

STATES OF JERSEY



MINISTER FOR PLANNING AND ENVIRONMENT: POWERS

Lodged au Greffe on 5th October 2010
by Deputy R.G. Le Hérisier of St. Saviour

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to request the Privileges and Procedures Committee, in consultation with the Minister for Planning and Environment, to examine the Minister's current powers with regard to planning applications so as to establish whether the extent of powers vested in that one individual should be reduced; and
- (b) to request the Privileges and Procedures Committee to report to the States with recommendations by 1st June 2011.

DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

REPORT

Introduction

Concern over the extent of the Minister for Planning and Environment's powers were expressed as long ago as 2007 in S.R.2/2007 – 'The Planning Process' presented to the States on 16th January 2007 by the Environment Scrutiny Panel (see Appendix). While the issue was raised in the context of who was "supreme" in Planning matters, the Minister or the States, the issue was seen as exacerbated by the Minister's ability to make important and critical decisions on his own.

Focus of Proposition

The focus of the Proposition is to examine the Minister's current powers with regard to planning applications and to see whether they need to be exercised by a Committee or Panel so that stronger checks and balances are in place.

It may be argued that the Minister decides within the context of the Island Plan, as would be the case with any successor body. However, the application of the Plan depends upon the exercise of considerable discretion and judgment. Most critically, the decisions of one individual, the Minister, can have enormous financial implications – good or bad. While the post is undoubtedly performed with commitment and integrity, it is wrong to place one person under such pressure, notwithstanding the availability of avenues of appeal.

A reversion to the previous Committee structure?

It is highly likely that the solution would involve resurrecting a Committee or ensuring that the Minister works, *primus inter pares*, with a Planning Applications Panel. No-one pretends that this will make Planning decisions more "popular" but it would make it easier to argue that, with the introduction of more checks and balances, the process was more robust. Furthermore, a reformed process should benefit from a diversity of views where members are challenged to justify their stances.

Obviously, if a Committee-type solution is proposed, there still exists the issue of a dominant Chairperson strongly influencing decisions. That is a challenge for all groups and not a reason to stop reform.

Reform in isolation?

I have been asked whether this should be proposed alongside the current Proposition (P.120/2010) proposing reforms to Ministerial Government and Scrutiny. However, I have been persuaded that the issues are so important as to merit a standalone debate.

Disclaimer

I would like to make it clear that this Proposition is not a reflection upon the manner in which the Minister has exercised his powers. Indeed, I pay tribute to his commitment and dedication to the task in hand. There is an important issue of governance viz what checks and balances should be in place to ensure decisions can be fully justified and to ensure that Ministers, operating as individuals, are not exposed to improper pressures.

Financial and manpower implications

There are no financial or manpower implications arising from this Proposition as I believe that this review can be undertaken within existing resources.

Extract from S.R.2/2007 'The Planning Process'
Presented to the States by the Environment Scrutiny Panel on 16th January 2007

- 15.12 It was clear to the Panel that a significant number of members of the Assembly were uncomfortable with just how much power had been delegated to the Minister. Moreover, the number of occasions on which the States had debated requests to reduce density levels on Category A sites, the relatively heated nature of those debates and the resulting votes cast indicated a need for the States Assembly to regain a greater degree of direct control over the planning process. The Assembly had considered and subsequently adopted the Island Plan. Surely it was also right that the Assembly could direct the Minister as to how the policies within the Plan should be interpreted?
- 15.13 The matter of directing the Minister was considered to be particularly important following the move to ministerial government. Panel members had become aware that there might be excessive scope for interpretation of policies within the current Island Plan [30]. Prior to 2006 decisions were made by a committee or sub-committee of between 3 and 7 members. This 'consensus' approach provided a moderating environment; however, the onset of ministerial government concentrated that delegated power in the hands of just one Minister and his Applications Panel. Accordingly there was now greater potential for marked changes in policy whenever a new Minister was appointed.
- 15.14 The current Minister for Planning and Environment, Senator F.E. Cohen, experienced the supremacy issue at first hand on 4th July 2006 when he took part in the States debate on a proposition, lodged 'au Greffe' by Connétable G.W. Fisher of St. Lawrence, concerning the Category A housing site at Bel Royal.[31] This proposition requested the Minister to bring to the States for approval an amended paragraph 8.71 of the Island Plan designed to limit the number of homes built there. Prior to that debate the Minister had already told Scrutiny –

'You cannot say to the Planning Minister: "You run it unless we decide as a States body we want to interfere" because that will not work. So I am afraid the decision has already been made that the Planning Minister will make the planning decisions and the States' right of censure is to get rid of him. That is the system. I do not think you can really improve it.'

- 15.15 In a public hearing held in September 2006, after the Bel Royal debate, the Minister clarified that he respected the right of States members to raise planning issues in the States Assembly. He nevertheless maintained –

'I think it would be a mistake to end up in a position where the Planning Minister cannot make any decisions and effectively every controversial decision is made on the floor of the States. We would never get anything done.'

15.16 The Minister added –

‘You really just need to make sure that you have [a Planning Minister] who respects the authority of the States... I agree you have a problem if you get somebody who does not respect the authority of the States and goes off as a maverick and makes decisions – but he will only make one.’

15.17 The Panel had some difficulty in accepting the Minister’s suggestion that a revised system limiting the autonomy of the Minister would bring the process grinding to a halt. Furthermore, it was concerned that members of the public were unable to understand why a Minister should be able to ignore the will of the States Assembly. Such a situation was likely to encourage voter apathy. If an elected representative was perceived to be powerless, what would be the point of voting for him or her?