

STATES OF JERSEY
PLANNING AND BUILDING (JERSEY) LAW 2002 (as amended)
APPEAL OF A DECISION UNDER ARTICLE 108
REPORT TO THE MINISTER FOR PLANNING AND ENVIRONMENT
by Mr Philip Staddon BSc, Dip, MBA, MRTPI
an Inspector appointed under Article 107

APPEAL BY: C. LE MASURIER LIMITED (Third Party Appellant)

AGAINST: Grant of planning permission for a proposal to “*Construct multistorey office building with associated basement parking and public realm. Temporary relocation of existing public parking.*” Decision dated 24 July 2015.

LOCATION: Esplanade Quarter (Building 5), Esplanade, St. Helier.

REFERENCE: P/2014/2192

APPEAL PROCEDURE: Hearing – held on 21 and 22 March 2016

SITE VISIT: 22 March 2016

Preamble

1. This report contains my assessment of the 'third party' appeal made by C. Le Masurier Limited (the Appellant). The appeal is made against the decision on 24 July 2015 to grant planning permission for an office development, known as 'Building 5', in the Esplanade Quarter of St Helier town centre.
2. The appeal is complex and unusual for a number of reasons. First, the scheme is a States promoted development, the Applicant being the States of Jersey Development Company (SOJDC). Second, other similar development on an immediately adjacent site has already been approved and is under construction. Third, the appeal does not allege any direct negative impact or harm on the Appellant's property (which would normally be the case with a third party appeal). Fourth, the appeal raises complex matters (with potentially far reaching implications) about the status of various Planning policies and guidance documents. Fifth, much of the appeal centres on criticism of the States' approach to delivery of one of the Island's most significant regeneration projects - the Esplanade Quarter. Sixth, the proposal and the wider Jersey International Finance Centre (JIFC) of which it forms a part, are matters of some controversy and publically expressed discordant views. The latter includes a substantial body of representation on the application itself along with contributions from the campaign body Save Our Shoreline Jersey (SOSJ) through the Hearing sessions.
3. All of the above matters have resulted in a need for me to read and understand an inordinate amount of material in a short space of time. Some of that material was presented to me very shortly before, and indeed some during, the Hearing. Collectively, all of this material covers many years and the various events, political views and decisions concerning what is clearly a major and complex area based regeneration project of profound importance to St Helier and to Jersey. I have endeavoured to make sense of that mass of information and to identify the matters that are most relevant to the current Planning appeal.
4. An additional complexity arises from the fact that, following the lodging of the appeal, the Applicant (SOJDC) lodged a fresh application that revised the application area (the 'red line') to take it outside the prescribed (50 metre) zone, which establishes the Appellant's statutory right to appeal. That application (Ref P/2015/1920) was approved by the Planning Applications Committee in March 2016, a matter of days before I opened the Hearing.
5. Some opponents consider this second application to be an inappropriate attempt to circumvent the proper appeal process, particularly given that it is made by a States owned organisation. However, the Applicant considers it to be appropriate, given its view that the Appellant's pursuit of this appeal is commercially driven, with the alleged intention of frustrating the scheme

and the wider JIFC project, to its own commercial advantage. I made clear at the Hearing sessions that the Committee's decision on the second application would not influence, one way or the other, my independent assessment of this appeal. Similarly, I have taken the view that the grounds of appeal, whilst unorthodox (not being based on direct third party impact), are not precluded by the legislation covering Planning appeals and must be considered on their merits.

6. I would also state that, whilst I am mindful that there have been other recent review exercises concerning the JIFC¹ project and its financial viability and predicted performance, my role and remit is quite separate. It is to look specifically at Planning issues and merits and, whilst that does involve some consideration of financial viability matters, that consideration is limited to what is placed before me in the Planning appeal submissions.
7. In view of the above complexities and the adversarial positions of the parties, the Hearing sessions could easily have become acrimonious and negative. They were not. The parties presented their cases in a thoroughly professional, intelligent and respectful manner. I am very grateful to all of the parties for their contributions and their approach at the Hearing sessions, which has assisted my appraisal of the very complex Planning matters that arise in this case.
8. In terms of the structure of this report, I begin by setting out details of the site and the locality. I then explore the legislative framework and the different components of the planning policy framework, including the Island Plan and two important related documents – the Jersey Waterfront Supplementary Planning Guidance (SPG) and the Masterplan for the Esplanade Quarter 2008 (hereafter referred to as 'the Masterplan').
9. I then look at the relevant planning history of applications in the area before summarising the Appellant's case and the key points from the cases of the other parties. That then leads to my detailed assessment of the proposal against the identified key elements of the Planning framework and to my overall conclusions and recommendations. Given the breadth and complexity of issues raised in this appeal, it is not possible, nor would it be helpful, for this report to address every point raised in evidence. It necessarily focuses on the identified main issues.

¹ Most notably the 2015 States' Scrutiny Panel report on the JIFC viability.

The Esplanade locality, the application site and the Building 5 application proposal

10. The application site includes part of the current Esplanade car park within St Helier town centre. This area, along with land to the south-west and around the harbours, is all reclaimed from the sea. This substantial land reclamation project was undertaken in the late 1980s / early 1990s. The Esplanade car park is encircled by roads: to the north is Esplanade (the road alongside the former sea wall), to the east is Castle Street and to the south is La Route de La Liberation, a busy urban dual carriageway cut through the reclaimed land and now the principal east / west route through the town centre. This road is partly submerged through a short underpass section under the Castle Street roundabout.
11. The area around the car park is, in land use and character, dominated by commerce. Indeed, the buildings to the south-east on Castle Street (Liberation House) and along the north-eastern side of Esplanade, are predominantly offices, typically occupied by financial and legal businesses. The scale of these is up to about six storeys and the style is modern and of a good quality. The area has the feel of the town's primary office business quarter.
12. To the south of the Esplanade car park, on the other side of La Route de la Liberation, is a collection of large modern leisure buildings that include a cinema, restaurants, swimming pool and gymnasium. Further to the west is a modern hotel complex, along with a large surface car park, recently constructed to provide parking for that displaced through the development of the Esplanade car park. Beyond this car park is Les Jardins de la Mer.
13. The application site itself actually relates to two parcels of land. The first is an irregular shaped area within the south-eastern part of the Esplanade car park, immediately to the north of the Castle Street roundabout and abutting the construction site of 'Building 4' to the north. The second area is a replacement car park on the other (south-west) side of the dual carriageway. At the time of my visit, that car park was already laid out and operational.
14. The application proposal, lodged by SOJDC, relates to a six-storey office building comprising 6,410 square metres (net internal area) with 51 car parking spaces and 72 cycle spaces provided at basement level, with the relocation of the displaced public car parking to the south side of La Rue de la Liberation. The building would front Castle Street and its curved frontage would follow the arc of the street as it merges into the slip road from La Rue de la Liberation, adjacent to the roundabout. The overall height of the building would be 25.5 metres and the design is modern, with extensive use of full height glazing on all elevations. The design includes a colonnade around three sides of the building.

The legislative framework

15. The Planning and Building (Jersey) Law 2002 (as amended) provides the legal framework for the operation of the planning system in Jersey. In essence, it adopts a 'plan led' system where a development plan, produced through an open and participative process and thereafter adopted, takes primacy in decision making.
16. There is a general legal presumption that development in accordance with the Plan will be permitted and development that is inconsistent with the Plan will normally be refused, unless there is 'sufficient justification'² for overriding its provisions. That is to say there is some discretion for decision makers but any inconsistencies (with the plan) have to be justified in Planning terms.
17. Of relevance to this appeal is the related provision under the law which allows the Minister to publish 'guidelines and policies' concerning any area of land or the development of a specified site³. Article 6(3) states that '*the Minister shall take into account when considering an application for permission to develop land the extent to which the proposed development complies with any relevant guidelines and other policies he or she has published.*'

The Island Plan 2011 (Revised 2014)

18. The States adopted the Island Plan in June 2011. A review was subsequently undertaken, primarily concerning the issue of affordable housing, which resulted in a revised plan being approved and adopted in July 2014. That revised plan is Jersey's development plan. It is a detailed and comprehensive policy document which combines a strategic policy framework with a detailed set of policies and site specific proposals.
19. There is a wide raft of policies contained in the Island Plan that are relevant to this appeal. Whilst, I do not consider it necessary to rehearse the full weft and weave of these policies, as they are set out fully in the Plan itself and listed comprehensively in other published documents⁴, I have summarised below the policies that are most pertinent to this appeal.

Strategic Policies

20. In terms of the Plan's strategic planning policy framework, Policy SP1 – Spatial Strategy seeks to concentrate new development in the island's defined built up area and, in particular, within St Helier. That strategic

² Article 19 of Planning and Building (Jersey) Law 2002 (as amended).

³ Article 6 (1) of Planning and Building (Jersey) Law 2002 (as amended).

⁴ Mr Nicholson's (application case officer) report to the Planning Applications Committee meeting of 23 April 2015 includes a comprehensive list of the Island Plan policies.

approach is supported by Policy SP 2, which seeks to ensure that development makes the best and most efficient use of resources. Policy SP 3 sets out a 'sequential approach' to new development and makes a specific provision that major new office development will be directed to the favoured locations of St Helier town centre and the Esplanade Quarter. To complement the urban concentration approach to new development, Policy SP 4 seeks to protect the island's natural and historic environment. Policy SP 5 supports economic growth and gives a high priority to supporting existing and new businesses. Policy SP 6 seeks to reduce dependence on the use of the car and the final strategic policy, SP 7, requires high quality design.

Built Environment Policies

21. The Plan's Built Environment (BE) chapter contains a section dealing with 'Delivering St Helier Waterfront'. It includes a specific policy (BE 2) which makes plain that the Planning 'framework' for the development of this area is set out in two documents:

- The Jersey waterfront Supplementary Planning Guidance (SPG) – April 2006
- The Masterplan for the Esplanade Quarter – April 2008

I deal with the content of these documents later, but the key point here is that the Plan, through Policy BE 2, establishes that this framework (comprised of the above two documents) will be the 'principal material consideration in the determination of planning applications' and that proposals which accord with it will be permitted. This is a central policy in this appeal, with different views espoused concerning the proposal's compliance (or not) with this framework.

22. Other relevant BE policies include BE 1 seeking to promote town centre vitality; Policy BE 5 which sets the parameters and assessment criteria for tall buildings and BE 10 which seeks to control the design and appearance of roofscapes.

Economy policies

23. The Economy chapter of the Plan includes Policy EO 1, which reinforces the sequential policy SP 3, by stating support for office development in the preferred prime locations of St Helier town centre and the Esplanade Quarter. The supporting policy narrative makes clear that ensuring sufficient space to meet the needs of a world class offshore finance industry is 'a key aim of the plan'⁵ and further recognises that the level of office provision

⁵ States of Jersey – Revised 2011 Island Plan – Paragraph 5.27

planned in the Esplanade Quarter will have impacts on the local office market⁶.

General Development (GD) and Other Policies

24. Policy GD 1 sets out 'general development considerations' against which all planning applications are assessed. These include sustainability, environmental impact, impact on neighbouring uses and occupiers, economic impact, transport and design quality. Policy GD 4 sets out when Planning Obligation Agreements (POA) will be required.
25. Other GD policies that have some relevance cover views and vistas (GD 5), contaminated land (GD 6), design quality (GD 7) and a 'percentage for art' (GD 8).
26. There is a range of other policies covering water resources (NR 1), renewable energy (NR 7), waste and recycling (WM 1 and WM 5), foul and surface water drainage (LWM 2 and LWM 3).

Travel and transport policies

27. The travel and transport chapter seeks to promote more sustainable patterns of travel to support economic growth, protection of the environment and the overall quality of life.
28. Policies include requirements for cycle parking within new developments (TT 4), developer contributions to improved public transport (TT 7 and TT 8) and the implementation of travel plans (TT 9).
29. Policy TT 10 deals specifically with off-street parking provision in St Helier. It generally seeks to constrain long stay off-street parking. It makes explicit reference to an intention to approve a 520 space multi storey car park in the Esplanade Quarter to replace the existing surface level car park (which includes the application site). The policy also states that the redevelopment of surface level off-street public car parking sites in St Helier 'will not be resisted'.

The Jersey Waterfront Supplementary Planning Guidance (April 2006)

30. The Jersey Waterfront SPG was produced by Chris Shepley ten years ago (April 2006). My understanding is that it was written following extensive consultation and public participation, at a time when there were a number of debates and concerns about the approach to development in the Waterfront. These included the vision and aspirations for the area; the relationship and complementarity with the town centre; the land use content and mix (including the issue and scale of retail content); open and

⁶ States of Jersey – Revised 2011 Island Plan – Paragraph 5.35 – 5.38

public spaces; pedestrian linkages and connections; sustainability; the issue of tall buildings and design quality.

31. The SPG did not start with a blank page. There had been various earlier vision and masterplan documents and a number of planning permissions had been granted and some of these schemes had been implemented. It is not necessary to recite all of that history here.
32. The 2006 SPG applies to the three (then) undeveloped sites of i) Castle Quays ii) Les Jardins and iii) Esplanade Square (now known as the Esplanade Quarter). Its main purpose was to provide planning guidance for the development of Jersey's Waterfront and enhance and supplement the policy set out in the (then) Island Plan 2002. It provided a 'framework' within which new development proposals for the Waterfront were to be generated and considered.
33. The SPG sets out thirteen Waterfront (WF) policies which can be summarised as follows:
 - Schemes should be integrated in a common framework and a co-ordinated approach (WF 1)
 - Developments which create vibrancy and vitality will be supported (WF 2)
 - Restrained and appropriate retail content (WF 3)
 - Public realm strategy and rich network of pedestrian routes (WF 4 and WF 5)
 - A set of strong design principles and protection of views and settings (WF 6, WF 8 and WF 9)
 - Support for high quality tall buildings (WF 7 and WF 9)
 - Height limits which, for the Esplanade site would 'be generally restricted to 6 storeys' (WF 10)
 - Requirement for travel plans (WF 11)
 - High environmental standard (WF 12)
 - Use of Planning Agreements (WF 13)
34. It is worth noting that the SPG is very much a document of words, setting out policy principles. However, it does contain two high level plans⁷, which identify the three component sites and indicates a proposed pedestrian connection via a bridge from the Esplanade site across La Route de la

⁷ Page 71 of The Jersey Waterfront Supplementary Planning Guidance (April 2006)

Liberation to Les Jardins de la Mer and the leisure quarter (called the 'Waterfront Centre' in the SPG).

Masterplan for the Esplanade Quarter (April 2008)

35. Following the adoption of the SPG, a 'masterplan' was commissioned for the Esplanade quarter (one of the three sites covered by the SPG). It was intended that the Masterplan would take forward the SPG principles and recommendations and provide *'the first step in providing a coherent and deliverable vision for the waterfront.'*⁸
36. In common with the SPG, the Masterplan was subject to extensive public consultation and revision prior to its adoption. The Masterplan's principal objectives are to:
- Integrate the old town with the waterfront and address the separation presently caused by the road;
 - Create a distinctive mixed use quarter in St Helier of quality, which makes a step change in design and appearance;
 - Create a new office quarter to serve the financial services industry;
 - Provide new homes for local residents;
 - Create new areas of public space that provide a real sense of place for residents and visitors to enjoy; and to
 - Create new opportunities to broaden the offer within the tourism and visitor sector, providing a new hotel and self-catering accommodation.
37. It is a detailed and comprehensive document, which undertakes a contextual analysis, including a critique of an earlier masterplan (the version with the pedestrian bridge link), before setting out a revised masterplan approach and supporting chapters establishing the approach to sustainability and transportation, waste and flood protection. It also set out the regeneration benefits and outputs of what it indicated would be a £250 million investment.
38. The 2008 Masterplan provides for a mixed-use development of approximately 1,096,144 sq ft of new development (excluding parking). Of this total, the greatest part is for offices to create a new financial quarter (620,700 sq ft or 56.6% of the total), followed by 388 residential apartments (291,128 sq ft or 26.6%), with the balance made up of lesser amounts for leisure, self-catering accommodation, hotel, retail and restaurant space. It also provides for 1,420 underground parking spaces and the provision of new public realm, notably in the construction of two

⁸ Page 4, second paragraph – Masterplan for the Esplanade Quarter (April 2008)

new public squares ('Arrival Square' and 'Main Square') and a winter garden.

39. A fundamental component of the Masterplan was that La Route de la Liberation, to the south of the Esplanade car park, would be lowered to enable traffic to pass through an underground tunnel from Gloucester Street to the eastern end of the existing underpass. This would create developable land and public realm space above, address the separation created by the road and integrate the quarter and town centre with the waterfront. The transport, access and parking proposals are detailed, and sought to demonstrate that the scheme would work in engineering terms.
40. The document also set out the headline terms of a Development Agreement (DA)⁹ that a developer would be required to enter. These include a guaranteed £50 million payment from the developer to the States and further overage payments estimated at more than £25 million. The developer would also be required to lower the road (estimated at £45 million at that time) at no cost and no risk to the States of Jersey.
41. An observation that I make here, and return to later, is that the Masterplan is more than simply a Planning blueprint of a proposed area based regeneration project. In addition to the proposed layout of buildings, roads and spaces, it sets out a scheme delivery approach. That approach is comprehensive and it was intended that a single developer would take the whole scheme forward. The Masterplan establishes very clearly performance obligations and risk ownership and that delivery would be controlled not just by the Planning system but, contractually, through a DA. That combination of Planning content, project delivery, performance obligations (financial and road lowering) and risk ownership are all inextricably linked elements of the Masterplan.

Esplanade Quarter Design Code (September 2008)

42. The Masterplan is supported by a companion Design Code. This sets out more detailed design rules and requirements for streets, spaces, building massing, architecture and building performance. I deal with the relevant more detailed content of the Code later in my assessment.

The Masterplan Amendment (March 2011)

43. In 2011, the Minister approved¹⁰ some amendment to the 2008 Masterplan. There is only a very brief report covering this matter. It sets out that the emerging demand for commercial space necessitated some changes in the eastern section of the Esplanade Quarter in terms of layout, size, scale and location of open spaces and buildings. I return to this later.

⁹ A Development Agreement is a legally binding contract between the landowner and developer.

¹⁰ Ministerial decision reference - MD-PE-2011-0029

Relevant Planning History

44. The Planning history of this part of St Helier is complex. The most relevant applications and permissions seem to fall in to two distinct phases. The early phase comprised two major applications by Harcourt¹¹ lodged in 2008. The later phase is a series of 'component' schemes lodged by SOJDC, which began in August 2012 and have continued to date (the most recent being the two Building 5 applications). The key proposals are summarised below.

The Harcourt Outline Permission - PP/2008/1680

45. This application lodged in 2008, to all intents and purposes, sought Outline planning permission for the 2008 Masterplan proposals. It was submitted by Harcourt and WEB (the predecessor to SOJDC) and was the subject of a Public Inquiry held in October 2008. The scheme comprised 620,000 sq ft of offices, 388 residential apartments, 65 self-catering units, winter gardens, boutique hotel, 54,000 sq ft restaurant / retail, public open spaces, 1,425 car parking spaces (being 900 private car parking spaces and 525 public spaces) with a new underground road tunnel (the lowering of La Route de la Liberation) and other associated road works and landscaping. It was approved in July 2010 and granted outline permission subject to 54 conditions and a Planning Obligations Agreement (POA). The permission was not implemented and has now lapsed.

The Harcourt 'Below Ground Works' detailed planning application - P/2008/1681

46. Submitted alongside the Outline application (and considered at the same 2008 Public Inquiry), this proposal sought detailed planning permission for excavation and enabling works to lower the road, create the underground tunnel, form basement car parking and other associated road and infrastructure works. The application has never been determined due to the absence of financial bonds / guarantees to de-risk (from the States' perspective) such major works. Whilst technically still undetermined, I understand that the application is regarded as a dead proposal.

The Building 4 Permission - P/2012/1141

47. Lodged in late August 2012 by SOJDC, this 'full' application sought permission for the first JIFC office building on a site in the eastern corner of the Esplanade car park. The six storey building comprised 7,426 sq metres (79,933 sq ft) of accommodation plus a basement with 41 car parking spaces, accessed from Castle Street. Other works included hard and soft landscape around the site, plus the temporary relocation of the lost public car parking to the south site of La Route de la Liberation. Planning permission was granted on 1 August 2013 subject to conditions and a POA

¹¹ Harcourt Developments Ltd was the States' developer partner at the time.

securing financial contributions for sustainable travel initiatives. Construction of this building commenced in 2015 and, when I visited in March 2016, works were at an advanced stage with completion planned in 2017.

The Building 1 Permission - P/2013/0993

48. Lodged in July 2013 by SOJDC, this application sought full planning permission for a for a six storey office building on the north-western part of the Esplanade car park. It would comprise 11,084 sq metres (119,307 sq ft) of accommodation with 38 car parking spaces in one basement level. The application also proposed to re-provide temporary car parking on a like-for-like basis to the south of La Route de la Liberation. Planning permission was granted in January 2014 subject to conditions and a POA, securing financial contributions for sustainable travel initiatives. Development has not commenced, as I understand the intended occupier secured alternative office space in another development.

The Underground Public Car Park permission - P/2013/1209

49. This SOJDC application sought permission for a 520 space underground public car park, across three and a half basement levels, on land to the south of Building 1. Planning permission was granted, subject to conditions, on 16 January 2014. Development has not commenced.

The Temporary Car Park (extension) permission - P/2015/1862

50. In December 2015, SOJDC applied for planning permission to extend the temporary car park (approved under the Building 4 permission). The initial temporary car park had been implemented but was of a limited size. This application sought to extend the car park, to provide the flexibility to maintain the existing 525 spaces across the two car park sites. Permission was granted in March 2016 subject to conditions which include a requirement that the temporary parking use will cease once spaces have been re-introduced to the Esplanade site (though the implementation of P/2013/1209).

The Building 5 applications - P/2014/2192 and P/2015/1920

51. A summary of the original SOJDC Building 5 application and the 'second' Building 5 application are set out earlier in this report (Paragraphs 13 - 14 and Paragraph 4 respectively).

The Appellant's Case and the Cases Made by the Other Parties

The Appellant's Case

52. The Appellant's grounds of appeal are extremely comprehensive, detailed and wide ranging. However, its case centres on Policy BE 2 of the Island Plan and alleged tensions with the two documents (the SPG and the Masterplan) that, through that policy, are stated to be the 'principal material consideration' in decision making on applications.
53. I do not intend to set out a detailed account of all aspects of the grounds of appeal (they are matters of public record) but a number of broad themes, which I consider to be most relevant to my assessment, can be summarised:
- Non-compliance with the SPG – in particular relating to the mix of uses to support vitality and the Appellant's concern that a sterile single use office scheme was being progressed (of which Building 5 was a component) at odds with the SPG's content and objectives.
 - Non-compliance with the Masterplan - the Appellant is concerned that the principal objectives of the Masterplan and regeneration requirements are not being met. In particular, it considers the approach to phasing, and the principle of a "demand-led" approach, is leading to an ad hoc delivery approach. Furthermore, the Appellant is concerned that this approach impacts on the ability to sink the road which it considers to be a key factor in the Masterplan delivery. Concern is also expressed about the Masterplan amendment in 2011 and the failure to review the Masterplan in the light of changed circumstances.
 - Viability and financial safeguards – the Appellant considers that the project is not financially viable and that, consequently, the future delivery of the Masterplan would be jeopardised and key regeneration elements would not be delivered.
 - That the Appellant and other objectors' views were ignored without objective assessment.
54. A further ground of appeal alleged that the POA associated with the Outline permission was triggered by the Building 4 permission implementation. I consider that unlikely given that the Outline application was not implemented (and has now lapsed) and that the subsequent applications were unconnected to it (as distinct self-contained full applications). Furthermore, I think these matters are well beyond the scope of my remit and, accordingly, I have not considered them further.

The Department's Case

55. The Department's Case is set out in the original officer's report (to the April 2015 Planning Applications Committee) along with a 'Response Statement'. The latter document sets out a rebuttal of the Appellant's case and, briefly, presents the following positions:
- Non-compliance with the SPG – the Department points out that the SPG covers a much wider area than the Esplanade Quarter. It contends that the development is not incompatible with the SPG, which specifically states that office accommodation is appropriate and that the SPG's wider area based mixed-use aspirations and policies should not be applied at a 'micro' level to a single building application.
 - Non-compliance with the Masterplan - the Department considers that the Masterplan delivery was always going to be demand led and that the Building 5 proposal complies with it and with the Masterplan amendment, which proposes a 7 storey office building on this site. It considers that the Masterplan is not a 'strait jacket' and that in taking forward the 'jigsaw' pieces, it has been mindful of the delivery of 'public good' elements in proportion to commercially valuable elements. On phasing, the Department considers that this needs to be flexible and adaptive but that there has been no change to the 'structural elements' which are, essentially, that office development receipts from Phase 1 facilitate the road sinking and then enable Phase 2.
 - Viability and financial safeguards – the Department considers that this individual building development is materially different to the earlier Outline and below ground works application. Those works potentially placed St Helier at risk of great disruption and justified appropriate financial bonds and safeguards (through the proposed DA). The Department does not consider that is a risk with Building 5 and states that, generally, it is not the role of the Planning system to protect developers from non-viable projects.
 - Appellant and other objectors' views – the Department disagrees that these were ignored and considers that a full and appropriate assessment was undertaken.

The SOJDC Case

56. The Applicant's case is, understandably, supportive of the Department's position and approach. It is presented in its Statement of Case as a very detailed point-by-point rebuttal of the Appellant's submissions. It is not necessary that I repeat it here.

The Save Our Shoreline Jersey (SOSJ) Case

57. The SOSJ group co-ordinated much of the opposition to Building 5 at the application stages and, at my invitation, attended and contributed to the Hearing sessions. SOSJ had become involved at the application stage when it became alarmed by some tree / vegetation removal works on the site.
58. At the application stage, it raised concerns about the relocation of the surface car park further away from the town centre and expressed concern about offices here, preferring to see mixed uses. At the Hearing, it set out its concerns about the whole Esplanade Quarter project and the views that it had become open to manipulation and misrepresentation and that the project lacked leadership and cohesion. It also has specific concerns about environmental controls and dust emissions from contaminated ground during construction.

Discussion and assessment against policy

59. Put simply, my task in assessing this appeal is to determine the conformity (or otherwise) of the Building 5 proposal with the Island Plan. Through that assessment I need to reach an independent and fair recommendation as to whether the Planning permission should be confirmed (i.e. the appeal be dismissed) or overturned (i.e. the appeal be upheld). However, that task is not a simple or straightforward one.
60. The appeal raises fundamental issues concerning the relevant planning policy framework and about scheme delivery against that framework. It is not my role to re-write policy, guidance and masterplans through my consideration of this appeal. Nor is it my role to determine the best method of scheme (and masterplan) delivery or to determine matters of project governance, detailed financial viability or political priority. That said, it is not possible for me to reach conclusions without giving some independent assessment of those dimensions and, where necessary, offering my considered view. I have endeavoured to do this fairly, objectively and positively. I have, throughout, sought to avoid making judgments based on hindsight, as I recognise that complex regeneration projects rarely progress in a smooth straight line.
61. I undertake my assessment by looking at each element of the Planning Framework, identifying the weight that should be applied, and then assessing the Building 5 proposal's conformity with that element.

The Island Plan 2011 (Revised 2014) – weight and conformity

62. The Island Plan is a comprehensive and relatively up to date development plan. As noted earlier, under Jersey Law, it has considerable weight in decision making. Some qualification is required in terms of Policy BE 2 which, unlike the remainder of the Plan, defers to the 'Planning framework'

established by SPG 2006 and Masterplan 2008. It is clearly important that these components are assessed separately in terms of their individual, and indeed combined, weight.

63. Indeed, in assessing the Building 5 conformity with the Island Plan, a useful starting point is to undertake a Policy BE 2 'off' analysis, and then consider the implications of the SPG and Masterplan layers. In theory, they should align and complement each other.
64. In terms of the Plan's strategic and economic policies, there can be no doubt that the Building 5 proposals find substantial support. In particular, the proposal accords fully with the spatial strategy (SP 1) directing development to St Helier and with the sequential approach (SP 3) which very specifically directs new office development to this favoured site. Although there are differing views about the JIFC, delivering new office space for a world class finance industry is a key aim of the plan and the scheme clearly does this, thereby supporting economic growth (in line with SP 6 and EO 1) and expanding St Helier's prime location for commerce.
65. The site's sustainable location, sustainable travel contributions (secured through the POA) and cycle parking all contribute to reduced dependence on the car (SP 6). In terms of design, this has not been a matter of dispute in this appeal, but I consider the building to be of a very high standard and that its architecture and quality is entirely fitting and positive in this part of St Helier. In my view, it fulfils SP 7, which requires high quality design. Overall, the proposals are substantially in accord with the Plan's strategic policies and help to deliver its objectives.
66. In terms of the wide ranging General Development and other policies, I find no tension and a good degree of support for the Building 5 proposal. It complies with and does not challenge the various GD policy requirements and those covering waste, drainage and other technical matters.
67. Similarly, the proposal addresses transport policy requirements including cycle parking (TT 4), public transport improvements (TT 7 and TT 8) and the requirement to replace the displaced Esplanade car parking (TT 10). It is worth noting here that there is no Island Plan transportation policy that prioritises the road sinking project, safeguards its route, or provides a policy basis for its delivery. To my mind, this is unusual, given that it represents one of the most significant infrastructure projects on the island. However, I believe it reflects a point in time where delivery was assumed and guaranteed (through the Outline permission and the DA).
68. Overall, in a 'BE 2 off' scenario, there is very strong support for the proposal from the Island Plan's policies. I now turn to Policy BE 2 and to the two documents that it instructs will comprise the 'principal' material consideration. These are the SPG 2006 and the Masterplan 2008. I then

consider the Design Code and the Masterplan amendment 2011, before reaching overall conclusions and recommendations.

The SPG 2006 - weight and conformity

69. Although it is now 10 years since the adoption of the SPG, I consider that its content and its WF policies remain current and carry considerable weight in decision making.
70. It is important to appreciate that the SPG is very much a document of written policy principles (the WF policies). These were very well conceived following extensive public consultation. They have perennial Planning merit and, I would suggest, they might be as relevant in 2026 as they are today. I do not consider that they are diminished by the passage of time and, in fact, their general conformity with (and in many cases replication by) the later Island Plan policies, refreshes and maintains their considerable weight.
71. In terms of conformity with the SPG, the Building 5 proposal is being progressed as part of a common framework as required by WF 1 (although I acknowledge differing views about the broader project delivery approach). It includes public spaces (WF 4) and pedestrian routes (WF 5). It is of a high standard of design and complies with the set design principles (WF 6) and the requirements for tall buildings and related criteria (WF 7, WF 8, WF 9 and WF 10). It also includes a travel plan (WF 11) and embraces high environmental standards (WF 12). Note – see paragraphs 87-89 for WF 2 'vitality' considerations.
72. I conclude that the Building 5 proposal is substantially in accordance with the SPG policies and that these carry significant weight.

The Masterplan 2008 – weight and conformity

73. The 2008 Masterplan is the only current adopted masterplan for the area and was produced and adopted following extensive public consultation. As noted earlier, it represented an impressive and ambitious vision and set out, in quite some detail, the scheme content, layout, land use, public realm, roads and transport infrastructure, DA requirements and project benefits. It should therefore have considerable weight. However, there are a number of factors that, individually and collectively, substantially reduce (and complicate), the weight that can be applied to the Masterplan in present day Planning decision making. These factors are to a degree interlinked but I identify five key points.
74. First, it is now eight years since the Masterplan adoption and perhaps nine or ten years since its key visioning and preparatory stages. There have been substantial changes in the economic environment since that time.

75. Second, the Masterplan's stated comprehensive delivery through the security of a DA did not progress. It appeared to stall for financial reasons, perhaps linked to the changing economic environment at that time. However, the Masterplan remains framed on that earlier comprehensive DA backed approach, and its publicly stated financial performance criteria and pre-conditions (such as sinking the road at no risk to the States). Indeed, this approach is still referenced in the current 2014 version of the Island Plan¹². However, that is not what is happening in practice, where a piece by piece delivery approach is being pursued, with SOJDC progressing individual building projects secured, at least in part, by signed office occupiers ('pre-lets'). This is a very different delivery model to that stated in the Masterplan and it is not without Planning implications.
76. Third, the Masterplan is fundamentally premised on the lowering of La Route de la Liberation. However, without the security of the Masterplan's intended DA, there is no Planning mechanism to secure its delivery. In my experience, where a large composite development is contingent upon the delivery of a central and critical piece of infrastructure, it would be usual to have a Planning mechanism, supported by a clear policy, to either i) secure delivery directly by the developer or ii) secure proportionate financial contributions to fund delivery by others. Neither Planning mechanism is in place to deliver the Masterplan's critical element of infrastructure.
77. Fourth, notwithstanding the absence of any formal Planning delivery mechanism for the road and other elements of the Masterplan, it is not certain that the Masterplan is financially viable. At the Hearing, it was suggested that the road lowering cost alone was estimated at £54 million in 2013, although that figure was just an inflated 2007 estimate (rather than a detailed scheme costing) and some caution is required. Whatever the true figure, it is a massive capital cost and SOJDC acknowledges that it will substantially exceed anticipated Phase 1 net receipts and that 'additional funding' will be required. Although ultimately SOJDC consider Phase 2 may generate sufficient funds, the evidence (that I have seen) is scant, appears broad brush and speculative, and is silent on the issue of risk and contingency. Given the acknowledged funding gap (for the road), the absence of a DA and the broader uncertainties about scheme affordability, I am currently unconvinced that the 2008 Masterplan can be regarded, in Planning terms, as viable and deliverable.
78. Fifth, there appears to have been no full and open review of the Planning soundness of the Masterplan in the light of these changed circumstances and the passage of time (I deal with the 2011 amendment later). Indeed, as Chris Shepley noted in the 2006 SPG¹³ "...contemporary masterplanning is

¹² Island Plan 2011 (Revised 2014) – Paragraph 4.45

¹³ The Jersey waterfront SPG – April 2006 – Page 41 - paragraph 4.1

an ongoing process and needs to continually check that original assumptions hold true." It is plain to see that some of the, quite fundamental, original assumptions no longer hold true, but the Masterplan remains substantially unchanged.

79. For all of these reasons, the weight that can be afforded to the Masterplan today is substantially reduced. This element of the 'planning framework' (that Policy BE 2 directs the decision maker to) cannot be treated as up to date or fully sound. This does not mean that the Masterplan has no weight whatsoever, but it does mean that the decision maker must be mindful of its current weaknesses and cautious in its application.
80. In the light of the above, I now turn to assessing the conformity of the Building 5 proposal with the Masterplan. This is not as simple as testing it against a list of criteria (as with a policy document like the SPG) but I consider there are two broad test headings. The first is the 'jigsaw piece' test of whether the development is the right one in the right place in the Masterplan picture. The second is the 'jigsaw puzzle' test in terms of the proposal's implications (whether positive or negative) for the broader delivery of the Masterplan picture.

The 'jigsaw piece' test

81. In terms of the 'jigsaw piece' test, the principle of a building in this location is well established by the Masterplan. It proposed a tall building on this prominent corner, which would ultimately abut a 'new boulevard' (once the road is lowered). In terms of its height, it is well within the parameters set and therefore in accordance.
82. With regard to land use, there is some conflict with one of the Masterplan drawings¹⁴ which indicated (without any clear rationale) a residential block on this site, although the companion Design Code amended this to an office block. In Planning and practical terms, I consider the office use to be eminently more appropriate in this part of the Quarter than a residential use. The design of the building is of a suitably high quality and will make a positive contribution to the immediate streetscape and locality.
83. In Planning terms, I consider the scheme passes the 'jigsaw piece' test – it is the right building and use, of the right quality and in the right place when considered against the Masterplan (and its companion Design Code).

The 'jigsaw puzzle' test

84. In terms of the 'jigsaw puzzle' test, there are numbers of matters to consider, although some stray beyond a consideration of the Building 5

¹⁴ Masterplan for the Esplanade Quarter 2008 – maximum building heights plan page 20.

Planning merits into matters of broader project governance and delivery (of the Masterplan).

85. Of the more straightforward matters, I have reached three key findings. First, the proposal will not prejudice the potential to lower the road in the future, as it does not intrude into its alignment. Second, the building design will work equally well should the 'new boulevard' be created to its south. Third, the scheme will deliver substantial public realm space, including the first public square (Arrival Square). In terms of these physical matters, the scheme is in full accord with, and contributes to, the delivery of the bigger (Masterplan) picture.
86. The less straightforward 'jigsaw puzzle' test matters relate to 'vitality' and 'phasing / delivery'.
87. 'Vitality' is an objective of the Masterplan (and the SPG under WF 2). The Appellant contends that Building 5 is part of a sterile single use office development that lacks the vitality and life demanded by the Masterplan (and SPG). The Department and the Applicant consider that the Masterplan does not preclude single use buildings and that active ground floor uses are planned in later components of Phase 1, and across the wider Esplanade Quarter (Phase 2) i.e. all will be delivered in the fullness of time.
88. In my view, this is not a black and white issue. I am mindful of the fact that the Masterplan always proposed very substantial office content in this area, and that this would be part of a much larger mixed-use quarter. Indeed, well over half of the overall planned floorspace is for offices and one of the Masterplan's principal objectives is to 'create a new quarter to serve the financial services industry.'
89. I also consider that it would be wrong to regard offices as devoid of vitality, as they can and do bring a great deal of human activity and life to areas through the working week (and certainly more than a surface car park). The Appellant's point about broader vitality, especially during evening and weekend periods is well made, but I do not consider that the Masterplan (or SPG) precludes single use buildings, particularly in this area, which the companion Design Code identified as an 'office zone'. However, it does link to the second issue of 'phasing / delivery' in terms of ensuring that the full mix of planned uses is delivered across the Esplanade Quarter.
90. In terms of 'phasing / delivery', SOJDC explains that Building 5 will be the second of six planned office buildings within its defined Phase 1. The Phase 1 area is effectively the existing Esplanade car park bounded to the south by La Route de La Liberation. There are actually seven sub-phases, one for each building (1A, 1B, 1C, 1D, 1E-1 and 1F) and one for a public car park and garden (1E-2) which appears to include some active pavilion style buildings. The 'garden' referred to in the latter phase is a portion of what

would ultimately be 'Main Square' (although the full square could only be created following the road lowering).

91. The Appellant considers the phasing / delivery approach to be 'ad hoc' and that it provides no guarantees that the Masterplan components, including the road lowering, the vitality of mixed uses and the public realm works, will be achieved. SOJDC disagree and consider it to be a pragmatic and demand led approach and stress that the Masterplan was always going to be demand led and commercially driven.
92. There are Phasing Plan requirements for the whole Quarter imposed by condition on the Building 5 permission. Condition 29 requires that a Phasing Plan be submitted and approved prior to development commencement. It states that the plan "... shall include details of the timetable for the delivery of the wider Esplanade Quarter works beyond Phase 1 (the Jersey International Finance Centre) to include the sinking of La Route de la Liberation and the balance of the works in the approved Masterplan for the Esplanade Quarter (as Amended)." The reasons stated for imposing the condition was 'to ensure compliance with Policy BE2 of the Jersey Island Plan 2011 (Revised 2014).'
93. A similar condition was imposed on the earlier Building 4 permission¹⁵. Details submitted pursuant to that condition indicated an approach whereby Phase 1 creates funding towards the road lowering and thereby enables Phase 2. However, as noted earlier, there is a funding gap for the road and it is not clear how this will be addressed or when it can happen. The condition submissions do provide a helpful insight into the current approach being pursued, but it is not, to my mind, a delivery timetable nor is there any guarantee that some or all of it will happen. In any event, these Planning conditions, whilst well meaning in their intent, have little substance or enforceability in Planning terms.
94. To an extent, both the Appellant and SOJDC positions on these matters have merit and they are not as mutually exclusive as may first appear. I agree with the Appellant that the phasing and delivery, particularly of the road lowering, can no longer be seen as guaranteed and certain. Without the security of a DA and the bonds and guarantees that were required by the States, there is no certainty that the road project, or indeed that Phase 2 will happen at all. I also understand SOJDC's position in that it seems to be focused on the 'art of the possible', in terms of making Phase 1 happen and deliver as much value as possible to facilitate (although not fully fund) the road lowering and enable Phase 2. It is all something of a muddle, which arises from the simple fact that a great deal has changed since April 2008, and that such major regeneration projects are inescapably complex and difficult to deliver.

¹⁵ Condition 34 attached to Planning Permission P/2012/1141

95. It is not within my remit, in assessing this appeal, to judge whether the current delivery approach ('component by component' led by SOJDC) is the right one or indeed, whether it is able to fully deliver a now eight year old Masterplan ambition in its entirety. However, it is my role to note that the current delivery approach is substantially different from that set out in the Masterplan and that development is proceeding without the performance obligations and guarantees that the Masterplan set out. It may well be that this is inevitable and unavoidable, but the Masterplan has not been updated (or a 'Plan B' produced) to reflect these changed circumstances.
96. Consequently, all of this does create fertile ground for views and allegations that delivery may fail once the relatively easy and valuable elements are delivered (i.e. building offices on the surface car park) or that the Masterplan will need to be substantially diluted and less public benefit achieved (the Appellant already considers this to be the case). However, it should be noted here that, even with a comprehensive DA approach, partial delivery of, or substantial changes to, ambitious masterplan schemes are not altogether unusual. The real world of economics can have powerful mediating and sobering effects on an urban designer's initial vision.
97. The critical matter today seems to be whether there are sufficient enablers and value generators to cross fund the substantially harder and costlier elements of the Masterplan and whether the States itself is prepared to countenance and underwrite the substantial capital costs and project risks involved in delivery (that Harcourt was originally intended to hold). If it is, then it is a straightforward matter to update and reconfirm the Masterplan. If it is not, then a different approach will need to evolve. These are not matters for me to determine, but it is important that I identify them as their unresolved state has Planning implications, not least of which is the substantially diminished weight that can be applied to the Masterplan 2008. Until these uncertainties are resolved, I sense that disputes such as this appeal and elements of public opposition will recur and continue.
98. I turn now to what all of this means for Building 5 application. Planning decisions often have to be made against less than perfect Planning policy frameworks. It is not my place to criticise the 'piece by piece' delivery approach being pursued. It is simply a fact that individual component applications have already been submitted and approved and that one scheme is already under construction.
99. In my view, the concerns expressed about delivery are much broader project ownership, approach and governance issues, rather than any inherent Planning flaw within the Building 5 application itself. The Appellant may well consider that the individual application approach itself is a symptom of a greater malaise, but I cannot see any Planning justification

for departing from the accepted convention of assessing the application on its own individual merits.

Overall Masterplan weight and conformity conclusions

100. I consider that the Masterplan 2008 is out of date and in need of review and that, therefore, its weight in Planning decision making is diminished. Notwithstanding this finding, I assess that the Building 5 proposal accords with the Masterplan and contributes to the delivery of part of its ambition. I conclude that whilst the delivery approach being pursued by SOJDC is very different to that envisaged in the Masterplan, the Building 5 proposal should be considered on its individual Planning merits.

Design Code for the Esplanade Quarter 2008 – weight and conformity

101. Policy BE 2 makes no reference to the Design Code so, arguably, it is not part of the 'planning framework'. However, it is clear to me that the Code is inextricably linked to and inseparable from the Masterplan (which directly references it). It was produced by the same masterplanners, and provides a finer grain of detail. One curiosity, never quite explained, is that the Design Code actually makes some changes to the Masterplan itself. Of note to this appeal is the change, on the current Building 5 site, from an eight storey residential block (in the Masterplan) to a seven storey office block, set within a broader 'office zone' (in the Design Code). I consider that the Design Code does have weight but should be considered closely alongside the Masterplan itself and a pragmatic view taken on any inconsistencies between the two.

102. I consider that the Building 5 proposal has a very strong conformity with the Design Code in terms of its design approach, architectural quality, public realm and land use.

The Masterplan Amendment 2011 – weight and conformity

103. Through this appeal, there has been much discussion and consideration of the 2011 Masterplan amendment which included some adjustments to buildings and spaces in the eastern part of the site. Despite all of the evidence I have heard, I am still unclear as to its actual meaning and purpose. It seems to be a post 'Harcourt' reaction to tweak the Masterplan, in the light of some office market soundings, to pave the way for the beginning of a Phase 1 delivery, presumably on a component by component basis. However, it is supported only by a brief and rather enigmatically worded report and was not subject to any public consultation.

104. Some consider that the Masterplan Amendment was actually a veiled 'paradigm shift' from the comprehensive delivery approach (Harcourt) to a piece by piece approach (component applications by SOJDC). However,

there is nothing in the report that articulates such a shift in delivery or how all of the pieces would ultimately be funded and delivered.

105. In terms of the building / public space amendments in the eastern part of the site, I can understand that real world commercial soundings may result in the need for some adjustment. However, those are the sorts of refinements that can readily be dealt with through planning applications and associated consultation and decision making. As the Department has stated in its case, a masterplan is not a straitjacket.
106. The report also states that the road lowering would be a 'later phase' but gives no detail of when that would be or, indeed, how it would be funded or delivered without the contractual mechanism of a Development Agreement and the bonds and guarantees that had been previously stated and required.
107. It was also revealed, through the Hearing process, that the published amended Masterplan drawing was grossly distorted and out of scale (a corrected version now appears on the Department's website).
108. For all of the foregoing reasons, I have concluded that very limited weight can be afforded to the Masterplan amendment. That said, there is no real tension between it and the Building 5 proposal.

Other matters

109. There has been concern expressed by some about ground contamination and dust emissions. These were not issues included within the grounds of appeal and are largely technical and regulatory matters. In my view, they are adequately dealt with by Planning conditions and other environmental controls. It will be for the Applicant to comply with these and for the relevant regulatory authorities to undertake any monitoring and compliance duties.

Overall assessment and recommendations

110. This has been an unusual and extremely complex third party Planning appeal. I have carefully examined every aspect of the Appellant's case, along with the submissions of other parties and a mass of background documents.
111. In my view, there can be little doubt that the Building 5 proposal strongly accords with most of the relevant policies in the Island Plan. Indeed, I find that it is a positive and high quality development that supports many of the Plan's strategic, economic and more detailed technical policies.
112. The cause of disagreement in this appeal has been Policy BE 2 of the Plan, which prescribes significant weight to two documents that sit outside, and predate, the Plan itself. These are the SPG 2006 and the Masterplan 2008.

I have listened to the very different views about the content of these documents, their interpretation and the weight that should be applied to each. I have taken full account of these in reaching my conclusions.

113. My analysis is that the SPG retains considerable weight and that the Building 5 proposal strongly accords with its content.
114. I also consider that the proposal accords with the principles of the Masterplan, but I must ascribe considerably less weight to this document as I consider it to be in need of review. I am not convinced that the Masterplan is sufficiently up to date and robustly 'sense checked' to provide a sound Planning Framework for delivery today. Its aspiration, objectives and vision remain strong, but there are questions and concerns about its overall viability and deliverability.
115. Overall, when all material consideration are considered together, I conclude that the proposal accords with the Revised Island Plan 2011 and that, accordingly, the appeal should be dismissed and the planning permission for Building 5 should be confirmed.
116. However, it will be apparent from this report that there are matters, outside the remit of the appeal proceedings that I have conducted, that warrant some further consideration. These include the need to update the Masterplan element of the Planning framework for this critically important regeneration area. Without a sound framework that responds to changed circumstances and the different delivery approach now being pursued, some of the risks and concerns articulated by the Appellant and others may grow and public, and indeed investor, confidence may decline. Moreover, Jersey may not secure the full potential and best outcomes from the Esplanade Quarter.
117. My formal recommendations are twofold:
- A. That the Minister dismisses this appeal and that the Planning Permission P/2014/2192 be confirmed.**
 - B. That the Minister gives consideration to the findings of this report in terms of the case to review and update the Masterplan for the Esplanade Quarter 2008 to provide a sound basis for future decision making and scheme delivery.**

P. Staddon