

2.6 Deputy R.G. Le Hérisier of the Minister for Planning and Environment regarding the criteria by which an owner, who has allegedly illegally converted a property, is recommended for prosecution:

Would the Minister outline the criteria which determine whether or not an owner who has allegedly illegally converted a property is recommended for prosecution?

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

I shall answer this question as fully as possible but must stress at the outset the decisions as to whether to refer a case for prosecution are taken by officers under guidance determined by the Attorney General. This guidance provides important background to my answer and this material has, therefore, been tabled for Members' information. Dealing with the planning enforcement aspects of the questions, alleged infractions are dealt with by officers under planning law and the relevant legal guidance that I have already referred to. Following appropriate investigations, including a site visit and the collation of necessary evidence, an officer will determine whether to serve an enforcement notice in response to an alleged planning infraction. Successful planning enforcement work often leads to the reinstatement of offending works by negotiation. Alternatively, where an appropriate planning solution can be found, the works may be regularised through a retrospective planning application. In such cases, it may be neither productive nor appropriate to seek prosecution. In some instances, it may be the case that the infraction is materially insignificant so, again, it may not be productive or an effective use of scarce resources to seek prosecution. However, if the infraction is significant or if an enforcement notice has not been complied with, we would caution the person responsible and refer papers to the Attorney General for prosecution. This is in line with Law Officers' guidance.

2.6.1 Deputy R.G. Le Hérisier:

Would the Minister explain whether the policy covers situations where a person may, indeed, have illegally or allegedly illegally converted a property, but in order to salvage that situation is prepared to develop another site? Would the Minister answer whether, indeed, such a situation exists and whether, indeed, there is negotiation carried out to allow a kind of swap?

Senator F.E. Cohen:

I need to be rather careful with this answer because I think that the Deputy is referring to a specific instance and, therefore, it would be inappropriate for me to give a detailed comment that may give an indication of how that particular situation was dealt with, but the general principle is that a practical approach is taken by the department bearing in mind the infraction, bearing in mind the likelihood of a successful prosecution, and bearing in mind the scarce resources within the department in relation to enforcement procedures.

2.6.2 Deputy R.G. Le Hérisier:

Could the Minister outline whether he consults with the Housing Department as there have been, as he well knows, a few recent high profile cases concerning the alleged illegal use or the illegal use of properties not being declared for their proper housing use for example? Would he indicate whether he consults with the Housing Department when such cases arise?

Senator F.E. Cohen:

I do not personally consult with the Housing Department, but I am aware that where it is appropriate there is officer consultation between the departments.