

PlanForum

Guernsey Agents Forum
Meeting 28th May 2014 @ Sir Charles Frossard House

MEETING NOTES

PlanForum members in attendance:

David Falla – Falla Associates International Ltd
Rachel Jones - Nigel Harris & Partners
Rob Le Page - Robert W Le Page
Nic Joyce - Create
Tony Charles - Portchester Planning Consultancy
Grant Steer – Tyrrell Dowinton Associates
Tim Guilbert – Consult and Build Ltd
Chris Lovell – Lovell & Partners
Matthew Henry – Swoffers
Mitchell Sneddon – DRP
Peter Falla – PF+A
Stuart Pearce – CCD
Ollie Brock – Bonham & Bonham

Apologies:

Bob O'Brien – SOG (CIOB)
David Aslett – Aslett Architects
John Hibbs – PF+A
Carl Foulds – Direct Architectural Solutions

From States of Guernsey:

Jim Rowles - Director of Planning (AJR)
Andy McKay – Senior Building Control Surveyor (AMK)
Claire Barrett - Policy & Environment Manager (CEB)
Alun White - Principal Conservation & Design Officer (AWW)
Michelle Hooper – Technical Support Officer

1. Development Control - update and progress

Staff Changes (AJR)

Planning Officer Luke Seaborne and Senior Planning Officer Christine Miles have left the Department while Planning Officer David Poole will be leaving shortly. Mr Ray Deans has been employed on a temporary contract for 5 months, while Edward Tildesley will be starting full time next week, along with Chris Crew on 22 July, both as Planning Officers in Development Control

One further DC post has been advertised and candidates are currently being shortlisted.

Stephanie Stuart will rejoin the DC section following secondment to Forward Planning next week, and Carl Holden will be seconded to Forward Planning later in the year.

Agents were advised as in previous weeks that there may be some delay when dealing with meetings and pre-application enquiries whilst new staff members settle in. It remains the Department's priority to keep applications moving whilst the Department regains full strength.

71 applications were decided in the previous week most of which were approvals.

The 8 and 13 week targets for speed of decisions last year were met and although the impact of staff losses has affected the Department's performance since April the Department is working hard to maintain its throughput of planning applications, as the output of 71 decisions in the last week demonstrates.

Agents agreed that they were happy with the current timescales and appreciated the quick turnaround of applications. It was appreciated that there was some consequent delay in relation to pre-application enquiries but overall the agents felt that the Department was doing a very good job.

Avoiding invalid applications – reminder of key aspects

AJR expressed concern that a great deal of Technical Support time is being wasted dealing with invalid applications. This situation had got worse since the Department stopped copying clients in on correspondence regarding invalid applications. Most invalid applications are due to careless mistakes, such as agents' overtyping forms but not changing descriptions of proposals. In order to speed up the service and quality of applications the Department is considering reverting back to the previous method of copying in clients or just returning invalid applications, as to spend large amounts of time dealing with invalids diverts staff resources from processing valid applications and is consequently unfair on applicants who take the trouble to submit complete, accurate applications. Agents were reminded to therefore take the time to check the forms, plans and fees are correct before submitting.

Agents agreed that invalid applications should not be reaching the Department. Although some agents expressed concerns about possible re-introduction of copying clients on all correspondence it was also noted by others that having the clients copied into the correspondence concerning invalid applications or returning those applications is good discipline to ensure quality of the applications received.

Recently published advice notes

Advice notes for Air Source Heat Pumps & Earth banks have recently been created and are available to use via the following links:

<http://www.gov.gg/CHttpHandler.ashx?id=86230&p=0>

<http://www.gov.gg/CHttpHandler.ashx?id=87673&p=0>

Agents were reminded to go to the 'News Section' of the planning website to ensure they are aware of any updates, link below:

<http://www.gov.gg/article/3937/Latest-Planning-News-and-Updates>

Following criticism of both the Environment Department and Commerce and Employment Department by the Planning Panel in relation to recent planning appeals for the Manor Hotel

and Greenacres Hotel, the Department issued media responses, the links to which are below:

IMMEDIATE

17th April

**ENVIRONMENT DEPARTMENT AND
COMMERCE AND EMPLOYMENT DEPARTMENT**

JOINT MEDIA STATEMENT

MANOR HOTEL PLANNING APPEAL DECISION

Expiry - If the contents and any quotes contained in this media release are to be used after 1st May 2014 journalists are requested to check the current situation with the Environment Department first as circumstances or events may have changed.

The Environment Department and the Commerce and Employment Department have carefully considered the Appeal Tribunal's decision letter regarding the Manor Hotel case. The Departments accept the decision made by the Tribunal to allow the appeal and the Environment Department will not be appealing the decision on a point of Law to the Royal Court.

Although the Appeals Tribunal has dealt, as it must, with the appeal on the basis of there being an assumed refusal of planning permission, in fact the Environment Department did not refuse the submitted planning application for change of use. It was possible, had the appeal not been lodged by the company which owns the site, that following the conclusion of discussions with the Commerce and Employment Department, planning permission may in any case have been granted for the development that was being sought.

The key issue on which the Tribunal and the Environment Department clearly took a different view in this case related to the adequacy of the submitted information to enable a robust decision to be reached on the merits of the submitted application. Neither the Environment Department nor the Commerce and Employment Department considered up to the point that the appeal was made that they had sufficient information to conclude that the Manor site could not be viably redeveloped or re-used as an hotel or other visitor accommodation, having regard in particular to the specific location of this site. This was why the Commerce and Employment Department proposed commissioning an expert review of the application, including the viability aspects, which was not pursued when the appeal was made. Following the presentation of evidence by the relevant parties over the two-day appeal hearing, the Tribunal was however in a position to reach a decision on this point, and the outcome of the Tribunal's resulting assessment of the merits of the proposal is not disputed by the Environment Department.

In reaching its decision, the Tribunal raised a number of issues relating to the handling of this application and in relation to this was critical of both the Environment Department and the Commerce and Employment Department. The Tribunal's examination of the application and consultation process is helpful to the Departments in identifying points for learning and improvement for future practice.

These issues together with the response of the Environment Department and Commerce and Employment Department are listed below:-

Absence of detailed advice for applicants regarding the information that should be submitted with a planning application for this type of development.

The Environment Department accepts that it has not published advice along the lines described by the Tribunal. The need for such advice has not been identified before and whilst the Department has published considerable quantities of advice relating to all manner of planning topics this has been prioritised in terms of the most frequently arising issues, for example advice about making a planning application. The planning policies regarding visitor accommodation will be reviewed as part of the current Development Plan review process and advice will be published once any new policy approach has been agreed by the States. In the interim, advice to address the issues raised by this appeal, particularly regarding the

assessment of viability, will be prepared and published by the Department.

The Commerce and Employment Department will assist with achieving definition directly related to the visitor economy. The economic development framework and the tourism and hospitality business plan, which is currently in development, will assist with shaping policy and updating guidelines and direction in association with the new Island Development Plan; the Commerce and Employment Department has already contributed data and information for all economic sectors as part of the Development Plan Review process.

Lack of expertise concerning development economics and viability

The Environment Department accepts that there is a case for it to possess greater expertise in this specialist area. Following the appeal hearing when this deficiency was identified, arrangements have been put in place for appropriate staff training in this specific area.

Whilst the Commerce and Employment Department has staff that have training and experience in business development and economist backgrounds, the Department does not have technical staff relating to quantity surveying or the specific area of costing and economics of rebuilding within this or other sectors. It was in this area that the Commerce and Employment Department believed the application was inconclusive and had agreed to commission an independent specialist review due to the complexities of this particular case.

Inconsistent approach to information requirements and assessment for other previous cases

The Environment Department accepts that in the two previous cases cited by the Tribunal both the submission of information and the resulting assessment process were more flexibly applied than in the case of the Manor Hotel. The Department accepts that a consistent approach is required, addressing all of the policy criteria, and the publication of advice and training in development economics and viability as described above will help ensure this is achieved. The Department is also of the view that those cases can be distinguished from the Manor Hotel case in relation in particular to the location and configuration of the particular sites.

Copying of consultation responses to applicant company

The Guernsey Planning Law requires that consultation responses are copied to an applicant along with the planning decision. The Tribunal concluded that consultation responses should be copied to the applicant before a decision is made, to enable them to comment. This accords with best practice in the UK and, more recently, Jersey, and would be facilitated by consultations being made available on-line. As noted in the Tribunal's decision letter, although the Environment Department is committed to delivering more services on-line, including details of planning applications and consultation responses, it is not yet for resource reasons able to make this change. The Environment Department will continue to refine its proposals for additional on-line services which will be implemented as soon as the availability of sufficient resources allows.

Inspection of the site and interior of the building

The Environment Department's staff dealing with this application did inspect the site as part of assessment of the proposal for change of use. However, it is accepted that this did not include examination of the interior of the building. The further expert review of the application that the Commerce and Employment Department had proposed to obtain but which was not pursued when the appeal was made would have included detailed internal examination of the building.

The Tribunal's conclusions regarding handling of the application

The Tribunal concluded that 'the handling of this application by both the [Environment and Commerce and Employment] Departments was seriously flawed. The Environment Department failed to manage the consultation process effectively and placed too much reliance on the Commerce and Employment Department's input, thereby fettering its duties as decision-maker. In addition, officers within both the Departments failed to recognise in an appropriate timescale the significant inadequacies in the level of skill and expertise they possessed to properly undertake the tasks for which they were responsible.'

The Environment Department believes, with the greatest respect to the Tribunal, that this overstates the position. The absence of detailed advice and lack of expertise in development economics and viability are accepted, as is the fact that consultation responses are not yet

copied to the applicant prior to decision. However, the fact that the Environment Department engaged proactively in discussions with the Commerce and Employment Department around the issue of viability after receiving the Commerce and Employment Department's initial consultation response, and prior to reaching a decision on the application, evidences that the Environment Department did not put itself in the position of placing too much reliance on the Commerce and Employment Department's input, or of fettering its duties as decision-maker.

In this context, the Environment Department does not agree with the Tribunal that the appellant company was left with no option but to make an appeal against non-determination, although that was of course their legal right, as the conclusion of these discussions could have resulted in planning approval being granted by the Environment Department having considered the further expert review of the application that the Commerce and Employment Department had proposed to obtain but which was not pursued when the appeal was made.

In summary, the Environment Department accepts the Tribunal's assessment of the merits of the application on the basis of the information and evidence put forward over the two days of the hearing. The Environment Department recognises that the planning appeal system is an important part of our planning processes, is an important check and balance and is most helpful in assisting the Department in improving its multitude of planning services for the benefit of all.

The Department however does not fully accept the criticisms levelled by the Tribunal regarding the application process, particularly in relation to the proactive interaction between the Environment Department and the Commerce and Employment Department which was entered into with the express intention of ensuring that a robust and reasonable planning decision was reached in this case by the Environment Department without recourse to the planning appeal process. Notwithstanding this, the Environment Department does accept with hindsight that this process should have been managed more swiftly and also welcomes the helpful comments of the Tribunal concerning aspects of its practice such as publication of advice for such applications and commissioning training in the specialist area of development economics and viability.

The Commerce and Employment Department has also agreed to evaluate their role to ensure sector trends, analysis and commentary is directly tailored not only to the application concerned but is tied in, to a greater degree, to specific planning policies and criteria. Cross departmental discussions have already been held and a further meeting to discuss the process and revised approach is planned.

The Environment Department also accepts that it should be striving for best practice in terms of making consultation responses available to applicants prior to decision, which would be facilitated by increasing its on-line services, and will endeavour to make this change as soon as appropriate resources permit.

ENDS

This media release will also be published on the States of Guernsey website – www.gov.gg.

**ENVIRONMENT DEPARTMENT
GREENACRES PLANNING APPEAL**

Expiry - If the contents and any quotes contained in this media release are to be used after 20th May 2014, journalists are requested to check the current situation with the Environment Department first as circumstances or events may have changed.

Media Enquiry from Juliet Pouteaux, Guernsey Press:

I have been wading through the report and the key criticisms of the departments' handling seem to be –

- The departments have no clear idea how many tourist beds were needed island-wide.
- That the planners relied on the Commerce and Employment Department in an 'unquestioning way'.
- Failing to ask the applicants for detailed information about refurbishment costs.
- The departments making the decision, despite lacking the evidence needed to make a determination.
- Focussing too heavily on any decision setting a precedent for other developments.
- A lack of weight being given to the need for homes for older people.

I am keen to have these issues addressed and how the departments are looking to improve their handling of cases in future following this decision.

As I mentioned, the story is looking to run on Saturday, which I know is too short notice for a response.

However, if the departments are able to respond as soon as possible after the weekend, we will get something in the paper.

Response:

Policy RE12 of the Rural Area Plan is applicable to proposals that would result in the loss of visitor accommodation, and has three main elements against which such proposals must be judged.

The Planning Tribunal identified a lack of evidence put forward concerning one of the tests in Policy RE12 relating to whether the proposal would 'prejudice the retention of an adequate stock of visitor accommodation across the Island'.

Although the Commerce and Employment Department opposed the loss of this sizable and popular hotel on the basis of its effect on the Island's stock of visitor accommodation, and this conclusion was accepted by the Environment Department when it refused planning permission, the Tribunal considered that there was insufficient evidence presented by the Environment Department to sustain this conclusion. However, it also concluded that the applicant had failed to demonstrate compliance with the criteria of Policy RE12 which seeks to maintain an adequate stock of visitor accommodation which is important to the economy of the Island.

The Tribunal, however, agreed with the Environment Department's decision and the view of the Commerce and Employment Department that the proposal did not satisfy either of the two other parts of Policy RE12, one or the other of which must be satisfied in order for the proposal to be acceptable in principle.

In light of the criticism, officers of the Environment Department and the Commerce and Employment Department will be meeting shortly to discuss and then implement improvements in their respective processes for requesting, collating and presenting evidence in relation to the first part of Policy RE12 relating to retention of an adequate stock of visitor accommodation.

The Tribunal also criticised the Environment Department for the lack of reasoning given in its consideration of the application to the need for the proposed use.

In reaching its decision, the Environment Department followed principles established by previous planning case Law in Guernsey, arising from past decisions of the Royal Court and the Guernsey Court of Appeal. This in essence meant in this case that as the principle of the proposed change of use was unacceptable having regard to the specific Policy RE12, relating to change of use of visitor accommodation, the Department had to refuse permission. Therefore, it did not give detailed reasoning in relation to other matters as it had to refuse permission in any event.

Consequently the issue of need for the proposed use was not assessed in detail at the time of the original planning decision. The Appeal Tribunal undertook an assessment of this issue by reference to the 'departure' provisions in the Planning Legislation and identified a need. Nevertheless the Tribunal's conclusion was still that the proposal was more than a minor departure from Policy RE12 and that the appeal could not be allowed under Guernsey planning legislation. The Tribunal also noted that the appellant had not made a request for the application to be considered as a minor departure from the Plan policy so that this part of the statutory provisions was not invoked.

The Environment Department has noted the comments of the Appeal Tribunal with regard to this aspect and will consider with the benefit of legal advice whether, and if so what changes might be required to its procedures or practices as a consequence of this appeal decision.

With regard to information submitted with the proposal regarding refurbishment costs, the Environment Department has already committed to producing an advice note for applicants concerning the information expected to be provided with such an application.

ENDS

This media enquiry response will also be published on the States of Guernsey website.

The Department will be producing guidance regarding requirements for applications for change of use of hotels to assist applicants/agents in relation to such proposals.

It was noted that the issue of development finance and viability has assumed far greater importance in planning in Guernsey over recent years. The Department's staff will be undertaking further training on this topic later in the year.

There have been some other interesting Appeal decisions recently, including that for the Kings Club site. It was noted that in the two cases so far that have been refused by the political Board at Open Planning Meetings contrary to officer advice and subsequently taken to appeal, both decisions have been supported by the Tribunal.

During a questions and answer session it was asked if the Technical Advice Notes for Protected Buildings would be issued soon. AWW confirmed that the documents were still being worked on; however it was felt that they were currently rather too technical and difficult to understand. It was agreed that it would be desirable to issue one or more of these documents as soon as possible. It was also agreed that it would be a good idea in the future to have on the website a compendium of 'stock responses' from cases where planning permission had been given for works to listed properties. This would give a clear indication of the balance adopted by the Department when considering development of listing buildings.

Fees advice update

Revised short guidance notes on the fees schedule have now been published and are available for use. This is a further effort to emphasise that fees for applications for domestic development, other than in relation to flats or mixed use properties, normally come within category 3a and 3b, not 4a or 4b.

The revised notes can be found via this link,

<http://www.gov.gg/CHttpHandler.ashx?id=78102&p=0>

A workshop on planning fees has been held recently with a firm of agents at which all staff from that firm attended. This proved useful and the Department is willing to hold more of these. Agents were invited that should they wish to attend a similar workshop they should inform the Department so that it can be programmed in.

2. Building Control - update and progress (AMK)

Staff updates include the shifting around of Building Control surveyors around the 3 Island areas. The replacement for Josie Burnett's post with an Assistant Building Control Surveyor is in the process of being filled, and the selection of candidates for interview for the Trainee Building Control Surveyor post is in hand.

Agents were informed on updates to the 'Controlled Premises' (as defined under the Fire Services (Guernsey) Law) procedures regarding Building Regulation applications. Agents were in agreement that the new procedures would improve the service and speed up consultation processes with the Fire Brigade regarding their requirements. It should reduce any changes required by the Fire & Rescue Service that have occurred in the past following changes during a build without pre consultation with the Fire Brigade.

The consultation document is being finalised for the review of Part P of the Building Regulations ahead of being presented to the Political Board. It is anticipated to go out to the agents for formal consult in mid to late June with the summer months to give feedback. The review will provide more detailed guidance on road layouts and include guidance on lighting on shared surfaces. The Department has over previous years visited several completed development sites to establish where things can be improved for future developments.

3. Development Plan Review - update and progress (CEB)

Staff updates included that Sophie Horsley (Forward Planning Officer) left the Department some months ago. She will be replaced by Ewan Taylor at the end of June. CEB explained that the Forward Planning team was currently under great pressure to produce the draft new Island Development Plan (IDP) with limited resources and that there were extremely tight timescales for completion of the draft Plan. Additionally, discussion had been held with the Planning Inspector and Policy Council about when an Inquiry might be held and also some of the very major studies such as the Employment Land Study, and Strategic Housing Land Availability Assessment, which had never been done on Guernsey before, were taking slightly longer than anticipated to conclude. All of these factors have meant that the previously estimated time for the publication of the draft plan has now been revised to the beginning of September 2014.

It is intended that the Environment Department submits the draft IDP to the Policy Council's Strategic Land Planning Group allowing for the Certificate of Consistency to be issued in

August. The Inquiry timetable allows for 6 weeks consultation period for initial representations and 4 weeks for further representations. It is hoped that most representations will be in written form. CEB explained that special software was being used to manage the process and it was very important that as many representations as possible were submitted on line for the process to work effectively and efficiently. It is the Department's intention to present the draft Island Development Plan to the States for approval within the current political term, at the end of 2015/beginning 2016. However, there are elements of the inquiry process that are unknowns as far as exactly how long they may take and are outside of the Environment Department's control.

There followed a general questions and answer session about the process of the Plan Review.

4. Managing the historic environment - update and progress (AWW)

AWW gave an update on the section's achievements over the last year, including completing the desk top assessments for the Protected Buildings Review. The Section has also written and published the following documents:-

'Criteria for selection of buildings to the list'

<http://www.gov.gg/CHttpHandler.ashx?id=87060&p=0>

'Community Guide to Protected Building Review'

<http://www.gov.gg/CHttpHandler.ashx?id=83571&p=0>

'Glossary of Terms for Historic Environment'

<http://www.gov.gg/CHttpHandler.ashx?id=84898&p=0>

'Frequently asked questions'

<http://www.gov.gg/CHttpHandler.ashx?id=87059&p=0>

The Section continues to progress on the Surveying work for the Protected Buildings Review and over the last few months this has attracted some positive media attention. Over the last 6 months, 5 buildings have been added to the Protected Buildings list and 12 buildings have been removed.

The team will be working over the next 6-12 months on continuing to survey buildings and make decisions to remove or add properties to the protected buildings list whilst also making decisions on the buildings surveyed in 2012.

Agents expressed some surprise at the feedback from the public and media and felt that there was a lack of knowledge and understanding of what it means to have a protected building. It was also mentioned that it sometimes proved difficult to sell protected properties as when potential purchasers discover that gaining permission for certain things could be difficult they tend to pull out of sales. It was however emphasised that the Department sought to take a proportionate and helpful approach concerning works to protected buildings but recognised that further advice and information was required to ensure that the planning process in relation to such buildings was as clear and straightforward as possible.

5. Agent feedback

Agents suggested that a system may work whereby you could have a planning officer's formal opinion on a scheme for a fee before submitting an application, therefore reducing revision and consultation time. AJR responded that pre-application engagement was encouraged by the Department and that there were no plans to charge for pre-application advice. Such advice however was of necessity given on an informal basis and was not binding on the Department in terms of formal decisions reached following full consideration and consultation on an application.

Ollie Brock requested an update regarding the training of Board Members for Open Planning Meetings as discussed at the last meeting. AJR advised that new members of the Board will receive training prior to the first Open Planning Meeting following their appointment.

Forum Members noted that some large sites with permission remained undeveloped, including some in very prominent locations. AJR explained that the Department had the ability to serve Completion Notices in appropriate cases but otherwise would generally seek to ensure through active engagement with developers that such major developments were carried on in a timely manner.

6. AOB and items for next meeting

There were no items of AOB

NOTE: The agenda and minutes are put on the Environment web pages and e-mailed to all the agents.

Date & time of next meeting:

Policy Council Meeting Room @ Sir Charles Frossard House, November 2014, date to be confirmed.