



14 October 2015

Planning and Environment Minister
Planning and Building Services
South Hill
St. Helier
JE2 4US

Dear Minister

Building No 4, SoJDC Esplanade car park development. Complaint.

We wish to lodge a complaint with regard to breaches in the Planning Conditions set out for the above development.

We have previously reported other breaches of the planning conditions to the Planning Department, in April, which they confirmed were “in all likelihood” breaches but upon which the Department chose not to take any action. (See appendix c). The Department and Law Officers have a duty to enforce the Law properly on behalf of the public - particularly, as we outline below, in environmental matters with significant long term implications. It is important for the States of Jersey to be seen to act correctly under the Law, especially as the development is being undertaken by a States / public owned entity.

Our own complaint comes after several months of complaints received by our organisation from the public, as well as our own observations. It deals with air quality, airborne dust from the site, and surface water contamination. In short, we feel that inadequate protection and consideration has been given to public health, since this site has been classified as a ‘Red Category High Risk Site’ by the Environmental Health, Public Health Department (see appendix a) and contains known and considerable deposits of incinerator ash and other toxic substances including asbestos.

DUST AND AIR QUALITY

Whilst we acknowledge that there is dust monitoring equipment on site to protect the work force, there has been no monitoring of dust in public areas. Much of the deep drilling into contaminated fill and the resultant dust has occurred at the north east corner where the sea wall is being breached. Our video clearly shows dust blowing straight off the site, east, along the Esplanade towards the bus station. This dust would not have registered on site monitors. Video confirmation of this can be found here: <http://axiomci.com/downloads/dust.mov>

In the absence of any accurate measurement, it has been assumed that such dust does not contain harmful pollutants. However, according to statutory nuisance law 1999, dust is regarded as nuisance, therefore, it should have been abated through an abatement notice to the contractors.

Since the effects of the pulmonary ingestion of a minute quantity of asbestos fibres is known to cause cancer up to decades later, we consider the lack of legal enforcement to be totally inconsiderate.

In July 2015, responding to several complaints received by the public, we contacted the Regulator of Environmental Health, Mr Peter Brown. He agreed that the initial dust blowing off the site was from topsoil that had not been covered properly (see appendix a). He said that this was an isolated incident and would not happen again. Mr Brown assured us that the public would very soon be protected by dust monitoring equipment which would be placed in the public areas such as the junction of Castle Street and Sand Street. We had also been assured by Lee Henry, CEO of the States of Jersey Development Company (SoJDC), at an earlier meeting in May, that the air quality data would be available and posted online daily. **These data are still unavailable.**

From an email from Mr Brown to SOSJ Committee member Jacqui Carrel, dated 29th September, 2015 (see appendix f) he confirmed the information shown in red:

1. Dust monitors ordered - Sometime in late July/early August (by JDC)
 2. Dust monitors received - 16 September
 3. Dust monitors found to be defective - 18 September and returned - 22nd September
 4. New monitors received Not yet. Followed up this morning and currently in the hands of UPS for re-delivery to Jersey.
 5. Working dust monitors installed. Not yet. Hopefully by next week.
- When the real time monitor is returned, the intention is that it will supply live data which will be made available for public view in real time.

Mr Brown reported to us that he had suggested to the SoJDC back in April that they should take background levels of air quality / before work started to get a 'baseline level', but they had been slow to order the equipment. It transpired that this arrived only on 16th September, but was found to be faulty. It was returned on 22nd September and was still not fitted as of 29th September (see appendix f). The excavation continues, and the demolition has commenced without the required dust monitors being in place to safeguard the public who have therefore been exposed to risk from the time when the tarmac was first lifted in June.

Mr Brown forwarded one complaint from Mr Andre Ferrari to the contractors and assured him on 18th September that he would shortly be receiving a response from them. As of date of writing, Mr Ferrari has not received one. (see appendix d). (Mr Ferrari was on the Waterfront Design Group formed by Senator Freddie Cohen when the Senator was Planning Minister.)

Further episodes of dust blowing from the site up the Esplanade were photographed on different days and the above mentioned video was sent to us on 3rd September 2015. It clearly demonstrates the problem which is described in detail by a member of the public (see appendix d). So on 3rd September the dust problem was still not solved, but more importantly, the public had been exposed to it with no adequate monitoring in public areas.

Here we refer to the terms contained in the Construction Environmental Management Plan (CEMP) which states: (our emphasis shown in red)

“Condition 18, of the Planning consent for Building 4 P/2012/1141, provides for the prevention of contamination under policies GD6, BE2 and NR1 of the Island Plan 2011, for which a CEMP has been agreed by the Planning Minister and which should be implemented in full..... The plan shall include an implementation programme of mitigation measures to minimise any adverse effects of the proposal and shall include:

(A) “A demonstration of best practice in relation to noise and vibration control and control of dust and emissions “

The CEMP, in Section 5.4.3 confirms: “The Contractor will develop a dust monitoring strategy in association with an air monitoring specialist Contractor.“

Clearly this has not been implemented despite the planning condition providing for a demonstration of best practice. **This constitutes a clear breach of the planning conditions and shows the contractor/developer is not following the CEMP. Moreover, it may constitute a breach of statutory nuisance - Jersey law 1999.**

PUBLIC HEALTH RISK

It should be noted that the public, including infants in nursery groups - <http://www.axiomci.com/downloads/photo3.jpg> - pass by just a few yards away from workers wearing full hazmat equipment - <http://www.axiomci.com/downloads/photo5.jpg> . They are only separated by hoardings which do not do enough. Wind hitting the boards will merely lift over it, carrying dust, and gaps underneath means waterborne contaminants can also spread as water leaks underneath.

The video and the photos demonstrate both these events. Dampening the ground (in order to stop airborne dust) means some fibres can be caught up in the ground water and spread around the site. Whether or not the water dries off, asbestos particles become trodden on and spread. Therefore, the ground must be kept dampened all the time and all runoff collected (but how?).

Air quality monitoring takes place in the UK and should be done here at points all around the site’s hoardings. We contend that the public are not and have not been adequately protected. Should they ingest even a small amount of asbestos fibres, they would be at risk of developing respiratory disease in years to come and even mesothelioma. The States of Jersey, if faced with legal action against them, would be confronted with evidence that there were no dust or asbestos particle monitors in public areas during the critical period when the excavation was in its earlier stages, also that large amounts of contaminated material were exposed to the elements, especially to often strong south and westerly winds. In fact this letter itself will constitute a public record that might be used in the future as evidence, relating public observations and concerns as well as our own.

SOS Jersey consider that, even as a basic precautionary measure, the nearby pavement should have been closed off and plastic erected on scaffolding much higher than the present hoardings. The absence of dust monitoring equipment in the north and eastern areas (the direction that the dust mostly travels), has exposed the public to airborne particles of potentially hazardous substances.

In the past few weeks, the contractors have erected blue netting in the north east corner in an attempt to minimise the dust. Protection to the public from fine particles of dust (particularly those that will contain asbestos particles) will be minimal, and from the junction of the Esplanade and Sand Street, no protection at all from a south or south east wind. This demonstrates a reactive approach to public safety rather than a planned proactive approach. A photo of this partial screen (which already has large holes in the outer skin) can be found here: <http://www.axiomci.com/downloads/meshwest.jpg>

CONTAMINATED WATER

With regard to the second part of our complaint, that contaminated water is being sprayed onto the road, then escaping into public drains. It has been pooling around the feet of pedestrians as seen in photo 8 - <http://www.axiomci.com/downloads/photo8.jpg> . The water must surely contain contaminants from the workings - has it been tested? Have the contractors or officers from the Environment Department taken water samples across the site? The run off goes out to sea via surface drains and we refer to the relevant condition:

CEMP states in Section 9.4.1 Site Drainage “ Under no circumstances will waste chemicals, fuels, silt or sediments be discharged to the drainage system, surface water or groundwater.”

Please see the photos showing the contractors workforce, some in protective clothing, sweeping/hosing sediment in to the road and main drains on repeated occasions over the last 2 months. It should be noted these are a few of the incidents we happen to be aware of and it is likely there are others which we haven't recorded. This constitutes a clear repeated breach of the planning conditions and which show the contractor/developer are not following the CEMP.

It is certain that sediment from the workings (including contaminated leachate) has been flushed into the drainage system and ultimately out to sea and it is in conflict with Jersey Drainage Law 2005 and its amendments in 2014.

THE SEA WALL BREACHES

Our final concern is not part of the complaint but is an issue we wish to put on record. This is the breaching of the old Georgian sea wall, particularly deep below ground level at the north eastern boundary.

In June 2013, SOS Jersey Chairman Michael du Pré and Co-ordinator Dave Cabeldu met the CEO of the SoJDC Lee Henry and the (then) Planning Minister, Deputy Rob Duhamel, plus the Director of Planning, Peter Le Gresley and Principal Planner John Nicholson. this was to request that the building be rounded at the north east corner to follow the wall and the promenade. The reasons were both aesthetic and because we believe that breaching the wall at this point in particular might open access to the town ground water which the wall used to separate from the contaminated ground waters of the Esplanade site. This issue has not adequately been taken into consideration and may well cause problems in the future.

The SoJDC wanted extra 'badly needed' office floor space and would not accommodate our request. The Planning Minister and his officers did not support our suggestion and the plans were passed. Sadly, work started before the promised conditions of the building being fully let before work began were adhered to. We have watched the butchering of the Georgian sea wall with great sadness when a slight alteration in the footprint of Building 4 would have greatly lessened the negative impact of this building.

We look forward to hearing from you regarding the complaints raised and the action(s) the Department will be taking. The matter is urgent. May we suggest, given the importance of safeguarding public health, that demolition is stopped until the monitors are in place and the required air monitoring specialist contractor is appointed. We have sent a copy of this letter to the Law Officers' Department to make them aware of these matters in the public interest and to ensure the complaints are dealt with objectively under the Planning Laws.

Yours Sincerely

Dave Cabeldu
Co-ordinator
for, and approved by, the Committee, SOS Jersey

c.c. Law Officers Department

Appendices Attached:

Appendix 1: (a), (b), (c), (d), (e) one file, (appendix1.pdf)

Appendix 1:

a) Key to and hot links to high resolution photos and video.

b) Response from Alistair Coates dated 11th April, 2015

c) Sample of emails from office workers above the site, concerned residents, plus mail to Peter Brown from Andre Ferrari 17th September 2015 and Mr Brown's response - 18th September 2015

d) Email from SOSJ's Dave Cabeldu to Peter Brown and his response - 7 Sept 2015

e) Email from SOSJ's Jacqui Carrel to Peter Brown and his response confirming lack of dust monitoring equipment in public areas - 29 Sept 2015

Appendix 2: Letter from Peter Brown, Environmental Health officer, to States of Jersey Planning Department - 20 March 2013. (appendix2.pdf)