

SCRUTINY ENVIRONMENT PANEL

FRIDAY, 23rd JUNE 2006

Planning Process Review

Panel:

Deputy R.C. Duhamel of St. Saviour (Chairman)

Connétable K. A. Le Brun of St. Mary

Deputy G.C.L. Baudains of St. Clement

Deputy R.G. Le Hérisier of St. Saviour

Deputy S. Power of St. Brelade

Witnesses:

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

Mr. P. Nichols, Chief Officer of Planning

Mr. P. Thorne, Director of Planning

Deputy R.C. Duhamel of St. Saviour:

A little bit of housekeeping for us all. When people are called to speak, please ensure you are close to the microphones because the whole of the thing will be written up at a later stage and it is one of these audio presentations and people have to listen to what is being said, as clearly as possible, before being in a position to be able to write it down as a written transcript. Before we start, I have to read out the Convening Notice so that people know where they stand. It is important that you fully understand the conditions under which you are appearing at this Hearing. You will find a printed copy of the statement I am about to read to you on the table in front of you: "The panel's proceedings are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and as a result you are protected from being sued or prosecuted for anything said during this Hearing, although this privilege should obviously not be abused. The proceedings are being recorded and transcriptions will be made available on the Scrutiny website." I would like to welcome you here formally, as Chairman of the Panel. I am not the lead member of this particular planning process review and that is Deputy Gerard Baudains and he is assisted by Deputy Roy Le Hérisier. So, most of the questioning will come from those 2 Members and we will supplement from time to time, as we see fit, in order to flesh out some of the arguments. I was given the opportunity to kick off so I think I will do. It is stated that the system of granting in principle approval is problematic. Notwithstanding that statement, could the panel perhaps offer up any indications as to whether or not they were in agreement with this particular suggestion and

give an indication as to whether or not part and parcel of any perceived problem might well be that the Island does not focus perhaps enough on the formation of very detailed development plans? That is your starter for 10.

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

Deputy Duhamel, do you think you could be a little bit more specific about what you are trying to get me to respond to?

Deputy R.C. Duhamel:

Yes. Basically, the Minister and his Department are entitled to bring to the House development plans in order to flesh out how development can take place in a particular area in Jersey, or indeed particular areas. This technique is used on occasion and we have drawn up plans as indeed we have seen for the waterfront area and perhaps Beaumont and other areas, although some of those plans at times have been shelved for a period of time and not used. Consequently, some of the applications that are made are being made on what could be interpreted as an ad hoc basis, not inside the overall direction of what was laid down within the development plan itself. So, the question is whether or not that causes part of the problems, or the perceived problems, in people applying for planning permissions in principle because in effect if those applications are not particularly tied into a long term developmental plan then there is no way to grade them or to consider them except on the merits of that particular building in itself, rather than how it fits into the overall area.

Senator F.E. Cohen:

Can I confine my response to the only relevant area which I have some knowledge and that is the waterfront? There is perhaps a very good example of where the general structure of development is partly the wrong way around and I think everybody accepts that it is the wrong way around. For example, we are now doing the EDAW Report at the wrong end of the process. Before we started we should have carried out the EDAW Report and it is also a function of how, for example, master planning over a period of time can become irrelevant and there were clear concepts of what would and would not be allowed on the Waterfront some years ago and suddenly the ballpark changed because the developers threw in aspirational requirements that significantly breached the general principles set by the previous master plan concepts. The response to that, instead of: "Well, let us remaster plan bearing in mind the developer's new aspirations" instead of saying: "Okay, stop, we will remaster plan" we somehow ended up in a position where we are trying to rework the old proposals with the new developer aspirations and it is a clear misfit. So, there is a very good example of where the developer-led application process, because that waterfront is developer-led at the moment, does not fit well with the previous master planning concepts. Now, whether that extends further throughout the planning system, I do not know, and perhaps Peter would be better to comment on other applications.

Mr. P. Thorne:

Certainly. On your briefing sheet, and thank you for making that available, I was under the impression with the words used “in principle approval”, you are referring to the in principle applications that we are dealing with, but from the question you are clearly referring to the development briefs and for major sites which really are designed to do what the existing planning law requires the Minister to do. The policy H2, or H1, states quite clearly that the States having zoned the particular housing sites in the Island Plan, the committee, which are the words used in the Island Plan, now the Minister, would produce a development brief for those sites. So, clearly the preparation of the development briefs has been based on a States decision. The reason for them, and again there is a route in Article 3 of the law which says that the Minister may bring proposals for the States to designate land for certain purposes and may indicate how land should be developed. That is not a requirement that those development briefs have to go to the States but the way the policy was worded in the plan is that briefs would be prepared by the committee and it was also agreed that those briefs would be produced in consultation in the localities where they were prepared for. I think it would be difficult to say that the development briefs give any approval in principle. What the development briefs seek to do is to indicate the sorts of things that the Minister would expect to see in an application coming forward to him. Clearly having given those indications it is difficult to retract from them at a subsequent stage, but those indications are given in very broad terms and they indicate, for example, the requirements for services and so on to be produced and we will seek planning obligation agreements to ensure that developers put them in and that sort of thing. So, really they indicate who the developer should consult for information and advice from the public utilities and so on. They indicate the type of layout and style and design and so on which have been put forward but they are written in general terms and they do not constrain a developer to do things in a particular way. Having adopted those development briefs we have received applications, some of which have been approved and development is already under construction, as you know; others are not yet at that stage but subsequent applications still fall to be determined on their merits. What I would say though is that previously the Committee, because I do not think the Minister has approved any of these briefs yet or not on the housing sites anyway, but the Committee has given an indication of the sorts of things it would seek to see coming forward. So, to that extent, yes, they are binding because they would obviously be thrown back in the face if the Minister tried to take a different view later on.

Senator F.E. Cohen:

Can I throw something in? In terms of development briefs I understand why you have picked up on this area. It is quite interesting. I have to be careful not to talk about specific applications but one of the Waterfront applications is governed by a development brief that was approved in 2004. I think I have the date right. Now, effectively, you end up in a position where I think the developer considers that their position is secured by the development brief and they then use that as a baseline. So, I am quite concerned that development briefs should not effectively underpin a level of development that is then seen as a base level to significantly exceed by developers. Clearly, the development brief should be properly constructed and should reflect what the department considers is the appropriate level of

development for a scheme, not a minimum base level scheme. In relation to housing schemes the Director of Planning is quite right, I have not approved any development briefs and I particularly refused to approve one. There was one that was suggested that I approved and it was so close to the application that I could not see a purpose in approving the development brief. So, a development brief, in my view, should be something that is established at the beginning to clearly lay out the principles of development on the site but not the minimum from which you work up and should not be laid before the Minister a week before the application is about to come forward.

Deputy R.G. Le Hérissier:

Thank you, Mr. Chairman. I wonder if I could ask from either you or Peter, if you could tell me what instances have there been, in your experience, where there have been details in briefs which in your view have come back to haunt you?

Senator F.E. Cohen:

I think Peter better answer that.

Mr. P. Thorne:

I have to say none immediately spring to mind.

Deputy R.G. Le Hérissier:

So, what you are therefore suggesting, Peter, is that it is pitched at such a level, if I understand what the Minister and yourself have said, that you do not feel compromised when the eventual application comes in. Because we have this constant allegation made, to which the Minister has referred, that when the brief is published, and when the application follows it you cannot retract it, so to speak, and that the term “legal action” is then used and we somehow seem to have boxed ourselves in. That is the impression given.

Senator F.E. Cohen:

I am not criticising the concept of development briefs at all. What I am saying is that I think that during my term as Minister I will be hoping that development briefs take the full view of the potential of the site and do not act as just a minimum base level from which people think they can work up. I am not suggesting that people will always do that but there is always the potential if the development brief is not carefully constructed and if we refer to the one I know about, the one relating to one of the development areas of the waterfront, there is already a potential that the developer may come forward with something that significantly breaches the development brief. Now, they may be right but the question is, what has changed since the implementation of that development brief to effectively say that the development brief should be cast aside? What I hope we do not end up in the position with development briefs is they are used as a lever to say: “Well, you’ve got to give me that anyway so that is our base level for negotiation.”

Mr. P. Thorne:

Could I add that it might help if I was to make available copies of the development briefs for some of the sites or all of them, if you want them, to show you what sort of things they deal with. They do not deal with it in specifics, numbers of homes or anything like that. They are written in general terms but I see them as part of a sequence where the overall principle of a development is effectively conceded by the zoning and then there is greater guidance given to the applicant in preparing their application. Then they make their application. But if it helps I am more than happy to make copies available.

Deputy R.C. Duhamel:

Is the department satisfied that the resources put into long-term planning and the provision of development briefs is sufficient for those purposes?

Mr. P. Thorne:

My own view is, no, we are not. One of the problems with some of the sites is that it took a long time to produce those briefs anyway, simply because we did not have the staff on hand to do them.

Senator F.E. Cohen:

There is clearly a timing issue in the same way as I said that I was not prepared to approve a development brief that was very close to the application put forward. You do not want to have development briefs donkeys years behind because things do fundamentally change and it may be there is some potential for development briefs to effectively be time-limited but you need to review them after a particular time.

Deputy R.G. Le Hérissier:

I wonder if I could explore this issue of the legal implications of the development brief because this is a matter that exercises the public and they feel that we enter into these things, we have rightly or wrongly been perceived as having compromised ourselves and the threat of legal action is wheeled out. Can you explain to us, Freddie or Peter, at what point is it a legally binding document or the equivalent of a legally binding document?

Senator F.E. Cohen:

Well, I cannot answer as a lawyer. Peter may be able to give you a better answer.

Deputy R.G. Le Hérissier:

Well, in terms of his planning experience.

Senator F.E. Cohen:

What I can tell you is that I know from the perspective of developers that they regard them as legally

binding. Whether they are right or not I do not know but they regard them as binding.

Mr. P. Thorne:

Could I respond to that point? They are not legally binding in the sense that the briefs themselves are not legal documents but the ultimate test of them is effectively a legal one. We deal with the brief, the designation, the application. They are all part of the legal administrative process of planning and the ultimate decision-making process is of course the determination of an application that is made. If that application, say, is refused then it is not unreasonable for the applicant on appeal to the Royal Court to claim the Committee, or the Minister, said this in an earlier policy document and I am entitled to rely on that as indeed they are entitled to rely on other policies in the Island Plan in framing their applications. Now, if having done so, and obviously when producing the briefs in the first place you are giving something of a view on how a site should be developed. If you take a different view subsequently it will be argued that the Court may determine that it was unreasonable to have taken a different view on the application, having already issued that policy document.

Senator F.E. Cohen:

I think to be specific if, for example, a development brief were to say that a particular development could include a certain quantum it would be very hard to come back and say it has then got to be half and developers, very clearly, regard development brief as having some legal significance, whether the development brief itself has the legal significance or whether its weight used in evidence in Court is what gives it legal significance I am not sure of but certainly developers consider development briefs have legal weight and that they can reasonably expect, other than in very exceptional circumstances, that they should be entitled to develop within the parameters set by the development brief.

Deputy S. Power of St. Brelade:

Just 2 simple questions relating to legal action in Roy's question. To what extent, over the last 3 or 4 years and in the recent past, have development briefs generated litigious action or litigious correspondence or litigious activity for your department? In other words, since 2002 and the evolution of the development brief, is your department now dealing with a lot more litigious action than before, and can you give us some indication as to the extent of that?

Senator F.E. Cohen:

I am not aware of any, so Peter will have to answer that.

Mr. P. Thorne:

I think in some ways that is quite a difficult question but it might have an easy answer. None of the development briefs that we produced or since the Island Plan was adopted in July 2002 have come up in any legal proceedings.

Deputy S. Power:

I did not mean legal proceedings, I meant just correspondence from law firms; that kind of thing.

Mr. P. Thorne:

Well, no, because essentially what would have been the Committee with these briefs, the Planning Environment Committee or Environment to Public Services Committee, one or other of them, had agreed these briefs knowingly, knowing what the implications would be and to pass them on to a developer and the developer has produced schemes informally initially and then formally, in an application. We have not refused any applications on any of the sites that have come forward. We have not had one on the site the Minister has been referring to on the waterfront where Deputy Dubras' Committee approved a brief and we have not refused any applications on any of the category housing sites yet. As you know we have been negotiating in discussions and so on with different developers but we have not refused any applications so they have not come up there. Clearly, we have legal advice to this effect. It may well come out in a debate in a couple of weeks time. I am not a lawyer, so do not take this as gospel, but my understanding on the advice that we are given is that there is a legal term of legitimate expectation and that if you ask a question of a public authority you are reasonably entitled to rely on the reply that you get and I would say a development brief falls in that sort of category. You have not necessarily asked a question but the planning authority has given you some guidance and you are reasonably entitled to rely on that and we come back to this point again. In terms of specific examples, no, I cannot think of any.

Deputy S. Power:

Let me ask a simpler question. Are there developers on the Island that are writing to you through law firms, normal correspondence that would be regarded as general correspondence relating to a planning issue?

Senator F.E. Cohen:

I would like to come in here. It would be appropriate to tell you that I am aware of one where I have received a lengthy letter from a firm of lawyers in relation to a contentious housing application that clearly lays out, from a legal perspective, what the developer's reasonable expectations should be but I think it would be inappropriate for me to disclose the particular application.

Deputy S. Power:

No, we do not want that. I was not going to ask that.

Senator F.E. Cohen:

It was a letter that was designed very clearly to lay the cards on the table and to draw the department's attention to the issues relating to an earlier development brief and reasonable expectation. It is the only one that I know of.

Deputy S. Power:

So, the incidence of correspondence relating to planning process applications or development briefs is very limited, you are saying. This is my final question. To what extent do developers take their legal representatives with them to meetings at South Hill?

Mr. P. Thorne:

Very, very rarely.

Deputy R.C. Duhamel:

It was indicated earlier that perhaps there are insufficient resources in the department to look at long term planning issues. If indeed further resources were made available, to what extent would that bring benefits and what would those benefits be in terms of the easing of the particular problems that are perceived within the planning system?

Senator F.E. Cohen:

Can I answer about the resources firstly, and ask Peter to answer about specifics? The Planning Department is, I am totally convinced, fundamentally significantly under-resourced and that is just a function of the changes in the Island's finances and the results of cost-cutting. There are enormous pressures within the Planning Department. Many officers are under considerable pressures. I am aware of one officer who has been burdened with far too much work and is buckling. So, there is a serious resource issue but it is not just constrained to this area. There is a lot that could be improved with additional resources but in practical terms the resources are not available and we have just got to make do with what we've got and there will be some budget reviews. I gave, as you are aware, certain commitments in my election campaign and I will be applying those in time in my own departments, but I will ask Peter to respond to the specifics.

Mr. P. Thorne:

The effect of working with an established resource clearly means that at times of peaks in work, and clearly with the Island Plan having been adopted in 2002, and I will come back to these housing development briefs for example, there was a lot of work following on from the Island Plan. As you know, and it is referred to in our submission, below the tier of the Island Plan we have what we call supplementary planning guides - general planning guides - which interpret how the policies are going to be applied and so on and these briefs really fall into that category and we struggled initially with the resources we had to produce the briefs. We have also had to take a decision again because of the resources and because of the complexities and significance of some of these housing applications to put out the policy planner who dealt with the brief is the case officer for the application. So, they have not been dealt with in the development control side of the department they have been dealt with by the policy planners. That again, in one or 2 notable cases, has taken them away from dealing with the

general raft of supplementary planning guidance which still needs to be done in the department. So, effectively if you only have -- well, you have details available of the numbers of people involved in that area of the department, you only have those 5 people plus 2 historic buildings team in that section as well but the 5 policy planners in that section are clearly limited in what they can do and the effect of it is simply to delay the provision of the things we are looking for.

Deputy R.C. Duhamel:

A final point from Deputy Le Hérissier.

Deputy R.G. Le Hérissier:

Well, it is a 2-part question. The first thing, Peter, is slightly off the point but since we have raised human resources I will pursue it. I thought when the fees went up almost in a quantum leap the whole idea was that it would enable your department, through fee income, to bring on board new staff and you brought on a raft of people in contract terms, as I understand it, who could give you that flexibility and enable you to deal perhaps with the peaks and troughs. So, it is very hard to go back to the public and tell them that we are under tight constraints because that was, it struck me, the whole rationale.

Mr. P. Thorne:

Yes and no. I can understand why you put it like that and I can understand how the public would perceive it like that. The user pays strategy which went to the States at the end of 2002 was based on the application service and the disquiet there was with having to deal with applications with a limited resource and the development industry generally came to us and said: "Look, we're prepared to pay more for the service if we get the service that we want" and on that basis 10 posts were made available for the department to be filled by people on a short term contract so that you clearly have the ability to relate the workforce to the amount of work in that area. We did not employ all of those people because we had done it off the back of a peak of applications work and indeed it is starting to fall off so we did not need to take everybody on and we have subsequently had to give up some of those posts under the fundamental spending review anyway. But Deputy Duhamel's question was specifically about policy area and that money cannot be appropriated for an applications work for which it is raised off application fees into another area of the department's work.

Senator F.E. Cohen:

Can I just throw something in? Remember also that with a new Minister comes new ideas and the department is stuck with having to put up with it. I have my own priorities, things like I am existing on an archaeology SPG being out to public consultation around September and the implementation of the appointment of an archaeological field officer, albeit on a part time basis, immediately thereafter and we have taken resources time out of normal policy for the preparation of 'Percentage for Art' supplementary planning guidance which is going to be out for public consultation next week, I think. The result of that is other things are delayed.

Deputy R.G. Le Hérissier:

But there is an ebb and flow, Fred. The excellent work your department has done in urban regeneration. Presumably that is all now, in terms of the intensity of the work, that is starting to slow up, for example. Can I come to the second part of my question, which is totally unrelated to the first?

Deputy R.C. Duhamel:

Deputy Le Hérissier, was that your second --

Deputy R.G. Le Hérissier:

No, that was just a point of clarification.

Deputy R.C. Duhamel:

Deputy Baudains has been waiting for a while to come in.

Deputy G.C.L. Baudains of St. Clement:

We seem to be moving around the subjects a bit. Going back to the issue of WEB (Waterfront Enterprise Board), or the Waterfront should I say, which I know is close to your heart, Minister, we have WEB and Planning as both States bodies but working to different remits and as such it would appear that there is a tension between them. There certainly was in the past. What are your views on how the procedure will work in future? You have a new Supremo in place. You have the 2 bodies WEB and Planning. How is it actually going to produce what it is that we want and if I could follow on from that, the planning obligations which we referred to and were speaking about earlier, how is that entire process going to ensure that the planning is not undermined by the wish to gain economic benefits from the process?

Senator F.E. Cohen:

I am afraid it is going to be a bit of a lengthy answer. I firmly believe that the key to delivering the successful Waterfront, as I feel with most planning, is that you have to get the design right and part of the problem with the Waterfront buildings we have seen so far is that they are fundamentally very poorly designed and I mean very poorly designed. So, therefore that resulted in a lack of public confidence because the general view seemed to me from my discussions with all sorts of people, was that they felt that people who had been responsible for the old buildings were effectively going to be the same people who would be responsible for the new buildings so I felt that it was important that we injected into the system someone of absolute integrity and credibility in terms of architectural excellence. These are hugely significant buildings for Jersey. The development of the waterfront will fundamentally change the town in all sorts of different ways, not just architecturally and the quantum of development - we were told that the quantum is 350 million and then we were told the quantum was 500 million but assuming it is hundreds of millions - is word class quantum and I felt that the appropriate

thing if you're dealing with world class quantum was that you got a world class architect to advise and the Shepley Report recommended that we either appointed an architectural panel or an architectural Supremo. I went for the latter because I felt it was far more workable and I felt that it was important for the Minister, whether it is me or my successor, to have a personal relationship with the individual who is going to be guiding them in terms of what was the best design. My concept is that the architectural Supremo advisor, Hopkins Architects, will not just advise on the designs at day one. They will be responsible for ensuring the quality is maintained from literally the day the doors are opened. That will not just include the buildings themselves. It will include the areas around the buildings and the public spaces so we end up with a well-designed integrated waterfront literally starting at the Weybridge new piazza and finishing at the fountains near La Fregate. The whole area should be architecturally administered under Hopkins Architects and that is why when I made the announcement in the States I said that I would be looking for Hopkins to endorse all applications before I was prepared to issue a permit and I believe that is the best way of delivering a successful Waterfront. In terms of the relationship with WEB, remember WEB is going through enormous changes. Firstly, the terms of the directors comes up very shortly; I think it is in August or September, we do not know what will happen at that time; secondly, the Waterfront has been driven by David Margason who as we all know has got a job elsewhere. He is leaving and we do not know who the replacement is going to be so quite how the relationship will work with WEB I do not know but what I can tell you is that the design will not be compromised while I am Minister.

Deputy G.C.L. Baudains:

So, what you are saying is that Planning in future will take more responsibility for the Waterfront because it has certainly not been clear to me in the past who is really the driving force. It was WEB and then it was Planning and then it was WEB.

Senator F.E. Cohen:

I can give you an absolute undertaking that design will be at the fore, that planning will take the lead in ensuring that the design is exceptional and that does not just apply to any tall buildings should there be tall buildings, and of course we are not saying there will be tall buildings. It will apply to all buildings and all public spaces. I see WEB's involvement as being the negotiation element with the developers on behalf of the States of Jersey and they effectively are the developer's partners. That really means that they are not our partners but that does not mean they are our enemies. They should be working with us. We should all have the same objective but they are more linked to the developer than they are to the planners and some time they will be acting as the conduit between the two but they are more on the developer's side than on the planner's side.

Mr. P. Thorne:

Might I add to that answer about the relationship between WEB and the planning authority and remind the panel that between 2000 and 2001 or a process that started in 2000 and was finalised in 2001 there

was put in place a Waterfront design framework, or development framework, which was agreed with WEB and was enshrined in the Island Plan where there is a policy which says that the Waterfront design framework will be adhered to. We did have in place a planning framework for the area and with the benefit of hindsight it is unfortunate that either WEB or the development partners did not come to us when they wanted to move those goalposts, if I can use that expression. The schemes that obviously there has been great publicity about in the last 18 months to 2 years came to us without any prior notice. We were asked for meetings with architects and developers for the 2 schemes that were publicised and were presented with fairly well worked up schemes which obviously broke, as we all know, the building envelope that had been previously agreed. So, that is unfortunate and had there been earlier discussions I am sure we could have put the recently approved supplementary guidance for the Waterfront, or acted to review it, that much sooner and it was very much a case of the cart coming before the horse with those schemes being publicised last year.

Senator F.E. Cohen:

It may be helpful also to add what is going at the moment because presently Hopkins are meeting with the developer partners, WEB's chosen developer partners, looking at their schemes, they are in receive mode. They will review the schemes. Once they have seen all 3 schemes they will then assess the architectural excellence or otherwise of the schemes and produce a report on what they feel the way forward is. They may take the view that a particular scheme is excellent and can proceed, they may take a view that a scheme is absolutely dreadful and has to be dumped, or they may take a view that a proposed scheme can be altered to meet Hopkins' design requirements but the key is good design and high quality construction, in my view.

Deputy R.C. Duhamel:

Thank you. I think that is clear. I will take another subject. I believe Deputy Baudains wants to discuss something.

Deputy G.C.L. Baudains:

What I want to focus on here is overview plans for an area. Perhaps it would help if I gave an example. I have spoken in the past to Peter about areas such as Samares Lane where as I said I presume that if development for 100 houses was submitted you would probably refuse it, but on the other hand applications for 10 and then 5 and 9 and over a period of years it adds up to what would not have been approved in the first place because each application is taken on its own merit. Do you have any plans to produce overall views into which each application would slot?

Senator F.E. Cohen:

Bear in mind that the Planning for Homes document raises the issue that by and large, with certain exceptions, we have sufficient homes with the approved sites and there is an assumption in the Planning for Homes document that there will continue to be a reasonable level of windfall sites and the 5s and 10s

constitute the windfall sites. I will ask Peter if there is any policy to take an overview of how those windfall sites are falling and whether we have any policies in place to stop them all falling in one area.

Mr. P. Thorne:

The windfall sites are essentially the demand-led housing as opposed to the need housing which are generated very much by market requirements. The operations of the developers in the market and the availability of purchasers in the market determines the peaks and troughs of activity through our department. There is no doubt that since the Island Plan was adopted there has been quite a lot of activity in exploiting, and I do not mean that in a pejorative sense, but exploiting land for development to meet the Island's housing needs in 2003 and 2004. The first 2 years after the Island Plan we had a staggering amount of new houses created in the Island - over 900 dwellings, I think it was in those 2 years, way above previous averages which is clearly a reflection of the market that existed at that time. I would imagine the pressure in these areas will ebb and flow, the expression used earlier, depending on market demand but the question specifically is whether we have a lower tier overview in particular areas which are likely to be subject to demand. It is difficult sometimes to see where that demand is doing to come. We know we have the built up area boundaries which were eased in the 2002 Island Plan, there is no argument about that, with the intention of continuing to allow demand-homes as required. We have in the plan indicated some areas where we will produce village plans or local plans, more detailed plans, which are not exclusively for the rural villages but predominantly for those areas. But we have no proposals, for example, to produce plans for somewhere like Samares Lane. Probably not a lot of point given the development that has been in train there in recent times. That is something we might consider but we are back to the same old problem; where does it stand in our policy priorities and the results we have available to do policy work?

Deputy G.C.L. Baudains:

I did not want to get into policy too much because, as you know, this review is basically not focusing on policy but it does seem to me that if there was an overview into which applications would also fit as opposed to each one being taken on its own merit then it would assist in the administration because a lot of the complaints occur because an area has been overdeveloped but the odds are given each time we cannot refuse it because each one is taken on its own merits and it does seem lacking that there is not an ability to take each application on its own merits within an overall framework.

Mr. P. Thorne:

I think in response to that the overall framework is difficult because if they are triggered by applications then we're on the back foot. What I think you are saying is that we need to take a broader view of the merits of a particular development given what has happened in the area and we take it the process perhaps is not to take an overall view as such but obviously the views that are taken into account by the planning officers in the department and by the consultants that we use, the traffic people and so on, their responses to us will have obviously had regard to what has gone before so let us say Samares Lane is a

good example, the carrying capacity of Samares Lane as a road for the amount of traffic that is likely to use it. There will come a point, I am sure, when the Highway Authority will say: "Enough is enough." That has not been the case in Samares Lane. I know the parish has objected to developments there but not specifically on grounds that the road is inadequate. I know there have been comments on visibility and so on but not the capacity of the road. So, I think we make the application decisions. We do have regard to what is happening in an area but we do not say that we will hold the application and go back and do a local plan to see what can go and what cannot go in a particular area. Maybe that is something for you to consider but it is not something we do at the moment.

Deputy G.C.L. Baudains:

Obviously, as I say, I do not want to get down into policy areas and try to stay on procedure but I thought that plugged into procedure to a certain extent. But following on from that and talking of applications, we have had in our submissions that we have received so far, several people have spoken of a lack of communication. Some have complained of not being kept informed and especially on revised plans which they were not aware of. We did have one case where people have made submissions to the Planning Authority but not received recognition of those and also issues of assurances that neighbours to developments have been given have ultimately not been upheld and things have moved on without their knowledge. Are there any procedural changes which could address these issues, because clearly it causes ill feeling among the public and is generally unhelpful?

Senator F.E. Cohen:

A prompt response to communications is, I think, the key. It is something that I am concerned about and it is something that the department can well do with improving. That is both correspondence with applicants, correspondence with objectors, and also keeping applicants informed of the progress of their applications. It is often quite frustrating for applicants to feel that their applications are bogged down in a process that they feel is like soup and they cannot quite find where it is swimming around and very clearly it is not usually the case that the department is purposefully delaying, it is often that there are good reasons. I have, for example, been exploring whether it would be feasible to send out an automatic letter to applicants telling them every month what stage their application is, who is dealing with it, who they can call if they want to find out what is going on. It is actually far more complicated to do than it sounds but these are areas that the new Chief Officer will be looking at but give him time; he only started on Monday. [Laughter]

Deputy G.C.L. Baudains:

Is there a process by which current applications, which have then been amended, are notified to residents because obviously one of the things which does irritate people and they blame developers for, when they see a plan which they may or may not approve of, but then what they see being built is different and the attitude that they then take is that developers can do what they like and tell the Planning Committee --

Senator F.E. Cohen:

We have all been involved in these. Sean and I were dealing with one last week but whatever the real situation behind them there is always a story. The story is always there is a mistake by somebody but it is never the person you are speaking to at the time. The planning process is a complicated process and there will always be areas of slip-ups and those slip-ups are always going to be things that you and Deputy Power find out about because your recourse in Jersey is to go to your political representative. All I can say is that the number is relatively small and if you add them up the majority of them come from 4 or 5 politicians or are routed through 4 or 5 politicians, a number of whom are in this room so I think that people are sensitive to the politicians who are likely to respond to these issues. Do not think that because we have 50 odd politicians that we can multiply the numbers up that you are dealing with and that you end up with hundreds of complaints. There are not.

Deputy G.C.L. Baudains:

So, it is all our fault.

Senator F.E. Cohen:

No, I am not saying it is your fault I am just saying that if I was in that position I would be looking to go to you to represent me because I know that you would do a good job and make sure that I am informed and follow it up if I forget to reply.

Deputy G.C.L. Baudains:

Really I see it as a communication issue and one can never be 100 per cent but on the other hand it does not take too many unhappy residents to create a bad impression of planning generally.

Senator F.E. Cohen:

All I can say is that there are these errors. There is no question about it. It would be silly they do not exist. They do exist. They do happen and I, as an individual, try and respond immediately and hope you will see that when you raise something I come straight away, if I can.

Deputy R.G. Le Hérissier:

We have opened up a few new fields and maybe you will get a chance to bring up your point later, Peter, but what I was going to ask apropos what Gerard raised about Samares Lane, it strikes me there are these continuous complaints that developments are too dense. We had the one opposite St. Saviour's Hospital where I think 37 houses were going to be squeezed into a variety of gardens and one demolished bungalow and its garden and so forth. In other words, almost by stealth a whole village was going to be created, it appeared. There is this feeling, exactly as Gerard said, that by an incremental process all of a sudden you are faced with a big development, be it a village, be it a large estate and then at a more micro level you are faced, and I know in the paper at the moment there is the case of the 'fort' overlooking St. Clements, so to speak, you are faced with a vast building that looks like some big whale

stranded there on the horizon or whatever and I think it is very hard for the public to comprehend how these things happen, you know, how the building is placed in context, how a decision is made about whether it is a large, a small building, it is a building fit for its surroundings, and how are these decisions made? It is very hard to work out how these decisions are made. Admittedly we all have subjective views, but at the end of the day there seems to be an awfully well-informed, and it has to be said, quite reasonable public consensus that something has gone wrong here.

Mr. P. Thorne:

Could I answer that on the Minister's behalf? I will do it by also making the point I was going to make before. I wanted to explain the procedures we do have in place to make the public aware of what is happening and we advertise all but inconsequential applications at the moment when the new law comes in the week after next we take a decision, subject to the Minister agreeing it, but departmentally we are recommending to him that we will advertise all applications however significant they are. We also advertise all significant revisions to a scheme, anything that is likely to have an effect off the site, if you like, and so everything that comes through the formal process is advertised. There might be some very insignificant -- "Can we put a slightly different window in?" or something like that which is not really significant and probably is not worthwhile advertising but everything else is advertised. As you know, because it has been discussed in the States, the intention of the Minister is to make an Order which will have notices put on site to say that applications are in and that will equally apply to revisions which are treated as new applications effectively anyway procedurally. So, that is the first thing. Everything that comes into us formally is advertised in the Gazette, in the JEP (Jersey Evening Post), on the department's website and from 10 days time, or whatever it is, with a fluorescent yellow notice on a site saying: "There is something in the department, come and have a look at the drawings if you wish." So, that is the first thing. The communication then, which Deputy Baudains referred to, was with the people who are making representations on applications. Those applications are encouraged to come into the department. It does not help when some are sent to the Minister's home, or to somebody else and they come in but if they are sent into the department, as we ask people to do, they are recorded in the system, they are acknowledged, admittedly it is a computer-generated acknowledgement to say your letter is in and we will take into account those representations. Ultimately at the end of the process they receive a notice that says a decision has been made and tells them what the decision is. Again, generated automatically by the system. If they are representations which beg a response to questions asked we will often do a bespoke letter to answer a particular case. So, I will not say that I can give you a cast iron guarantee that everything is dealt with in that way but that is the procedure that is in place. If it is quite clear it is a letter of representation it goes down a particular route and is acknowledged and so on in that way. Because we advertise the revisions when they come in the opportunity is there again for people to make further representations and they are treated in exactly the same way as well. So, as I say, the process is in place there to enable those things to happen. Now, you mentioned the property Lezardrieux at St. Clements and I think it is probably fair to say we all look at what we see now and think: "How on earth did that come about?" Let us not lose sight of the fact that there was a dwelling

there before which was visible. Admittedly it was pretty shabby and was not as stark and new and bright as what has replaced it and admittedly the building is slightly higher, and only slightly higher, than the building that was there before. What they have effectively done is remove ground and lowered the building and Deputy Baudains has asked a number of questions in the States where that has been referred to. We believe that some of the screening landscape has been taken away, not all of it, but some and the building has moved closer to the edge of the site. The process ... I am not going to try and justify the decision necessarily but the process pursued was the normal one. The applications were submitted, they were advertised, the opportunity was there to comment, they went before the then Planning Applications Sub-committee, they had the opportunity of going to see it on site if they wanted, I do not think they did, and they were granted permission. That is how the process works.

Deputy R.G. Le Hérissier:

And you think it worked well?

Senator F.E. Cohen:

I said I am not going to comment on the decision but the process was the proper process that was gone through. We had a change in owner who wanted to do it slightly differently, he then had second thoughts on what he wanted to do so there were various changes but they all went through the normal process. Your question is based on people's perceptions of what is happening and that is why I am stressing the point.

Deputy G.C.L. Baudains:

Can I take that a bit further? It may help the Minister on this issue. That is, how can we learn from the Lezardrieux issue because most people are unhappy about it? I mean, even the president of the Architects' Association wrote to the *Evening Post* about it, if I remember correctly. We have had submissions on it. What I cannot understand is whether the full height was realised when the committee passed it. There seems to be a whole load of issues around there which we do not understand how it came to be as it is. How can we hope that it does not happen again?

Senator F.E. Cohen:

The answer to this, I believe, is simply poor design and the assessment of what constitutes good design and assisting applicants to allow their design guiders, because remember they are not all architects, to ensure that the buildings are of good design. Predominantly, I am sorry to say, that buildings that we have allowed in recent years have not been of the best design. We choose to pick on one or 2 examples because we believe they are symptomatic of the general problem. The one that you have chosen in St. Clements is at the very extreme end but there are an awful lot of others that are relatively close to it. That is not the fault of the Planning Department. What we are trying to do is to develop a multi-pronged approach to attacking the issue of poor design. We are doing it internally by forming a design group. We are taking all the members of the Planning Department who have design expertise, and some of

them are really good. We are putting them all in one place at one time and all relevant applications are going to go through this design grid at the front end. So, we are not going to be in a position where you have the Minister, as happened a couple of weeks ago, pulling something out right at the last minute because he thinks that the design is unsuitable. We are going to do that at the front end. Hopefully that is the first prong of the attack, to ensure we root out bad design. Secondly, we are going to raise this as the central issue of Architects' Week in October. Architecture Week will be effectively a partnership with the AJA. It will be funded partly internally by the department but largely by private donation and its objective is to raise the issue of improving design. To show people how they can improve, by improved design that they can get better buildings which they enjoy more, which have higher value and which the public appreciate. We are going to get some significant people coming to speak. Yesterday Paul and I got a commitment from Sir Richard McCormack that he will come over and speak, particularly on the issue of design and the Association of Jersey Architects, through the new president, as you have seen in the article in the Evening Post the other night is also committed to ensuring that we raise the issue of design. It is unacceptable that the department should be faced with, in many cases, such incredibly poor design. We've got to do something about it. I am about to drop a bit of a bombshell. There is one example of a recent building that I regard as so absolutely abysmally poor that I am going to instigate an internal inquiry into it. I cannot understand, I do not want to say which one it is, it will come out shortly. I cannot understand how anyone could have proposed such an appallingly awful building in a sensitive country location and I think that out of an investigation like that we will find whether we are able to deliver better design through this design group and this multi-pronged approach effectively led by the department at one end and the Association of Jersey Architects at the other but we have to improve design. When you talk to people about buildings in Jersey and ask them which buildings were built in the last 2, 3, 4 decades they are proud of, there is hardly anything. They will talk to you about the Archive, they will talk to you about Morier House and they will occasionally now mention the West Park flats but there is not much else and that is a real shame and it is a lost opportunity.

Deputy G.C.L. Baudains:

Could I press you, Minister, on whether you are satisfied that you have sufficient checks and balances within the system, or is that under review? I mean, just taking the Lezardrieux issue again, and I promise you I will finish raising that one, it does seem that most people did not realise how high it was going to be and whether that was the Committee or the officers I do not know.

Senator F.E. Cohen:

I do not think the issue there is the height. The issue there is it is badly designed. Simple as that. It is the same issue as the Waterfront. I kept saying I would rather see a tall, beautifully designed, well proportioned, elegant building, designed by a great architect that is tall than a short one that is badly designed and I am afraid it is the same with any particular application. There is nothing wrong with the processes. You can produce a book this high with boxes to tick and Lezardrieux would probably have

ticked every box but you cannot do that with design. You cannot say: "Design is for A, B, C, D, E and F." It is something in your head and it is something that everyone is able to see whether it is good or bad. They may not necessarily like it but they will know whether it is good or bad.

Deputy R.C. Duhamel:

I had one question. In the past we had a system of planning which was tied to the political system so every 3 years basically you ran the risk, or there was the potential, depending on which way you looked at it, of coming forward with a new set of people who would perhaps interpret the planning system in a subtly different way, or massively different way compared to what had happened before. Since we have moved to the ministerial system indeed allowed a number of the decisions or indeed the majority of decisions to be undertaken by the planning staff themselves, have we managed to iron out all of those potential difficulties in having changes of opinion brought about by changes in staff? I will give you one example. I had some 7½ years in my political experience on the Planning Committee and I can tell you that the interpretation of the redevelopment of large houses in large grounds and conversions to small or mini housing estates was something that was frowned upon and disallowed but in the recent past we seem to have moved forward where we are encouraging this in particular places.

Senator F.E. Cohen:

The issues have become more focused because of the change to the new system because instead of having a committee with a president where the president's views were always naturally going to be tempered as you know because many of you have sat on previous planning committees. You have now effectively got a Minister who can make all the decisions and if you have one Minister with a particular view today and he gets fired and you get another one tomorrow you can have a huge change and that is going to be the natural consequence of the new system. You just have to hope that the way the system is constructed appoints the best person for the job but with the present system unless you obligate the new Minister to carry on with the policies of the last Minister you are not going to avoid potentially huge swings. I've got a particular view that the key to delivering good buildings is design. I might get fired tomorrow. The next guy may have a completely different view and suddenly design gets dumped and something else comes to the fore.

Deputy R.C. Duhamel:

If I can interrupt there, I think I was suggesting that if indeed we are going to try and make the system a little bit more certain and focus in on the design issues, it is the subjective judgements that you bring in determining what is good design and what is not good design. If indeed the departments are suggesting that there will be a universal or Jersey-based design book into which we put very good representations in order to establish what we mean by good design then all well and good but if it is going to be at a level which can be interpreted by the incumbent Minister or indeed by the staff then I think we run the risk of not defining our term sufficiently in order to bring the consistency of approach that perhaps the public might wish.

Senator F.E. Cohen:

If you are going to drive the concept of new buildings from the design end you have to accept that there is going to be a wide variety of alternatives. If you look at the planning policy that I have implemented, which is a one-page document, as I like everything to be, it says that we want to encourage traditional schemes, modern interpretations of traditional schemes, and modern schemes with the emphasis being on design. I do not think we should be too prescriptive about what applicants and their design advisors should propose. I think what we need to have is a robust internal process that assesses those designs. For example, there are a couple of sites we are looking at at the moment where you could argue that equally for a traditional Jersey granite house with timber windows - I know Deputy Baudains has different views on timber windows - and just as strongly you could argue that it is the perfect location for a post-modern building. You could argue that it is the perfect location for a streamline moderne building but the importance is not to say to the applicant: "You must have a streamline moderne building here." It is to assess the design and see whether the design is suited to the location, whether the design adequately picks up on the surrounding references which could be other buildings, which could be landscape, could be colours, shapes, all sorts of different things, and whether holistically it is relevant to the location. So, I do not think we should be too prescriptive. I think we should ensure that we have a process that assesses design.

Deputy R.C. Duhamel:

No, but I think at some stage there will be an element of interpretation and one man's meat is another man's vegetables.

Senator F.E. Cohen:

There will but it is rather like looking at an Old Master. You may not particularly like it but you can tell it is a good painting and I think that is what will come out of a design-led approach to buildings. That you may not necessarily like it but you will be able to say it is a good building, well constructed, well designed, made of high quality materials, relevant to its surroundings and not dwarfing its surroundings either.

Mr. P. Thorne:

You also asked about the delegation. I think I heard you correctly but you seem to be implying that delegation has only come about recently. That is not the case. The States of Jersey Law changed in 1996 to allow legal delegation, although certainly for as long as I am aware there has been a delegation of sorts operated, as you may remember from your first appearance on the Committee, and that used to work in such a way that applications would be prepared and basically they would be listed. They would be put before the old Committee and the Committee just used to ask questions and so on but otherwise they were effectively delegated decisions. But since we have had the formal panel in its various guises since it first started in November 1996, the first applications panel was set up, it has been fairly

consistent around the 89 to 90 per cent mark for applications which are dealt with in the department. Bear in mind that the predominant number of applications we get are fairly straight forward, non-contentious, not necessarily raising design issues or what have you. Perhaps what I was inferring from what you were saying is that the situation had changed in some way between a pre-existing situation and the situation now. My take on that is that the situation has not really changed at all. The percentage of applications going to the politicians, whether it was the old IDC or the Planning and Environment Committee or the Environment of Public Services Committee or the sub-committees in its various guises or now the Panel, has not really altered certainly over the time I have been in the department.

Deputy R.C. Duhamel:

I think the point I was trying to get at was to tease out whether or not, in your view, there was a greater consistency that could be brought to bear in design terms or in planning terms by either having the issues delegated to an individual who was in post for a long period of time, or indeed if there was a better system whereby we had committed and interested politicians who indeed kind of developed some form of consistency of approach to working long term in looking at applications.

Senator F.E. Cohen:

I think you have to wait and see if the processes that we are putting in place work. I think we will know within a few months whether they work because we will start to see what comes out. There are risks with a rigid design-led policy like this but if you have applicants who are incapable of producing good well-designed buildings that you cannot prove anything and we are going to quickly have to work through those issues and find out what sort of consistency comes out of the group but remember that unless the next Minister comes along, assuming the group continues to work, unless the next Minister comes along and says the group has to work in this way, the group will still continue in its own way and it is for that reason partly that I have said that I am not going to chair the group. I will sit in and listen, gather information from it, but the group will be chaired by the Chief Officer.

Deputy S. Power:

Getting back to good design, Freddie, which is a subject close to all our hearts. In your own department's Planning Design Note No.1 it kicks off, one of the first statements it makes is that there is mediocrity in design and that has been carried through on the Island for the last 25 to 30 years. How is your department going to reconcile (a) good design, (b) with the sensitivity of a local area, and (c) with an existing design brief that is already established post 2002 Island Plan? There are quite a number of sites that are still to be developed which have fallen within the windfall area and how do we all, as Assembly Members who are interested in good design, reconcile those 3 areas? To me it appears if there are design briefs already written and we are looking for good design and that design brief brings in areas of high density or large numbers of units on an existing site, how do we reconcile that?

Senator F.E. Cohen:

Can I deal with the density issue first? I have strong views on density, as I think you know in our private conversations. I think by and large that we should aim to develop houses that have significant space about them that have larger rooms than are currently built and generally give a living environment that we would all be proud to live in. There are consequences of that and I think that the cost consequences may be over-egged. I do not believe, for example, that if you increase a bedroom from 70 square feet to 80 square feet that that makes very much difference to the cost of the unit and I think that the final cost to the purchaser is actually not driven from that end anyway. It is driven from the other end, including developer profit and including higher land values. So, I think that there is significant room to increase the standard of buildings generally from the end of the occupier of the building. You clearly are stuck where you have a development brief or you have a design agreement or officer advice or previous Committee indication that allows higher density but only yesterday Paul and I were in a conversation with a world-class architect who happened to be in Jersey for the day and he was talking about work that they are doing to try and deliver reasonable densities by good design. Now, that will always be a compromise; there is no doubt about that. When we are dealing with fresh applications I give you an assurance that I will be looking for space about, garages with units - all the things we have always talked about - but during the transitional period when we are dealing with existing schemes where indications have already been given or where there have been consents in principle, we are really stuck and all I can do is beautification exercises. We are in the process of doing that with one quite large residential site. You asked about how do you balance the issues of good design and sensitivity? They are the same. You cannot produce a good design that is not sensitive to its surroundings. If it is not sensitive to its surroundings, it is not a good design. That is what I am hoping will come out of the design group. There are people in Planning who are really skilled in terms of assessing design. Peter, for example, is brilliant at taking a drawing that looks completely out of place and with a few lines completely changing it, and we have done it. We did it with the Annex site where Peter took a building that we all felt was completely out of place, in a very prominent location, and Peter, within literally 5 minutes, converted it into something that we were able to go back to the architects and say: "Look, do something on this basis." 2 weeks later we were able to grant them an approval. So, there are the skills there to do it. We just need to apply them.

Deputy S. Power:

One last question related to that area. You briefly referred to land value and in the development brief that had been written as a result of the 2002 Island Plan, we have situations - and you are aware of many of them around the Island - where an agricultural field is worth £15 - £10,000 depending on the size, and suddenly it is worth £2.5 million. One of the results of that is that a developer will negotiate with the owners of that field and he will then try and shoehorn in as many units of accommodation as he can to justify the cost and the value of that field. Do you think you will take that into account in your revisions of the way forward and how we look at good design because this is one of the major items that is affecting good design?

Senator F.E. Cohen:

100 per cent. We most certainly will. I am working very closely with my new friend, the Minister for Housing, and we are looking at the whole of how these are delivered. Basically everything is stopped at the moment and we are going to look at the 45/55s. If we change it we are going to change it on the basis of some evidence proposal and not just picking something out of the air. We are going to look at the Treasury model that is used to sell out the social end and out of that I think you will find we will deliver the potential for better designed schemes that are significantly more realistically priced for those who most need them.

Deputy S. Power:

Excellent.

Deputy R.C. Duhamel:

Before you jump into a new subject, Constable Le Brun would like to ask...

Connétable K.A. Le Brun of St. Mary:

It is leading off that. Sorry I came in late. I do apologise. Leading on from that and I was pleased that the Deputy asked that question because I put down here which comes first? The developer's requirements or the architect's requirements because I do feel at times leading on from that last one there the question is that at times it seems that the architect is only abiding by the developer's requests and, therefore, it comes down to the bare minimum and such like. It is a point - and I was pleased to hear you say - regarding the design because it should be the original design that leads it from the front. But it is difficult for an individual person wanting to change rather than developers who have their own architect and such like, to decide who would be the best architect as such to do a development and such like that you would require. This is where I think the problem comes in as well as I foresee it: that you can have someone who is continuing doing the same but if you want something different you have then got to have an alternative. In the past I think it has always been hoped that Planning would give extra guidance to it. Would you see that as being an extra?

Senator F.E. Cohen:

Well, a professional architect is a qualified individual with integrity. He should not allow himself to be compromised because of pressures of his client. Again, referring to a meeting we had yesterday with a leading architect, he was telling us about how clients had attempted to compromise him and get him to design things that he thought were poor and he just walked away. We have got to expect architects to exercise their professional integrity in a proper manner but what you are saying is rather like a previous President of the Planning Committee who was a close friend of mine who, when his doctor gave him the wrong advice, changed doctors; went around to see all sorts of different doctors until he got one who told him he could carry on drinking. The same will apply with architects. A developer may well be able

to go around different architects until he finds somebody who is prepared to put forward a scheme that suits the developer rather than architectural standards, but we cannot protect against that. All we can do is, within the department, have the proper assessment procedures to ensure that we root it out.

The Connétable of St. Mary:

Thank you because it does give me the impression at times, and knowing of architects and certain sites that they have, from time to time it seems that the architectural design is far superior in one than it is on the other and it seems to me that things have been driven by the requirements of the developer or the person who wants and, therefore, it does not seem to come down unfortunately, which I hope will change in the future, solely to the architect. It is driven by the requirement --

Senator F.E. Cohen:

Well, he should not be. A competent architect should only be proposing schemes that he believes are of benefit to the Island firstly; to the applicant in terms of the applicant's ability to deliver something of benefit; and something that is of benefit to the people who are going to live in the completed construction. That is the architect's obligation In my view.

Deputy R.C. Duhamel:

Deputy Baudains, new subject?

Deputy G.C.L. Baudains:

Talking about availability of plans and information to interested parties and neighbours and the like. At present plans are available at parish halls. It would be useful if people could take copies away but they are not allowed to by copyright at the moment. Have you any plans to address that? I believe also plans will be available online or it has been spoken about putting them online. Are there any plans to do that?

Mr. P. Thorne:

Can I answer that? Essentially those are fairly detailed process matters. You are right. We have not been able to hitherto to make copies of drawings submitted with applications to the general public to take away and consider their representations if they wish to make them. But the new law - and I do not know the article but it is in there close to the beginning where it talks about advertising of applications - is that we will be able to do so and it will not infringe copyright to do so. It will infringe copyright if someone takes away somebody else's design and tries to reproduce it or what have you but the actual act of making drawings available is now authorised by the new Planning and Building Law. So, that is the first point. The issue of the availability of drawings online is a little bit more difficult simply because of the nature of drawings of A0 size, and the technology is certainly there to make them online but the equipment and hardware that is needed to be able to produce drawings of that into a digital image is quite considerable.

Deputy G.C.L. Baudains:

I was coming at it from the point of view that obviously the better people are informed the less likely they are to be critical of the planning process and surely the better it is for everybody. In that regard I was wondering if there is any room for better communication with the parish halls to make sure that people are aware that plans are available and they can go and see them. Better working together between planning and management.

Senator F.E. Cohen:

Yes, remember though that with the new requirements to put up notices on sites, I think people, if they live in the vicinity - there are obviously people who do not go out in that direction and will still be surprised, but we should significantly increase people's awareness of what is going on in their vicinity.

Mr. P. Thorne:

Drawings have been in the parish halls for about a year now and, as I say, it will be all applications come 1st July.

Deputy G.C.L. Baudains:

I was just thinking about people making better use because I do not think everybody is aware that plans are at parish halls.

Senator F.E. Cohen:

It may be worthwhile - and is something I will speak to Peter and Paul about - whether we can require applicants to submit their drawings in digital form as well and they just go on the website. It may be possible to do that. Certainly we could not expect the department to take all those big plans, scan them in and put them on the website.

Deputy G.C.L. Baudains:

That may be a disadvantage for a smaller firm of architects than a larger one perhaps.

Senator F.E. Cohen:

Well we have had this with modelling. I regard that part of any large application is the provision of a proper 3-dimensional model because it is the only way I, as a layman, can understand the implication of a particular building in that particular context. One of the responses was that that is unfair to the small architects. Well I am sorry but when I was going around visiting world-leading architects to find a Supremo for the Waterfront, every single one of them had a modelling studio at the centre of their architectural practice. If you go and see Lord Foster's operation, it is right in the middle because modelling is so important. Yes, it means that the small guy who does not know how to make a model

and cannot employ a modeller is put in a difficult position but that is part of providing the information. I am sorry but I cannot provide everyone with a modeller.

The Connétable of St. Mary:

Just quickly to come in there because obviously as Connétable I know the predicament and the situation, it is being well used in the sense that people are coming in to use but the difficulty I find is that the majority of parish halls are only open the same time as other people work so, therefore, it does mean to say that we frequently get - and it is no disrespect to the ladies that come in - but they do come in and say: "Oh, can we not take it because my husband knows more about it but he is at work and therefore he can't". So, they have to come in and try and memorise or make notes so if you could find some alternative or further to that. It is working well in that respect but on the other hand --

Senator F.E. Cohen:

With respect, there is always something more you can do.

The Connétable of St. Mary:

Yes, I am just saying that it is working well as it is.

Senator F.E. Cohen:

Some people hold a view that just advertising in the *[Jersey] Evening Post* is enough. I think you need to do more than that. Then we go down the line of talking about putting plans on the website and then you will have people who have not got access to the internet complaining. At the end of the day, you can only do so much. Yes, I appreciate that it is a shame that people who work do not have access to the plans at the parish hall out of hours, but if the problem is that bad, then why do the parishes not, once a week, say: "We will have 7.00 p.m. to 8.00 p.m. in the evening"? We can leave it in your hands.

The Connétable of St. Mary:

Again, a good idea. It depends on which parishes. I must admit that invariably it is only the people that are within their own parish. I am not being critical. I am just saying if it is that they can take some copies or such like, that would be --

Senator F.E. Cohen:

Well, I am not an expert on the municipal arrangements in St. Mary's. (...overspeaking) When I was in the Honorary Police in St. John there was one night a week we were open until late and the secretary was always there. There is no reason why people could not come in on that night and have a look at plans.

Deputy R.C. Duhamel:

Thank you for that. Deputy Le Hérisier?

Deputy R.G. Le Hérisier:

I wonder if I could open up this question of how the States seeks to amend the Island Plan? It was introduced, as we well know, almost like an iron corset so that there would not be all these attempts at political change based on: “Mrs. Lewis approached me and they are desperate to get a house in the field” and so forth, so the States then becomes the Planning Committee. I can well see your point of view that we do not want the States to be bogged down with individual pleas for mercy and for help and compassion and so forth. But how can we deal with amendments? What ideas have you got to improve this situation, which I do acknowledge is a difficult one? But people find it all so incredibly inflexible at the moment.

Senator F.E. Cohen:

It is a very odd position to be in where you are a Member of the States Assembly, you have enormous respect for your colleagues - some more than others [**Laughter**] - and a matter is put forward to the States and you know, at the end of the day, that in Planning Law terms you have to disregard it, or that you cannot give it a high priority. That is just the function of the position we are in but the converse of that is you have got to make a decision: either the Planning Department under the Planning Minister runs the planning system, or the States run it, and if the States run it, just think of the complications that would be involved. 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. I do not think there is a halfway house.

Mr. P. Thorne:

The question specifically related to requesting amendments to the plan. Our take on that is that there is no reason why that should not happen, either informally member to Minister or in a States request. The real difficulty comes when we have been asked to amend the plan just before we are expecting to make an application decision with a particular thought in mind, because clearly those applications fall to be considered under the policy regime when they were submitted. Those are where we get the difficulties. Like the Constable of St. Lawrence’s current proposition, for example, and the Deputy of St. Clement has done a similar one. They will have no effect legally in the planning process for the individual applications which are still current. They will have an effect in the future if the Minister decides to change the policy but they will not stop what is happening in the present and that is the problem. But as for requesting the Minister to look at changing policies and so on, one would expect that to happen in the normal course of events.

Senator F.E. Cohen:

But at the core of this is the question of whether the States should or should not be able to direct the Minister for Planning as to how he should determine an application. That is a decision that was made long ago. I was not party to it. You chaps were so it is not my fault. The position is very clearly that the Minister for Planning makes the decisions and that in many cases a States debate may not represent a valid planning reason in the determination.

Deputy R.G. Le Hérissier:

What about a slightly broader issue where we wake up to the fact there has unfortunately been a lot of waking up recently. We seem to have maybe missed a trick or two. People wake up to the fact and say: “This definition of the countryside zone or definition of a boundary is clearly awry.” We got it wrong because it would have needed microscopic eyes to have fully absorbed all the implications, even though there was yeoman work done by our St. Clements representatives last time. What about if people wake up to that fact and say: “We have really got to adjust that boundary”? How do you suggest we go about that?

Mr. P. Thorne:

My view on that is States Members need to engage more in the process of producing the policy. Rather than perhaps sit back and rely on parish meetings or the Island Plan Roadshow or that sort of thing, which is not a particularly effective way of dealing with things. Shepley in his report on the process said it ought to be more structured and the new law brings in provisions for public inquiries on those things, and that is where States Members and general public need to engage. That is the proper process of agreeing a policy and if there are concerns with a proposed policy that is when they need to be raised. No use crying over spilt milk. Once the thing is established and adopted and people have made applications in the light of that, there is not a great deal you can do. So, it is important now that Members are awake to it that they stay awake next time we seek to amend policy.

Deputy G.C.L. Baudains:

One thing that has never been quite clear is that Members adopt or amend the Island Plan every few years which is then binding on the Minister. What are the arguments in favour of preventing a Member from amending the Plan at a later stage? Surely Members are equally aware of planning issues in both circumstances.

Senator F.E. Cohen:

I think that an applicant has a right to have their application determined according to the principles at the time their application was received.

Deputy G.C.L. Baudains:

I am talking about pre-application.

Senator F.E. Cohen:

Usually the problems that result in Members wishing to amend are as a result of an application.

Deputy G.C.L. Baudains:

I hear what you say but that is probably an incorrect method of amending the Island Plan. I am talking about other circumstances.

Senator F.E. Cohen:

Maybe Peter can answer.

Mr. P. Thorne:

I must admit I am not totally sure of the points you are driving at.

Deputy G.C.L. Baudains:

Well, the situation is if, for argument's sake, I wanted to take 3 or 4 sites rezoned in favour of built up zone back to green zone, before an application has been made on them I cannot do that. Only the Minister can lodge a proposition so I have to either persuade him to lodge it or wait until he lodges another proposition and hope that I can put in an amendment on the back of it. I fail to see why that should be the case.

Mr. P. Thorne:

I cannot answer that. That was a matter of law on which the AG or SG advised last year but it seems to me the legal position is that you have to ask the Minister to bring forward a change in policy. I think there you have a political process anyhow. If a Minister says: "No" then you are going to use some means to embarrass him into doing it, or bring pressure on him to do it.

Deputy G.C.L. Baudains:

Yes, but if there was a proper process rather than the nuclear option of threatening to replace him with another Minister which may not be helpful. It does seem to be making a mountain out of a molehill.

Senator F.E. Cohen:

It is as it is and it may be logical that it was better that it was a different system. I am not sure. Would that mean you would be bogged down with constant propositions to rezone this and rezone that? That could be a result.

Deputy G.C.L. Baudains:

I am merely trying to understand the arguments in favour of the position.

Mr. P. Thorne:

I think one of the arguments - and if you look back on the debates last year on the built up area boundary - that arose because you and Deputy Hill had raised individual propositions about specific sites. Now, the sensible way to have dealt with that - just stepping back from the political process - is to have said: "Look, questions have been raised about the boundaries of the built-up areas. Perhaps we should review the entire built-up area boundaries" which is indeed what we did. Rather than just deal with them piecemeal. That is an irrational approach. If you are saying the policy is wrong in those instances, we need to address the policy and see whether it is wrong in other instances and, as you know, we brought a proposition which did make changes to the built-up area boundaries and in the case of yours, Deputy, incorporated at least one of the 2 which you raised.

Deputy R.C. Duhamel:

New subject, Deputy Baudains?

Deputy G.C.L. Baudains:

Yes. We still hear of permits being issued, reluctantly it seems, because of previous decisions. Now, obviously we appreciate that assurances given prior to the Minister taking office have to be honoured or the applicant may feel aggrieved. I am confused, for example, with such things as the recreation ground in St. Clements. I cannot understand how a previous decision could have created a prior commitment because the application came in during your tenure of office, Minister. What is the problem? Where do these previous commitments occur and how much are they legally binding?

Senator F.E. Cohen:

It is my biggest problem. I have made it very clear that I am going through a transition period where I am not able to impose my principles entirely and I am having to negotiate. There are many situations where there have been previous consents in principle or whether these are revisions to existing approved schemes or where there have been development briefs approved as we have discussed at the beginning and I am told that I am not looking at a clean sheet of paper. Now, I am sure that quite a lot of that sort of thing has not been formally tested. Do I have the power, for example, to say in relation to one or other aspect: "Sorry, I am going to allow this to be tested in a court of law"? By and large I have been advised that you have to go along with previous decisions. Again, that is a function of the system and I am expecting that by next year that the majority of the applications I deal with will be fresh applications. Do you want to add anything to that, Peter?

Mr. P. Thorne:

Not in particular. It is just these opening quotes - the recreation grounds - I am not that familiar with it.

As I understand it the only prior decisions on that one would have been the Island Plan decisions for the various zonings on the site. As far as I am aware we only had one bite of that application.

Deputy G.C.L. Baudains:

That is why I mentioned that one as an example because it was my understanding that the decision was constrained by a previous commitment.

Senator F.E. Cohen:

I do not want to deal with that one particularly because I have not got all the details to hand, but so far as I remember generally, there was a suggestion it would be unreasonable to refuse. If you remember, the area was divided in to 2 parts. Part was in a built-up area and part was in --

Mr. P. Thorne:

That is what I am alluding to with the Island Plan.

Senator F.E. Cohen:

The part that was not in the built up area was not approved and the part that was in the built up area was approved because the developer had a reasonable expectation based on the Island Plan to expect that it would be approved and there were no special circumstances to reject it.

Deputy G.C.L. Baudains:

I do not want to go into the details of that because this is not a St. Clements based enquiry.

Senator F.E. Cohen:

I think I am right in saying that if a site is designated in a built up area that the developer has a reasonable expectation to expect he will get approval for a reasonable number of units. Is that correct?

Mr. P. Thorne:

Yes. I will paraphrase the policy because it is not before me but what policy H8 says is that: "Developments in the built up area will normally be permitted provided that --" and there is a list of criteria they have to satisfy. If the applicant can demonstrate that he is meeting those 16 criteria then it is unreasonable not to allow the development.

Deputy R.C. Duhamel:

Any other issues?

Deputy R.G. Le Hérissier:

The issue of retrospective permission. As you know it infuriates the public and we often get comments:

“They have raised the height of this house. It has mysteriously moved during the night” so to speak. “I’m being overlooked by a window when I thought that had been explicitly forbidden. Glazed bathroom windows might be ok but I’m now being...”. I know there are some urban myths but there is a great concern that developers use this in order to put through material changes to a building which perhaps they would not have put through knowing they would be rejected at the initial stages. So what is your view on this and do you feel you are in control of this part of the process?

Senator F.E. Cohen:

Can I come in first? It is a real issue and we have got one at the moment that is a big one and it is a multiple site big one. I’m being looked at not to reveal too much. You have got to look at whether people have duped the system or whether they have made an honest mistake. Is it reasonable for example if somebody has made an honest mistake and they have done something wrong at the beginning of construction that would require them to remove the whole thing and start again? Is it reasonable to really say sorry it is not exactly as it was on the permit and therefore you’ve got to start all over again. I have taken the view up until now that if the applicant can demonstrate that it was a genuine error and it was not too much of a huge problem for the neighbours, or it wasn’t too much bigger or terribly awful, that we would be sympathetic. I have been involved in one with Sean recently where it was in 2 parts. Houses and garages were not where they should be. The garages had not been fully built yet. They were just a slab. The houses were nearly finished. Now, fortunately the houses were only a short distance from where they should be and the garages were a further distance away and they had a greater impact on the surrounding property. So, we took the view there that the houses could stay but the garages had to be moved back to their original line. So, the tests are you have got to apply reasonableness; you cannot just be daft and say that because this brick at the bottom of your house was not where it was supposed to be you have to pull the house down. In my assessment I have tried to find out whether it was an honest mistake or not.

Deputy S. Power:

Relating to what Roy asked, Freddie, in general if a developer has a house or a series of houses half a metre out which is not significant but not insignificant, given that you are being reasonable in that case, a very strong letter should be sent to that builder to essentially say that this is intolerable but we are reasonable people.

Senator F.E. Cohen:

In one case where a mistake was made in an application I have asked for a very stiff letter to be sent. In most cases I have been involved in and I haven’t been involved in lots – four of them - I have sat down with the applicant and the architects and said how unhappy I was and tried to assess why it happened, whether it was an honest mistake. But it is interesting that they are nearly always to the advantage of the applicant. **[Laughter]** Maybe I have not had a sufficiently large number for that to be statistically

relevant.

Deputy G.C.L. Baudains:

Are there any sanctions you apply on that? I think we have all endorsed the fact of “reasonableness” but one might find people are using your “reasonableness” to stretch the boundaries with reasonable expectation of getting away with it in future. Do you apply sanctions to people who have made mistakes when it appears they might have done so deliberately?

Mr. P. Thorne:

I think it is when they make them for the second time that we start to worry about them. I think that the test in this situation – builders do build for whatever reason perhaps they have just had a change of mind or perhaps they have got it wrong on site but if something is not as it should be then clearly we look at it and we will take the appropriate action; whatever that may be. Whether it is genuine or intentional, that might have a bearing on it but I think the prime test is would we have approved this anyway? Because if it is acceptable, why make an issue of it? Yes, we will ask them to make a retrospective application to get permission for what they have actually done because it creates problems further down the line if properties are transacted. But if it is something we would have approved anyway, then it is really not that big an issue. When it comes to using the enforcement powers, whether it is prosecution or defending enforcement notices on appeal, the legal advisers for no other reason than they have got enough work on their plate anyway say: “What is the point of going through this long, expensive process if you would have granted permission at the outset anyway if that was what they had asked for?” So, there are judgments to be made and the action one takes has to be appropriate to the situation. If someone has cocked a snook at the Minister by saying: “To hell with it; I am going to do it the way I want to do” then he can expect a suitable response. We have got one like that.

Deputy G.C.L. Baudains:

Leading on from that, are you satisfied with the level of policing of building regulations? Adequate supervising of foundations, especially for retrospective applications? If someone has built a conservatory and realises they have not applied for permission, how do you determine that?

Senator F.E. Cohen:

From my very limited experience I am more than satisfied with the standards of monitoring within the department. Clearly if you are dealing with a retrospective application and you ask a question about the foundation, it does not matter how competent your guys are, if they cannot look at the stuff they cannot give you a conclusive opinion. They can make an assessment but I am not aware of any situation that I have dealt with where that is actually relevant. If you take those garages for example, all they’ve got is the slab and they’re going to have to move the slab. They will be properly inspected.

Mr. P. Thorne:

When the building control officers go on site once the job has commenced they are not there to measure every single dimension. They will look at whether it accords with the plan but, more particularly, what they are there to do is ensure the foundations are adequate for purpose. We cannot send a building control officer on site and ask him to measure the nearest part of every building to the boundary to make sure it is exactly as approved on plan. If the developer has not done it as approved on plan, we have sanctions we can take against him and they might be drastic at times. I know of at least one instance in Jersey where we had someone remove a structure they built because it was a problem. Those are the sanctions we have. The onus is on the developer to build to the plan he has permission for.

Deputy G.C.L. Baudains:

How frequently do you check on buildings in progress? On a stage by stage basis.

Mr. P. Thorne:

There are statutory stages in building control inspection but we make site visits anyway just to keep an eye on the job generally, but they are not that frequent it has to be said and it depends on the size of the job. On a house being built on a plot I dare say there will be about a dozen, 15, inspections over the course of the job.

Deputy G.C.L. Baudains:

I am mindful of the time.

Deputy R.C. Duhamel:

Yes, I will take one more issue from Deputy Baudains.

Deputy G.C.L. Baudains:

We have had during our submission several organisations that we thought might have useful comments who have either not made submissions or reduced their submissions because they fear if they did make those submissions it could possibly create future difficulties when they make applications. Could I ask for the Minister's comments on that and what comfort could you give to such people?

Senator F.E. Cohen:

I would have thought that any contribution would be worthwhile. There can be no case for a contribution having a negative effect on the applicant in terms of their future applications within the department. I would like to know the organisations because I am amazed.

Deputy G.C.L. Baudains:

It has caused us some difficulty. In fact there is one organisation which we thought would give quite

useful information that we probably will only get them in camera.

Senator F.E. Cohen:

I am very surprised. All I can tell you is you can give them an assurance that whatever they say it will not be held against them. I just cannot think what sort of organisations you would be talking about.

Deputy G.C.L. Baudains:

I am talking about fairly large developers.

Senator F.E. Cohen:

I cannot answer.

Deputy G.C.L. Baudains:

No, as I say, I raise it as an issue and just wondered what your comments on it were.

Senator F.E. Cohen:

We give an assurance we would not penalise anybody for whatever they said.

Deputy R.C. Duhamel:

Okay, well, thank you for that. We are drawing to a close. Have you or your chief officer or other officer any closing comments that you would like to make?

Deputy R.G. Le Hérissier:

Paul, you remain very silent. I know you do not wish to comment probably on Jersey, but have you got any general observations?

Mr. P. Nichols(?):

Yes, I felt I could not comment on issues in my first week which are dealing with longstanding issues and debates about the process here, but personally I have found it a tremendously useful exercise to be involved in at this stage coming in and evaluating how the department runs and what key issues to be addressing. To have the documentation prepared, to see the representations and hear discussion today has all been very useful in that purpose.

Deputy R.C. Duhamel:

Thank you. On behalf of the panel and all the Members, I would like to thank you for attending and thank you for your comments.