

3.6 Deputy T.M. Pitman of St. Helier of the Minister for Planning and Environment regarding damage by a developer to properties or the foundations of neighbours' properties who had objected to the development:

Who is responsible upon the passing of a planning application if damage occurs as a result of the consequent work to the properties or foundations of neighbours' properties who had objected to the development?

Senator F.E. Cohen (The Minister for Planning and Environment):

Responsibility for damage to adjoining property lies with the person carrying out the building work. It is common practice, although not a legal requirement, for developers to undertake a conditional survey of surrounding properties prior to the commencement of work. The report is usually agreed with the neighbouring residents. The purpose of this is to provide a baseline survey of the condition of neighbouring buildings and walls for comparison in the event that damage is subsequently claimed. This is a practice similar to the requirements, of course, under law of the Party Wall Act in the U.K. In addition, reputable developers and builders usually operate with indemnity insurance to cover against damage to neighbouring property. However, damage to a neighbour's property is a civil matter. Nonetheless, I have in a number of cases, where I am aware of potential damage to neighbours, conditioned planning consents to ensure that developers undertake surveys and are covered by insurance before development commences.

3.6.1 Deputy T.M. Pitman:

I thank the Minister for that and he has partially answered this question. However, to what extent does his department consider such information put forward suggesting that damage might occur? For instance, one area in my own district where builders suggest it will need pylons sunk 90 feet or more into the ground where subsidence has already occurred, how much does that get taken into consideration when his department is considering those planning applications?

Senator F.E. Cohen:

If neighbours alert us to their concerns, we will always take those concerns into account and, as I said earlier and to reiterate, where those concerns have been raised at my public planning hearings, the consent has been conditioned to ensure that proper surveys are prepared and insurance taken out. But it is largely up to the neighbours to notify the Planning Department of their concerns, albeit the Planning Department are aware and are alert to the issue.

3.6.2 Deputy M. Tadier:

Does the Minister acknowledge that planning conditions regarding surveys and insurance are only of limited peace of mind to residents, for example, who may have construction going on both sides of their houses, as will be the case in the Petit Port, an area which will be in the National Park, and it is very difficult for the person stuck in the middle to prove which building is responsible for any subsidence, any damage that occurs to the property. So will the Minister state if there is any power for applications to be quashed completely if there is reasonable expectation for damage to occur to the property which, while it could be resolved by a legal route, might entail many years of litigation and extreme cost for the person in the middle who is perhaps not so wealthy.

[10:30]

Senator F.E. Cohen:

I do not want to comment on a particular application, and the comments of the Deputy do relate to a particular and rather unusual set of circumstances. All I can say is that issues of damage can be taken into account in any determination and should be appropriately dealt with by the department at the point of determination.

3.6.3 Deputy M. Tadier:

Can I have a supplementary? I will try and make it more concise this time. We have heard that appropriate points can be taken into consideration by the department but will the Minister categorically state whether it is within the department's power to say a development cannot go ahead because they think there is an unreasonable risk that damage will occur on the balance of probabilities and they will not allow that?

Senator F.E. Cohen:

Because of the particular relevance to a particular highly contentious application, I think before answering that question, I would like to seek formal legal advice and I will circulate my response to Members as soon as I receive it.

3.6.4 Deputy P.V.F. Le Claire:

I recall a debate on La Fantaisie Lodge which was being required to be repaired and kept in condition by the owner by the States at great expense. What are we doing in this process? Are we going into people's homes and saying: "Right this is how things are. Let us keep them that way and make sure you keep them that way and pay to keep them that way." Is that what we are doing?

Senator F.E. Cohen:

I think the Deputy's question relates to the previous question.

Deputy P.V.F. Le Claire:

I was confused when I asked the question so now it is worse. [Aside] [Laughter]