Media Statement on the DPA's current Pointues Rocques Planning Application Procedures.

From the Delancey Conservation Committee. October 9th, 2019

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We write in respect of the DPA/ Development and Planning Authority's recent media release dated 1st October 2019:

"*Following usual process, the documents relating to the Pointues Rocques planning application have been reviewed and are incomplete.''*

The phrase, 'usual process', appears rather misleading.

For the process which led to this unusual DPA statement has itself been anything but usual.

On 11th September 2019, the Delancey Conservation Committee wrote by email to the Planning Authority, listing all the supporting documentation for the latest Pointues Rocques Planning Application, FULL/2019/1645, that we believed was either out-of-date, or missing. After a painstaking initial study of the Planning Application, we concluded that the surprising lack of key information made it impossible to write an *informed and accurate* letter of representation. Nearly a week later, on 16th September, the Planning Authority confirmed to us in writing that our discovery was correct:

'*It is recognised that parts of the present submission will require to be updated or added to… These are likely to include the percentage of affordable housing proposed, a Surface Water Management Plan, an updated Traffic Impact Assessment, an updated Construction and Environmental Management Plan and any other outstanding matters from the Development Framework. Further matters requiring revisions or additional information may arise as a result of the public responses on the application.'*

The Authority further advised that *'when received, this will be the subject of a further round of public consultation….'*

This confirmation from the DPA that an incomplete Planning Application had been submitted, *and accepted by them,* came a full 6 weeks after the submission on August 1st.

We were shocked: why are the public being forced to take part in such a worthless exercise?

Why exactly should we have to represent *twice over* on account of the sloppiness of a Planning Application submission which, under the terms of the Land Planning and Development Law 2005, *and* the Statutory Planning Submission Form, is incomplete and therefore should never have been accepted in the first place?

Why, in spite of our pointing out to the DPA the problems of making a thorough and proper representation in these circumstances, are we nonetheless being coerced to continue with this initial public consultation?

Had we not pointed out these errors and omissions, would the Planning Authority really have informed the public?

The fact that the Planning Department had been sitting on their knowledge of these omissions *for a full 6 weeks,* and only admitted it very late in the day, and then only when the DCC raised the problems, does not give us any confidence that this would have been the case.

The application was made on 1st August. Site notices went up on 20th August. So the Planning Authority had almost 3 weeks to spot these omissions, and ask for a withdrawal of the application, or, at the very least, delay the issue of the obligatory site planning application notices until such time as all the supporting information, which is mandatory, both in the Practice Notes for the Planning Submission Form, and under the Guernsey Land Planning and Development Law 2005 and associated Ordinances, had been amassed and submitted, together with the new plans.

Yet, an additional 3 weeks' silence from the DPA elapsed before the problems, (and their consequences for the public in terms of time and energy, and indeed, money wasted), surfaced, only because they were finally pointed out by the Delancey Conservation Committee.

On 18th & 19th September therefore we wrote to the political DPA board, as our elected representatives, explaining the situation and asking for guidance. We asked whether the public should be made aware of the situation and whether they considered this treatment of the public to be acceptable.

The DPA president replied *a full 11 days later*, on 30th September, (only a couple of days before the actual representation deadline of the 4th October), stating that:

'*The Planning Service does not always receive "perfect" planning applications, in fact, many need to be revised and require more than one round of such consultations…'*

In conclusion, it seemed that not only did the Planning Department consider this piecemeal and *ad hoc* procedure acceptable, but so did the President of the political DPA.

[However, observe, please, how the word *"perfect" which has no legal weight,* is deftly substituted here for the word *"incomplete", which has legal implications, and was the actual word the DCC used*].

Then on 1st October, the DPA issued a surprising press release.

The President stated "... ***It is unfortunate*** *that the applicant did not send the Planning Service all the necessary documents, but I agree with the Planning Service that a further consultation is the fairest course of action."*

We strongly disagree**.** This manner of proceeding is more than just "unfortunate". It is in breach of the Law. Touchy-feely language will just not wash here.

As previously explained to both the Director of the Planning Department and Dawn Tindall, President of the DPA, we consider that, under the terms of the Land Planning and Development Law 2005, and its associated Ordinances, this Planning Application is invalid. The 'fairest course of action', therefore is to treat it as such, exactly as the Land Planning and Development Law and associated Ordinances dictate. The fairest way to treat *all* interested parties is to follow the letter of the Law, which demands that such situations be prevented, all of the time.
To do otherwise, is to make it appear that the DPA has the power to alter the Law at will: so that there is one law for the building fraternity, another for the general public.

Yet, no such discretionary powers are to be found in the Land Plannning and Development Law 2005 and its associated Ordinances.

We find ourselves in a most difficult situation, where we perceive that our public concerns are being dismissed and lightly cast aside as just an inconvenience. As a consequence, we have had no choice but to engage an advocate in order that such seemingly unusual procedures are properly questioned, and in order that we, the public, are heard.

When we pointed out that without the missing information we could not understand all aspects of the Planning Application proposal for Pointues Rocques, the Planning Authority's reply was:

'*Notwithstanding your comments, there is nothing to prevent the Delancey Conservation Committee or any other interested party from submitting written representations on the application as it currently stands within the consultation period*.''

It is extremely unfair to expect the community to make representations on a piecemeal basis. The public have a legitimate expectation that the Authority will not register an Application as valid until all required documents are present, as both the statutory Planning Application Form and the Law demand.

In this case, the Application was submitted by the Applicant's agent, who are well-known professional advisers, no doubt very well-versed in the requirements of such applications. Errors and omissions might be expected from a private individual. But we must wonder whether the Planning Authority would really permit errors of this magnitude in the case of a private individual. We wonder why the Planning department are so lenient with this professional advisor.

Moreover, the Planning Authority has not considered the hugely negative impact its actions, in triggering an illegally premature representation period, have had on the community: putting us through the considerable and unnecessary stress of having to provide representations in relation to a deficient and incomplete application. **This represents procedural unfairness to the community.**

IN SUM, our concerns are two-fold:

Concern Number 1

1) The Director of the Planning Authority has confirmed that this application is deficient in respect of a number of outdated and omitted items. The

> DPA President has also confirmed this, in her October 1st statement to the media [Guernsey Press]. It is abundantly clear that this Planning Application is devoid of the required information. As a consequence of these admissions, it cannot be denied that the Application was defective from the outset.

For the avoidance of any possible doubt, this Planning Application is entirely separate to the one submitted in 2017. The clear distinction between past and present Planning Applications was confirmed by the Authority in the letter sent to the community on 13 August 2019, which stated that the previous 2017 Application had been "withdrawn", and that since this was a "new Planning Application", no past representations on the site would be taken into account.''

Yet, in complete contradiction to the edict in the August 13th letters to the public, the Director of the Planning Authority has since stated, to the contrary, that

'a planning application … was received in August 2017 and was validly made' and that *'the current submission was given a new reference number with the agreement of the applicant as an administrative process to avoid confusion of this* ***amended*** *submission with the previous original one'.*

To avoid confusion??

This is all most confusing as these statements contradict one another. The status of this application cannot be amended after it has been submitted, to suit the circumstances (ie. because of the missing and inaccurate accompanying documentation).

Further, who is actually calling the shots here? The applicant, whose agreement to a new Planning Application reference number is apparently needed? Or the DPA?

If all this is purely an "administrative process", rather than a muddle, our previous representations would not have been completely discarded.

Those representations in the bin represent another huge waste of past time and labour for the general public, for which no-one is remunerating us! We the tax payers ultimately pay real money for this waste and mess.

Alice in Wonderland springs to mind:

"When I use a **word**,' **Humpty Dumpty** said in rather a scornful tone, 'it means just what I choose it to mean — neither more nor less.' 'The question is,' said **Alice**, 'whether you can make

words mean so many different things.' 'The question is,' said **Humpty Dumpty**, 'which is to be master — that's all."

Concern Number 2.

2) Written consent from all the 'Phase 1' and 'Phase 2' landowners [a necessary pre-condition to avoid piecemeal development of the site under IDP Policy GP10] had not been given at the time of the Planning Application submission. Yet, the Planning Authority wish to proceed as if this were not the case, and as if it is not in breach of the Land Law, but just an inconvenience.

Due to constraints within the Development Framework, a number of landowners are included as part of this 'Phase 1' Planning Application by no choice of their own. We do not believe that they have all given written consent. Phase 2 landowners, we have good reason to believe, had also not all given their written consent at the time of the Planning Application Form submission on August 1st.
Further, one 'Phase 2' consent, *if* it had been given, has subsequently become invalid, due to the death of one of the Phase 2 landowners in mid September 2019. So the heirs of that part of Phase 2 land must now give consent.
When we pointed out this additional qualifying complication to the DPA President, we received a surprising reply from the Director of the Planning Authority, stating that
'*Written consent from the 'phase 2' landowners is not required at this stage'.*

We disagree.
The development guidelines within the Development Framework make it clear that division or piecemeal development of the Site is not permitted. If such written consents cannot be provided, the application falls foul of IDP Policy GP10, (which states that partial or piecemeal development of a site will not be supported by the DPA), and further, it does not comply with either the statutory Planning Application Submission Form, or the requirements of the Land Planning Law, or the associated General Provisions Ordinance, 2007, and therefore it must be declared invalid.

Under the Land Planning and Development (Guernsey) Law, 2005,
(Section 2 (1); Section 6(a); Section 16(5)(a); the Planning Authority has a duty to seek to achieve the purposes of the Law. By accepting this application as valid, the Authority is not following the strict requirements of the Law and is

acting *ultra-vires,* unreasonably/and/or irrationally. If an application does not comply with the requirements of the Law, it must be declared invalid and should be rejected.

As a result of all the extraordinary proceedings just recounted here, we have been driven to formally engage with the Planning Authority by means of an advocate. We now await a proper and substantive response.

Will this be forthcoming? Will justice be done?

Watch this space!

The Delancey Conservation Committee

Contact: delanceyconservation@outlook.com
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