

2.3 Deputy P.V.F. Le Claire of St. Helier of the Attorney General regarding consultation on the Island Plan amendments:

Given that the Minister for Planning and Environment is required by law to consult on the Island Plan amendments, would Her Majesty's Attorney General advise what the legal status is of the addendum issued by the Island Plan inspectors in June 2011, which the Minister has stated supersedes the Plan and the planning process?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

The addendum appears to be a report prepared by the inspectors at the Minister's request, which is added to their report of May 2011 on the further examination in public. The Minister is not required to consult on any proposed amendments to the Draft Island Plan at all. Article 4A(5) of the 2002 Law gives the Minister a discretion to publicise a lodged amendment and seek representations from the public on it, but he is not required to do so. The Minister did decide to consult on some amendments and the report by the inspectors of May 2011 was the result. There is no provision governing the form of any further consultation and the process in the Planning and Building Order of 2009 does not apply to any consultation other than the first when the initial Island Plan is publicised. The addendum is the product of a further consultation with the inspectors and, as such, it is information that the Minister is entitled to take into account in responding to amendments or formulating his own amendments. It can be given such weight as the Minister and States Members choose and believe appropriate. I note that the Minister has written that the addendum supersedes, as it postdates, the examination in public. While the addendum clearly postdates the latest examination in public, it does not hold a status that is any greater than any other part of the inspectors' report. It does, however, amend the conclusions in part of the second report subject to the qualifications set out by the inspectors in the addendum itself.

Deputy P.V.F. Le Claire:

Thank you, Sir, a very helpful answer. May I ask a supplementary, please?

The Bailiff:

Yes.

2.3.1 Deputy P.V.F. Le Claire:

Therefore, it does hold the weight that we choose to give it and in the inspectors' report addendum, which the Minister has sought, in the fourth paragraph, it states, having been given a partial transcript of the speech that Senator Ozouf made - not a statement - the partial transcript comforted them and they said: "thereby affordable housing can be delivered on States-owned land", at least by implication to accept that land may be disposed of for less than the fullest market value. So by implication the Minister for Planning and Environment is now giving weight to the fact that a speech from Senator Ozouf has given him comfort that the States are ticking the box and telling him: "We can now proceed to dispose of States land at less than market value."

The Attorney General:

I am not entirely sure what the question was but all I can say is that the Minister and the States can give to the addendum the weight that they think that it merits in all the circumstances.

2.3.2 Deputy P.V.F. Le Claire:

Could I ask one last supplementary? If the plan proceeds and is approved and challenged by any Members in subsequent planning applications, is the law itself open for judicial review or application to the Royal Court? **[Aside]** Can we have an indication as to whether or not it could be challenged by judicial review, as a law and a policy, and could it be challenged in the Royal Court?

The Attorney General:

Any challenge by way of judicial review will come about as a result, undoubtedly, of a decision made by the Minister in the circumstances in which he would fall to make a decision. The primary legislation cannot be struck down by the court on the grounds that it, for example, is not compliant or human rights compliant, but that I do not take to be the question. I think the answer is that, of course, as part of the argument as to whether the Minister is discharging his obligations in a judicial review application, the legislative framework, including the Island Plan, in which he discharges it will undoubtedly fall to be taken into account.