SOCIÉTÉ JERSIAISE
ENVIRONMENT SECTION

4th May 2006

Dear Deputy Baudains,

The Planning Process.

I regret that I have been unable until this late stage to submit comments on behalf of the Environment Section of the Société Jersiaise as invited by the Environment Scrutiny Panel. I hope that we are not too late. We found that the Terms of Reference that were quoted formed a convenient sequence in which to deal with the various aspects.

1a) As to the role performed by officers during the pre-application process, we feel that there is confusion in the minds of both applicants and the public in general as to the status of comments that may be made by officers at this stage. Some years ago, shortage of staff meant that the advice of particular officers could not be requested, although the advice of a Duty Officer could be sought. We are not aware that this approach has been formally abandoned and we believe that the general public are probably unaware that they are able to request advice. The formal position should be publicised.

Once obtained, there is uncertainty as to the status of that advice, It would be best if the policy were to be that the advice had no formal validity. It needs to be made very clear that, while the advice could be relied upon in so far as it related to the process that should be followed, any advice as to the merits of an application was based on the officer's reading of the import of relevant Island Plan policies and should not be relied upon as an indication of the likely decision that might be taken by a Committee when considering an application. It must be made absolutely clear that the advice given by an officer implies no commitment as to the Committee's interpretation.

A Supplementary Planning Guidance could be developed which explains the planning process, possibly in the form of a 'flow chart'.

1b) As to the value of the process to potential applicants, it should be made clear that possible lines of the process are that there could be (i) the above relatively informal advice, (ii) an application for approval in principle and (iii) eventual full approval. The Schedule of Fees should be explained to applicants at an early stage.

It may be appropriate here to express our concern over the practice of receiving 'approval in principle'. Once the principle has been conceded, it is difficult to halt the progress of an application towards implementation of the project. Although this may be to the benefit of the developer, it is not in the interests of fairness to those who may object to the project. The eventual appearance of a development may be very different from that on which a Committee has based its general approval; the final design may even be given by the developer to a different architect and with a different brief. In practice, objectors have great difficulty in opposing changes which often receive limited publicity. What may appear to be minor changes can seriously affect the acceptability of the end product. We suggest that 'approval in principle' should not take place and an unacceptable application should be rejected in toto, possibly with an indication as to its perceived shortcomings, although this could place a Committee in difficulty when dealing with a later application.

1. c) As to the degree of neighbour/public involvement, the whole decision-making process should be as transparent as possible. Applicants should be required to place proposals in the public domain as soon as possible and at every stage in the process. Notice in the press, though desirable at later stages, should not be relied upon. Clear notices should be displayed in the vicinity of the site where development is proposed: these should contain general details of the proposal together with information as to where further details can be obtained. In some instances - perhaps all - relevant information could be made available at the appropriate Parish Hall.

2. The new Planning and Building Law 2002 has been developed through a long process of public consultation. There was ample opportunity for everyone to comment on the proposals as the Law passed through the various stages, and before the Law, which was prepared and presented by the Planning Department, received the approval of the Island's governing body nearly four years ago. It reflects badly on the consultative and legislative process when the Planning Department has chosen not to take the final step in bringing the Law into operation.

It is believed that an element of the Law which has not found favour within the Department is connected with the possible financial consequences of allowing third parties to appeal against decisions, despite that matter having been the subject of specific debate within the States. The opportunity to appeal against decisions is allowed to developers but is denied to objectors. It says little for the democratic process when a Department is able to block a decision of the States.

As to the effectiveness of the imminent Law, this cannot be judged until it is in operation. To the best of our knowledge, no significant environmental factors have emerged over the four years following consultation and States' debate. It is therefore most desirable that the Law

should be brought into operation as soon as possible. However, we note that, having been drawn up under the then- extant system of government, some up-dating will be necessary to reflect the current structur. Recognising this, we nevertheless hope that this could be dealt with as a formality rather than requiring debate and yet more delay.

3. As to influence on decisions taken by the various bodies -

(a) Island Plan policies were drafted for no other reason but to direct the decision makers as to the course the Island has agreed should be followed.

b) precedent should not necessarily be a deciding factor: a bad decision should not be exempt from re-consideration - each case should be considered only on its merits

c) the prospect of litigation on the part of applicants should not be an influence on decision making. Although there may be occasions where a complainant may consider there is a legality on which a decision may be chalenged, if the Minister or the Committee believes that the intention behind the law is clear and that whatever action was taken was justified, there should be no hesitation in being prepared to defend the decision.

4. As to the extent to which officers within the Planning and Building Services Department exercise delegated powers, the general public is unaware what these powers are. They should therefore be clarified, defined and published. It should be recognised that what may appear to be a minor matter be turn out to be highly significant. ie, although the addition or removal of planned balconies might be of minimal importance individually, the combined effect on the appearance of a large building might be dramatic.

These powers are particularly important when matters relating to BLIs and SSIs are being considered. No decisions connected with such buildings should be taken without prior reference to whatever advisory body is currently in place.

5. We are not aware of the extent of, and implications arising from, limitations on the ability of the States to direct the Planning Minister. We believe that many members of the public are in a similar position. Similarly, the powers of individual Ministers are now not generally apparent. We suggest therefore that there needs to be public debate on these points and on all the implications of the recent change to Ministerial government.

Yours sincerely

R. Anthony

Chairman