

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 3rd JUNE 2014**

Question

Given that Article 7(4) of the Planning and Building (Jersey) Law 2002 states that a person may be convicted of an offence under this Article despite the fact that (a) an enforcement notice or a condition notice has been served in respect of the breach of development controls; and (b) every step required by the notice to be taken has been taken, could the Attorney General advise Members, through the use of examples, where he feels that a prosecution under this provision would be in the public interest and where he does not if a person so served with an Enforcement Notice complies fully with the terms of the Notice?

Answer

Article 7(1) of the Planning and Building (Jersey) Law 2002 provides that a person who develops land except with, and in accordance with, permission shall be guilty of an offence. Article 7(4) makes clear that a person may be convicted of such an offence despite the fact that an enforcement notice or a condition notice has been served in respect of the breach of development controls, and every step required by the notice has been taken.

There are two stages in any decision to prosecute. The first stage is the evidential test, that is, whether there is a realistic prospect of conviction. The second stage is the public interest test. In cases of any seriousness a prosecution will usually be appropriate unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. In the case of an infraction, a prosecution is likely to be in the public interest if, for example, the breach was significant, or deliberate, or was one of a series of breaches which suggests a persistent lack of conformity with the law. A prosecution may not be in the public interest where the breach was minor, or the result of a genuine mistake or misunderstanding, or where the Court is likely to impose only a nominal penalty and the accused has taken steps to remedy the breach. However, it will be necessary to consider each public interest factor in the circumstances of the case and go on to make an overall assessment.

In the case of a planning infraction, where an enforcement notice has been issued and fully complied with, my Department would give careful consideration as to whether a prosecution would be in the public interest.

Each case is difficult and must be considered on its own facts applying the principles set out above. I do not think that it would be helpful to refer to specific cases for the purposes of comparison as it would be necessary to consider in detail all the relevant facts and circumstances of those individual cases.