WQ.84/2019

WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
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ANSWER TO BE TABLED ON TUESDAY 12th FEBRUARY 2019

Question

By what legal provisions does the Minister for the Environment assess the public interest in deciding planning applications on major projects which are not in accordance with the Island Plan and what alternative mechanisms for assessing the public interest are available to the Assembly?

Answer

The determination of all planning applications inherently involves assessing the public interest. The assessment by the Minister for the Environment ("the Minister") is by way of an inquiry under the Planning and Building (Public Inquiries) (Jersey) Order 2008 ("the 2008 Order"). The 2008 Order requires the inspector to prepare a report to the Minister, collating and summarising the evidence submitted, setting out his findings and the grounds for them.

The Minister is the ultimate decision maker for planning applications determined by him under Article 12 of the Planning and Building (Jersey) Law 2002 ("the 2002 Law"). There is no mechanism under the 2002 Law for the assessment of the public interest to be made by anyone else, including the Assembly.

Detailed answer

Planning is concerned with land use from the point of view of the public interest. The public interest is always engaged and is part and parcel of any grant or refusal of planning permission, irrespective of whether the application concerns a major or minor project.

This is because the right for a person to do as they please with their land has been curtailed by planning legislation. Since the introduction of comprehensive planning control under the Island Planning (Jersey) Law 1964, which came into effect on 1st April, 1965, ownership of land no longer carries with it the right to use or develop land as an owner thought fit. Ownership only carries with it the right to continue with the use of land for its existing lawful use, or the right to apply for planning permission.

The requirement for planning permission cannot operate in a vacuum. Planning decisions are taken having regard to planning policy, the most important policy document of which is the Island Plan, as approved by the States.

Broadly put, the duty under the 2002 Law is to assess all applications on planning principles, in accordance with the Island Plan, for the public good. The Island Plan is a significant document. In general, planning permission shall be granted if the proposed development is in accordance with the Island Plan. There is discretion to grant permission that is inconsistent with the Plan if the relevant decision maker is satisfied that there is sufficient justification for doing so. The unwritten corollary in the 2002 Law is that applications inconsistent with the Island Plan will not generally be granted permission.

The Minister will only be the decision maker for major projects or developments that would be a departure from the Island Plan.

This is because Article 12(1) of the 2002 Law provides:

> "*This Article applies in respect of an application for planning permission where the Minister is satisfied that if the proposed development were to be carried out –*

> *(a) the development would be likely to have a significant effect on the interests of the whole or a substantial part of the population of Jersey; or*
>
> *(b) the development would be a departure (other than an insubstantial one) from the Island Plan."*

Article 12(2) is unambiguous in its terms:

> "*Where this Article applies –*
> ***a) the Minister, and only the Minister, shall determine the application****; and*
> *(b) the Minister shall not do so unless and until a public inquiry has been held concerning the application.*" [Emphasis added]

The Minister cannot abdicate his decision making.

Article 12(3), provides that "*The Minister shall take into account in determining the application representations made at the public inquiry*".

If the terms of reference require the inspector to draw conclusions or make recommendations, they must be included in the report. The duty is to give the Minister a fair account of the evidence on which the inspector has based his report.

The Minister's discretion is not fettered by recommendations of the inspector since it is the Minister who bears ultimate responsibility for the decision. Nonetheless the Minister may adopt the reasoning of the inspector, so that the reasons of the inspector become the reasons of the Minister.

The responsibility for determining planning applications dealt with by way a public inquiry under Article 12 is placed on the Minister, and not the Assembly or individual politicians. The Assembly can form a view on a proposition properly adopted, and there is nothing wrong in the Minister taking that view in to account where it raises material planning considerations – as long as in so doing he does not abdicate his responsibility (*IDC v Fairview Farms* [1996 JLR 306 at 314]).

The 2008 Order does not enable the Minister himself to seek the opinion of the States as part of the Inquiry process. If the Minister wished to seek the opinion of the States on a particular planning consideration, this would require an amendment to the 2008 Order.

The Minister must have regard to all considerations that are material to an application. Material considerations are those considerations that serve a planning purpose. A planning purpose is one which relates to the character of the use of land. There is therefore some breadth as to what is capable of being a material planning consideration.