 60 The main difficulties arising for the decision maker in this case are that (A) there are no firmly established odour emissions standards for use in planning cases involving STWs, only a number of guidelines set out by relevant institutional and professional bodies, and (B) the baseline effects of the use (particularly as represented by the

existing odour contours) are difficult to compare or correlate with the nature of the expressed local experience. This especially applies in the case of evidence such as the daily experience diary recorded by Ms Beaumont, resident at one of the Pomme d'Or flats lying closest to the valley edge coinciding with the STW site boundary.

- 61 Turning to standards, the summary presented in the report to BAG by Dr Bull identifies the variety of guidelines and standards which may have some relevance to a case of this type. There is no clear-cut commonality or agreement between these publications. Their recommendations are founded upon different research bases, and their purposes and focus can also differ. They do not always appear equally directly relevant to the planning system as opposed to other regulatory systems. Some focus more than others on issues of 'nuisance', whether statutory or otherwise, particularly as manifested by recorded complaints. However, as noted in one of the studies mentioned by Dr Bull, recorded individual complaints may only represent a small fraction of the discontent felt by a local population about frequently emitted odours. It seems very likely that if a population knows or expects there to be little short-term action which can be taken in practice to resolve issues arising on a frequent basis, individuals may see no point in making constant complaints and instead take a longer perspective and channel their efforts into what they may see as more effective long-term actions. A further aspect emerging from the various publications is that from the standpoint of considering concentrations of emitted odours, nuisance does not always equate (and may represent a harder test) than the broader concept of amenity adopted in the Island Plan policies.
- 62 Whatever questions may be asked about the assumptions behind the dispersion modelling, there is no firm evidence to disregard the general extent of the odour contours presented with the application and appeal. Taking a view on the information in the various advisory publications concerning standards and other relevant sources, I note that a  $5\text{ou}_E/\text{m}^3$  boundary has been adopted as significant by 'custom and practice' in a number of UK planning cases. However, every individual decision must be carefully based on the specific site circumstances and the other evidence available. In this case I consider that the  $3\text{ou}_E/\text{m}^3$  contour represents a pragmatic boundary to adopt as critical here, especially as Ms Beaumont's flat is one of a number at the Pomme d'Or estate lying inside the  $3\text{-}5\text{ou}_E/\text{m}^3$  band and her odour diary appears to me to demonstrate exposure to strongly unpleasant odours in this zone with notable frequency. Even if some unknown number of these occurrences is due to emissions not from the STW but from some other point in the sewerage network this is still a strong counterweight to the relatively small weight placed by the DfI consultants on the  $3\text{-}5\text{ou}_E/\text{m}^3$  band. This is not to say that some within the population inside the  $1.5\text{-}3\text{ou}_E/\text{m}^3$  boundary will not also feel the degree of annoyance recognised in the EA publication.
- 63 The number of properties currently suffering odours above  $3\text{ou}_E/\text{m}^3$  is 70 (60 in the  $3\text{-}5\text{ou}_E/\text{m}^3$  band and 10 experiencing  $5\text{ou}_E/\text{m}^3$ ). According to the dispersion modelling results this would rise to 90 after completion of the new STW (83 in the  $3\text{-}5\text{ou}_E/\text{m}^3$  band and 7 at  $5\text{ou}_E/\text{m}^3$ ). Although the number of properties within the  $1.5\text{-}3\text{ou}_E/\text{m}^3$  band would fall from 336 to 275 these are the least affected of those within the modelled contours. In my judgement the overall impact of the appeal proposals

would be greater than should be seen as acceptable under the Island Plan policies quoted in the notice of refusal. I therefore consider that the decision by the Planning Committee on the appeal scheme should be upheld.

*Could the appeal be allowed and permission granted subject to a condition concerning review of the need for covered PSTs?*

- 64 I now turn briefly to the evidence presented with the application and appeal modelling the effect of covering the PSTs. Under that scenario the number of properties within the 3-5 $\text{ou}_E/\text{m}^3$  band would reduce from 60 at present to 7 and those at 5+ $\text{ou}_E/\text{m}^3$  from 10 at present to 4, resulting in an overall substantial reduction from 70 to 11 in the total number of properties lying above the 3 $\text{ou}_E/\text{m}^3$  contour. In my view the inclusion of covers in the scheme would represent acceptable compliance with the Island Plan policies.
- 65 The provision of covers is clearly the outcome which the Planning Committee sought when it decided to ask the DfI to amend the application in July 2017. It is also the solution which local residents and organisations have been urging. It is therefore a matter for the Minister to consider how that outcome should be achieved.
- 66 This will depend on whether or not the provision of PST covers is considered to make a substantial change to the nature of the scheme under appeal. Would (a) the law leave it procedurally open to him to allow the appeal subject to a condition/conditions requiring covers to be included as an integral part of the scheme, or (b) would the scale of such a change to the appeal proposal make it one requiring the submission of a new application?

### **Recommendation**

- 67 I recommend that the appeal in its submitted form be dismissed and planning permission refused.
- 68 I also recommend that the Minister takes advice on whether or not it would be legally and procedurally open to him as the decision maker to allow the appeal and grant planning permission subject to a condition or conditions requiring the installation of PST covers as an integral part of the scheme in accordance with details to be submitted to and approved by the DoE prior to the commencement of the works permitted.
- 69 In the latter case it would also be appropriate to impose the conditions set out in the Planning Committee report which were not contested, save that (as agreed by the DoE) the words “.....but not be limited to.....” in the fourth condition may be omitted as superfluous.