

STATES OF JERSEY

Environment, Housing and Infrastructure Scrutiny Panel Infrastructure Levy

MONDAY, 6th NOVEMBER 2017

Panel:

Deputy D. Johnson of St. Mary (Chairman)

Deputy T.A. Vallois of St. John (Vice-Chairman)

Witnesses:

President, Jersey Chamber of Commerce

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce

Representative, Jersey Construction Council

Vice-President, Jersey Farmers' Union

[9:33]

Deputy D. Johnson of St. Mary (Chairman):

Welcome to the public hearing of the Environment, Housing and Infrastructure Scrutiny Panel. This is being recorded and for the record can we go round the table please and identify yourselves?

Starting with myself; I am David Johnson, Deputy of St. Mary and chairman of the panel.

Deputy T.A. Vallois of St. John (Vice-Chairman):

Tracey Vallois, Deputy of St. John, vice-chairman of the panel.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Claire Smith, Ogier, here on behalf of the Chamber of Commerce.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

David Whalley, Grange Developments on behalf of the Chamber of Commerce.

Vice-President, Jersey Farmers' Union

Doug Richardson, vice-president, Jersey Farmers' Union.

Jersey Construction Council representative:

Andy Fleet from Jersey Construction Council.

President, Chamber of Commerce:

Eliot Lincoln, president of the Chamber of Commerce.

The Deputy of St. Mary:

Thank you for that. Apologies may I give on behalf of 2 panel members. One is attending a Commonwealth Parliamentary Association conference and the other one is not available. As you are aware, this hearing is particularly to consider the Jersey Infrastructure Levy approval in principle. The proposition has been lodged as to principle only. We are aware that Chamber has expressed the wish for their views to be heard by Scrutiny and once heard we have a corresponding public hearing with the Minister for the Environment later this week. So we will report your views and then report on. So essentially we are here to receive your views. So we will ask questions as we go along. Would someone like to start off by giving an overview as to where you are?

Representative, Jersey Construction Council:

I can start certainly in terms of Jersey Construction Council's view. During the course of the last 12 months the Je.C.C. (Jersey Construction Council) has met with the Minister to express our concern on the proposal for the J.I.L. (Jersey Infrastructure Levy) tax on our industry. During this process our comments have largely fallen on deaf ears as proven by the consultation document that was released in July. The Je.C.C. and with its members companies chose to appoint Lichfields who are a leading U.K. (United Kingdom) planning consultancy holding extensive experience of the infrastructure levy in the U.K. The instruction to Lichfield was to provide an evidence-based response on the draft proposal and our public consultation submission has been circulated to you all. During our meetings with the Minister and, in particular, on 8th May he stated that before a decision was made on the implementation of J.I.L a public inquiry will be held. We understand that this is not now the case and the Minister has backtracked stating that the public inquiry was to debate

the amount to be charged only under the levy and not the principal of these new facts. Following the extensive work undertaken by Lichfield we have serious concerns relating to the viability of the proposal and the potential impact on the construction industry. We are of the opinion that this tax is unfair and unreasonable to be imposed on just one industry only. We are also of the opinion that this tax will increase property prices. The costs will be passed on to the end user making properties less affordable. This tax will cause the current affordable housing problem on the Island to come worse. The Minister is of the opinion that the tax will be absorbed by the landowners. This will not happen. As landowners do not have to sell their land and will hold out for the highest price. The Minister has stated in his consultation response that there has been no further submission of alternative evidence that challenges their work. This we consider is a complete dismissal of the Lichfield report. He goes on to say that the industry's objection is one of principle only. This is not the case. The viability process that he has used is fundamentally flawed. The Minister claims that from the consultation they have received equal support to objection to the tax. However, the support showing the response is not evidence based. How can this be equal and valid if it is an emotive response only? Lichfields have identified that the viability studies used to assess the viability of the proposed J.I.L. is flawed. Planning have assumed that most brownfield sites in Jersey are to be industrial sites with lower land values. This is incorrect. Many brownfield sites taken in Jersey for development are former hotels or offices. There is a very low level of industrial land in Jersey and very rare does that come forward for redevelopment. The construction costs used are significantly below actual costs, as confirmed by Je.C.C. member companies, based on current projects. This year alone has seen build costs rise 10 to 12 per cent following the impact of Brexit and the weaker pound. It has also been assumed in the viabilities that land will sell at only 20 per cent above its existing use value. There is insufficient evidence to support this albeit it is being used in the viabilities. The Minister claims extensive consultation was undertaken with our industry over build costs however from the response our views have been ignored. Just prior to the public consultation on J.I.L. the Minister updated the existing payment obligation agreement S.P.G. (supplementary planning guidance), which in some cases increased construction costs by up to 53 per cent, which is unsustainable. The public consultation on planning obligation agreements and J.I.L. should have been undertaken together to avoid double dipping, a term extensively used and experienced in the U.K. with their construction levy, which amounts to a duplication of increasing construction costs. Lichfields, we believe, have proven beyond doubt in their report when the correct build costs are applied this proposed tax is making most sites unviable. This week we have seen for the first time in 10 years an increase in interest rates potentially adding £700 a year to an average mortgage. This is likely to increase in the coming years. Now is not the time to introduce a further tax on the industry and certainly not based on a foundation of inaccurate facts and figures.

The Deputy of St. Mary:

Thanks. We will ask each of you in turn to give your point of view. A very general point: do you consider the Jersey situation is markedly different from ... better than the U.K., for instance, where some authorities have got something similar and in addition to that there is a tax from general revenue in the form of capital gains tax. Are you saying Jersey's development or construction industry is more prone to ...

Representative, Jersey Construction Council:

I do not think the industry is different. I think the nature of the land supply is substantially different. The Island Plan itself identifies most of Jersey as a green zone. Most of development takes place or is allocated to take place in St. Helier or in built-up areas, so by definition most of its brownfield site is redevelopment of existing areas. In the U.K. a major part of development takes place on greenfield land and it comes about as a major allocation of greenfield linked with a planning obligation agreement, called section 106 agreements in the U.K., where there will be infrastructure provided specific for that development. It may include a bypass or a ring road. It may include new schools, British Centre, et cetera, but there are situations in the U.K. ... there is one that we are involved in as a company where the district council has chosen not to apply the C.I.L. (community infrastructure levy) to the project as they are taking forward through a section 106 agreement the planning obligation agreement. So it is specific infrastructure improvements to that particular town, to that locality, to that development. Not a general taxation to be spent in unknown areas. So that is one of the downfalls of C.I.L. and J.I.L. We have no idea where the money is going to be spent. It is not specific to a development that planning consent has been granted. So I think the locations are different. The fact that the majority of land is brownfield sites, most of those sites themselves are more expensive to build. Some sites will be contaminated. Many sites will have existing foundations and fairly expensive foundation solutions to build on them, rather than building in a greenfield. So there is a different set of circumstances between Jersey and the U.K.

The Deputy of St. Mary:

Another point: you mentioned the parallels between the planning obligation agreements and C.I.L., it is now called rather than J.I.L. I think, is it not?

Representative, Jersey Construction Council:

Yes.

The Deputy of St. Mary:

I think the department have changed their view on that over the period, have they not, in the sense that they talk about more or less not phasing out planning obligation agreements, sort of using them far less. From what you say, would you prefer planning obligation agreements to continue more robustly than C.I.L.?

Representative, Jersey Construction Council:

Yes, I think we would prefer planning obligation agreements to continue because we expect, and that is what we are used to, because they are specific to that particular project. It comes out of the planning stage of that particular project. If it needs a bus shelter or if it needs a set of traffic lights or an improved junction then that comes as part of the design for that scheme. I think that is accepted. But what we believe we are seeing here is a duplication and a double dipping, as I referred to. The planning obligation agreement supplementary guidance was specifically reviewed and updated before J.I.L. came out for public consultation.

[9:45]

Why? Why were the 2 not considered together? They are supposed to be for the same type of things, albeit an obligation agreement has got to be site specific. J.I.L. is more general in terms of its levy. But the 2 should be considered together. But the planning obligation agreement guidance was substantially enhanced, costs increased substantially and the reference I quoted of costs increasing by 53 per cent was the cost of a bus shelter. They now cost 53 per cent more than they did 6 months ago to provide a bus shelter. Why have all these changes taken place? Then we are faced with a public consultation for J.I.L. coming afterwards.

The Deputy of St. Mary:

I take that point. Planning obligation agreements and the ... I can see the sense in a small development that a bus shelter, for instance, might be germane but if we are talking about building a large apartment block, that is going to affect more than just the immediate vicinity. Do you not see any justification for having a levy affecting the whole of St. Helier? When I use "St. Helier" I use it like the department does in the town sense, including the outlying areas. It will have an effect on infrastructure elsewhere, which is what they are trying to get at, I think, is it not?

Representative, Jersey Construction Council:

I think that has got to be proven that that specific development will impact infrastructure elsewhere? Generally infrastructure improvements in a town, sort of St. Helier, come from general taxation. Everybody plays a part in that. All industries should contribute to that, not one specific industry.

The Deputy of St. Mary:

Again, they considered general taxation and decided against that in the property review. Perhaps you would have preferred that; to introduce some form of general taxation on the equivalent of capital gain?

Representative, Jersey Construction Council:

Subject to the criteria I think that potentially makes it more fair for the general taxation applying to everybody, not just one particular sector.

The Deputy of St. John:

I would just like to know, I sit on this panel because I am still learning about environment and the housing and the infrastructure side of things. So excuse me for my types of questioning, but the planning obligation agreements, as they stand, what are your views on them and could they be used in a better way from an industry point of view? Because we are talking about the double dipping. I am just trying to ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I am just going to rewind a little bit. The Minister said that he would not introduce P.O.A.s (planning obligation agreements) and the J.I.L. We have meetings with him all the time so first of all he has not been true to his word on that, which is quite upsetting. It is easy, as a developer, to be seen as a pantomime villain. It is easy to sell to the public of Jersey that we want another tax. But we had a meeting up at Chamber as part of the consultation for P.O.A.s and before we knew it, within a week or 2, it had just been introduced. No real consultation. It was just: "That is what we are going to do, we are just going to introduce it" and Andy's just mentioned about the cost. In there the Eastern Cycle Route was £1,000 a plot, it is now £1,350 a plot; a 35 per cent increase. We have got to provide bus drivers, buses, I mean you would not believe the shopping list. So that has just been foisted on us and we have absolutely no choice. Now a planning obligation agreement is supposed to be for a site specific thing. But nowadays if you read that document everything has been lumped in there. Everybody is having a go. D.f.I. (Department for Infrastructure) are having a go. If you can get it paid for by a developer that is the *modus operandi*. This is just another tax. At the moment an average house in Jersey - I worked this out before this meeting - is 21 per cent of the price of the house. Now I think if the people in Jersey realised that 21 per cent of their house price is going to the government I think they would be quite upset about it. It is everywhere. It is stamp duty. Of course we all pay income tax as well, and the list ... I nearly filled an A4 page of all the different taxes that the government get from house building. So this is the straw that is breaking the camel's back. It is just another tax and the Minister has already had flags printed up. He thinks it is coming in, and that is something else that we are very upset about because the consultation process is not being followed properly. He is bringing it in and that is what he thinks.

The Deputy of St. Mary:

Just to clarify. As you know, the detail ... it is not going to be coming in until April 2019.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

He thinks it is coming in so we have done all of this work. It definitely does not work. The tax just does not work. I think all we want is a fair hearing and for the Minister to realise that it is just a step too far.

The Deputy of St. Mary:

Again, just to clarify ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Does that answer your question? Because on the P.O.A.s they are supposed to be site specific but there is a percentage for our ... I mean the document really is worth the read, perversely. There is so much in there and we all do contribute a lot of money to development. I mean just the increases that have just ... why were things not increased by 2 per cent, the rate of inflation? Why 35 per cent on this and 53 per cent on a bus shelter? It is that sort of thing. So I think the whole mindset of it is just wrong.

The Deputy of St. Mary:

Again, the main point for both of you is that we ought to pay greater attention to the 2 of them in tandem rather than ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Yes.

The Deputy of St. Mary:

Am I right in what you say that you believe that the boundaries of the P.O.A.s have gone beyond their original one, almost like a C.I.L. now because they cover a greater area?

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I think they have. Just having to provide buses and bus drivers and all this sort of thing.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I was just going to offer a little bit of background that might be of assistance. I have been practising here for 5 years. I am a specialist planning lawyer but I have 18 years' experience of the section 106 agreements that you were just having explained to you and of the community infrastructure levy

in the U.K. So it is what I specialise in. I would say not just for developers but also on secondment for Transport for London and the Homes and Communities Agency, so I am very much aware of what it is the Minister is trying to achieve. I would simply ... I am here really to try to offer some notes of caution to what we are doing here. In the U.K. - and I know we do not have the detail yet and it will be worked up in whatever way it is worked up - but essentially a lot of this is being based on the U.K. legislation and the viability assessments that have been done by the consultants is very much approaching it from the U.K. direction. So as an industry, all we can do is presume that that is the path that the Minister is intending to head down. So I would want to say a couple of things about that. It is the most amended piece of legislation since Planning has existed ...

The Deputy of St. Mary:

The U.K. version?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

The U.K. version. Because it is so incredibly technical. It is the hardest area of all areas that I practise in and I also specialise in nuclear law, so I do not say that lightly. It is incredibly complicated. It is very, very expensive for councils to deliver because the entire system is front loaded and it has to be. The rate of return that you get from C.I.L. in comparison to section 106 agreements - our equivalent being the P.O.A.s - is infinitely smaller and it costs an awful lot more. So our experience from the U.K. is that you get a lot less from this. I do not believe this is going to deliver all of the good things that the Minister is looking for at all. We will set that just to one side now and I go back to planning obligation agreements. Now, legally, planning obligation agreements are site specific. They have to fairly and reasonably relate to the development that is being proposed to come forward. As it is, I have already cautioned, and it is the same with my colleagues and other competitor advocates on the Island, that the latest guidance is right up, if not over, the line of what you can legally require under a planning obligation agreement because it is already starting to pull in matters that are outside the scope of the pure impact from that one specific development. So they may be nice to have, they may be in the public interest but whether or not you can specifically tie them to mitigating the harm, the impact, from a particular development and therefore legally justifying them, is a complete other question. That is yet to be tested, and quite a few of my clients are waiting to see if the full shopping list that David is describing that is in the guidance, are requested from smaller schemes. It is quite likely that that is going to be challengeable under the appeals system. Given that our inspectors here in Jersey are from the U.K. system and we are very much aware of what can and cannot be included in a P.O.A. In comparison, if you sat that against the community infrastructure levy that is designed to be, as you are aware, providing a taxation that provides monies for infrastructure outside of just site specific need from one development. But the problem with that, that we are trying to explain to you, is as a developer, as you have just put to us, you recognise that a particular development has an impact outside of the boundaries of its site. So let me take the

example of a housing development that needs for a junction half a mile away to be improved in order to facilitate the people who are going to be living in there, passing in and out, in the morning and rush hour and coming home, under a planning obligation agreement if you can show that link you can provide those monies. So that is something that is allowed. If you do that under J.I.L. the requirement is still there, the monies are paid over, the impact still needs to be mitigated. But the developer has zero control over how that money is spent. It just literally disappears into a black hole. The way it works is there is a list of priorities that are set out by the department. They scoop up all the monies and they spend them in the order of priority on their list. So notwithstanding that that need is still there, the people living in those houses are getting caught in traffic jams, they are cross with the developer because, from the way they see it, they have just dumped a load of houses and they have not resolved the infrastructure issues but the developer can do nothing because that money is not under their control anymore. It is a tax, it is paid over and once it is paid it has gone. Whereas under planning obligation agreements there is a clawback. So if the need is shown by the department and they say: "You are causing this impact, you must mitigate it and the financial sum is X" that is what a planning obligation agreement is principally designed for. Planning conditions deal with things that are not monetary for any financial sums to be paid, those have to be under a planning obligation agreement. If it transpires, as the development is built out, that it was not necessary, and the impact has not arisen, those monies are repaid to the developer. So that is a fair system. It says: "We are causing a harm. We provide monies. Those harms are mitigated and they directly relate to our scheme." You cannot have it both ways and that is the system that the Minister seems to be proposing. It is sort of a halfway house between the English system, which says: "We need new schools and we need a new hospital and we need a bypass and your monies go into a pot because we calculate on a unit-by-unit basis what impact your scheme will have" and that is how much you have to pay. With all the conversations that we have had with the Minister that is not what he is proposing here. I know we have not seen the detail yet but in conversations with us he has said the monies will go into improving things such as street furniture in St. Helier. Now that is not what a system such as community infrastructure levy is designed for. It is supposed to be for really big pieces of kit that the local authorities cannot afford to fund themselves, but that it is in the public interest for everybody to contribute to. If he is genuinely talking about improvements in St. Helier the Island Development Plan already allows for that. That is the built-up area, that is where all the development is supposed to be, so each development that comes forward in that area can already contribute under the existing planning obligation regime towards whatever impact it causes on St. Helier, improving things like street furniture and open space. J.I.L. or C.I.L., or whatever we want to call it, is literally a sledgehammer to crack a nut. The administration of that will be incredibly intensive whereas planning obligation agreements are not. You tend to make your payments at the beginning as soon as you implement your planning permission whereas if he does follow the English system the monies are payable in phases, when you have phased development, and they are assessed at the point that you get reserve matters for your outline planning permission,

which is further down the line, which because we have not got any anti-double dipping legislation here will result in a planning obligation agreement in order to get your planning permission released. So if you are aware you get your minded to grant resolution from the committee subject to conditions and signing the planning obligation agreement. That will require you to make onsite payments upfront for certain things. You will pay those and get your planning permission, but later when you phase or implement out your large scheme in the built-up area, which is the appropriate location for it, at that point you will then have to pay J.I.L. as well.

The Deputy of St. Mary:

I think there is some reference to that being phased in as well.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Exactly. At least in England where their legislation is in place to prevent this same impact being assessed twice from 2 different points in the development scheme.

[10:00]

The Deputy of St. Mary:

I said we are here to listen, and thanks for that.

The Deputy of St. John:

One of the arguments that was made was that this is important because it will give developers an idea of how much the cost will be upfront.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

That is all spin.

The Deputy of St. John:

I want to hear what you have got to say. I mean you are the developers. You are the ones that deal with this day in day out, so I am intrigued to hear exactly what it is you experience and how you see it. I think there is possibly a way to achieve a better outcome than having lots of different things. But understanding what developers go through I think is important from our end.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Essentially, until you get your charging schedule - which we have not got any of that detail, which sets out an alternative to what is currently in the guidance for P.O.A. - it would set out employment use, hazard floor space of X number of pounds, housing has a floor space of X number of pounds,

so that essentially each time you build some new development the way J.I.L. works is you pay for the amount of new floor space and particular use an amount in pounds. Without knowing how that is going to work, where it is going to be fixed, if for example we are going to have nil rated, like we do in the U.K., so if the government want to encourage a certain kind of development in the built-up area and therefore certain things will be zero rated and you will not have to pay, until we understand how they are going to go open book on viability ... so the way that works is you provide all of your accounts about how much a particular site has cost, what the abnormals are, what the land value was, and it is incredibly easy. I do not say this disrespectfully, but it is incredibly easy if you are an expert in this to provide sufficient detail to show that there is no money in the pot at all; incredibly easy. Whereas the planning obligation agreements you need that infrastructure to happen in order to make your site work. It is my experience - not speaking specifically about Jersey to be very clear, I am speaking about England, I cast no aspersions - you want your planning obligation agreement payments but you are trying to avoid the community infrastructure levy. Without the detail yet to know there is no way of knowing that it is going to present a fairer, simpler system. All it is likely to present is an awful lot of appeals because the viability basis that this assessment has been done on is not correct and is flawed, so it would be quite easy to drive a coach and 2 horses through it.

The Deputy of St. John:

Of course not having the legislation in terms of appeals as well, that could add cost on top if it was to go to the Royal Court.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Absolutely. And delay. And it will do.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I think it will just kill development. We are already the most heavily taxed industry in Jersey. The tax just does not work. I look at it very simply, it just does not work.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It does not achieve anything here whereas ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Why is the Minister carrying on driving this through when it just does not work? He is not listening to us.

Representative, Jersey Construction Council:

Apparently there is a shortage of homes on Jersey and bringing this in will just slow down the whole process, suffocate the process, reduce the amount of housing in Jersey and increase the affordability problem.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

He had already increased the P.O.A.s so much, he has plenty of money.

The Deputy of St. Mary:

I was going to pick up on that.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

If he has put that up, I mean, why does he even need another tax?

The Deputy of St. Mary:

You explained that they pushed the P.O.A. boundaries as far as they can, in a sense then you can see why they might want to put a seal in place to do things which they should be doing to the P.O.A. in any case, maybe.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

One could certainly say that but one would have to say that you cannot do it both. Both have been done at the moment and I noted your comment that you thought that they were not going to continue with P.O.A.s as much.

The Deputy of St. Mary:

They have, as I say, backed off.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

That is certainly not in the guidance and, for example, the Minister said to us that he would be dropping the Percentage of Arts when he brought in extended P.O.A. and that certainly has not happened either. He has gone back on that and has now said that the Percentage for Arts system works incredibly well, and I would already say that is supposed to be voluntary and yet it is the most involuntary thing imaginable.

Representative, Jersey Construction Council:

But it was not included in the viabilities.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Not at all, that is the problem. It is another flaw in that it has not been included in the viability assessment but the Minister does want to keep using that system so we have got 3 systems in train, none of which have been included properly and fully in the viability assessment. So you are not stepping away from this side of the fence, you are not getting realistic figures or having your expectations managed about what is going to be achievable from this. What is going to be is incredibly expensive and I firmly believe you are not going to get the monies that you think are going you to get so that it is essentially going to be a waste of public money to do this.

The Deputy of St. Mary:

There are 2 points there. The other point you mentioned is that under the P.O.A.s you develop a stake in development in the sense that the bus shelter, or whatever is being built, is germane to that development. Your concern is that you are losing control of the relevance to your development?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Yes.

The Deputy of St. Mary:

Just to deal with that at the moment, if this was a general taxation you would have no control over that in any case, would you?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I would not have a concern with that, personally. I am not here to speak to that but if they had put half a percent on general taxation that would be fair across the board. I think what I am trying to say is the construction industry already pays its contribution under P.O.A.s, having a second layer of tax that is already combative with the P.O.A. system and does not integrate properly with it, because Jersey is not big enough to need to deliver this by an airport, a new port, a hospital, that is not what this designed for, this particular version of it. It is not fair and reasonable, it is not.

The Deputy of St. Mary:

Okay. In your view is there any scope - and I know you say they are pushing the boundaries already with the P.O.A.s - for pushing them legally so that if you have your development, yes, and half a mile down the road you need to do a new junction, that could be included in that P.O.A.?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

That is already possible.

The Deputy of St. Mary:

That is possible?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

That is already possible, yes, it is called a Grampian obligation that you are allowed to have an obligation that involves land offsite outside of your control if it is necessary and if the harm from your development necessitates that, that is already legally possible under a P.O.A. agreement.

The Deputy of St. Mary:

Are you saying in fact that the P.O.A. could be juggled or ...

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I do not believe that is necessary to achieve what the Minister wants to achieve. I think he can do it under P.O.A.s. I do not speak for whether or not the industry would be happy with that but legally, as a planning lawyer, I believe you are exposing yourself by proceeding with J.I.L. this way. It will not achieve what you want, it is going to be incredibly expensive and I do not think it will successful at all. You are taking the microcosm and applying a macro system that specifically will not work in Jersey. Among other reasons because, as we have already said, in England there will always be land that is being turned over. It is just a part of life. There will always be people who need to sell. It has been my experience of working here for 5 years, that simply is not the case in the Channel Islands and it is much like work I used to do for peers in England, for the gentry. Where their land has been in the family for 300, 400 years and I say at the moment this taxation called Community Infrastructure Levy, and they just go: "Well, we will just hang on to it for another 50 to 100 years." There is no impetus to sell.

Representative, Jersey Construction Council:

That is the view of the Jersey Farmers' Union.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Yes, there is no need and therefore there is no regular turnover of land and that is what you need for this to be successful. Quite aside from if you can work out the detail. The fundamentals of how land is held and sold here in Jersey are not comparable to the U.K.

The Deputy of St. Mary:

That is one of the problems with housing in the U.K. So you question the net gain from this on the basis that the admin costs would continue to be disproportionate?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Yes, just because, again, we have not had it here, that means nobody here has that experience so you are going to have to buy in that experience, much in the same way that we paid to have consultants, you paid to have consultants, that become incredibly expensive. So in these times are we really going to create an entire new department to administer a community infrastructure levy. That is what you will need to do. It is incredibly specialised, it really is.

The Deputy of St. Mary:

Yes, I think the proposition itself makes reference to it not being ... "It will be capably managed from existing resources." I do not disagree with that then.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I find that quite hard to believe just because it is incredibly specialised.

The Deputy of St. Mary:

Okay, thanks for that. The Farmers' Union has not yet had a say, would you like to?

Vice-President, Jersey Farmers' Union:

I would just like to say that I have read the report, it seems to just tear to shreds what the Minister is trying to achieve. I wholeheartedly agree with the people here and their views. I think it is crazy to employ this policy. That is where we come in on it. I guess the Minister would put in elements so where, if it did come through - and I think it would be wrong if it did - the agricultural community would probably be exempt on some of the things. New agricultural buildings hopefully would be exempt and that sort of thing. Staff accommodation I think is possibly a grey area for the Minister and we certainly need to upgrade our accommodation going forward. There is going to be a lot of focus on that. That is one of the things we are going to be doing or trying to do and this sort of thing makes it all the more difficult. So our position from seeing that Lichfields have, you know, literally torn it to shreds, we do not think it should go through.

The Deputy of St. Mary:

You have touched on a couple of specific concerns of the farming industry, improving staff accommodation is one then, is it?

Vice-President, Jersey Farmers' Union:

Yes.

The Deputy of St. Mary:

Which you are under pressure to do that, I imagine?

Vice-President, Jersey Farmers' Union:

In an industry that has got very, very low profit margins, in an industry where it is difficult to incentivise the younger generation to come through, because they see it as being a very ... there is too much bureaucracy in the industry, too much ... there is too much paperwork and this is more paperwork. I sympathise with developers of a certain age and I would sympathise with them if they decided never to do any more property development because from my standpoint I see that there is an awful lot of bureaucracy and paperwork involved in construction. There is already too much so this is just ... how are you going to get, you know, the next generation of property developers coming through and that sort of thing. We need simple ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

We need to stimulate it not tax it.

Vice-President, Jersey Farmers' Union:

Correct.

The Deputy of St. Mary:

So, Chamber of Commerce, do you have any particular comments to make or ... we have all your submissions here, of course, as well.

President, Jersey Chamber of Commerce:

Our concern is that we have an area of the economy that we feel that these changes will slow down, and it is at a time where we need more building, we need more things to be happening and what we are going to be seeing is clearly the opposite. The idea that the residual loan value will suddenly be ... the landowners will suck that in, I think is misguided. I think that what you will see is one of 2 things. You will have landowners holding on to land or you will see it possibly passed all the way down. Either one of those is going to slow the industry down. So we are really concerned. I think the fact that there is something coming in with no idea about how the other thing is possibly going to be moved away, there is no clarity on that. I think it is really difficult to make a decision and for the Minister to be going in principle to get that in before the end of the year, I think it misguided because we will be making a decision on something that starts to get the foot in the door when we do not have all the facts. So I think it is a dangerous thing for us to be doing and we wholeheartedly advise against the introduction of this policy.

The Deputy of St. Mary:

This in principle route is a very well-worn path, I am afraid, in the sense we are seeing what is involved to a certain extent. There is no point in going further if the Members as a whole are going to knock it out.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It is an easy sell. Like I said, we are the pantomime villains. So I can see that it will, if it is allowed to go through, unless it is withdrawn and we are on that slippery slope then. That is my real concern.

Representative, Jersey Construction Council:

It seems wrong for it to be going forwards when the industry can prove that there are errors in the basis of the information. Surely that should be resolved first so everybody is in broad agreement of the terms of the actual facts, the bill costs, the land values, the various factors which have normal costs or contingencies. Everything is on the same level playing field going forward to assess this correctly. The viabilities assessment is not good, as we have said, and the proposition seems to be going forward on an unstable basis.

[10:15]

Vice-President, Jersey Farmers' Union:

The other thing, as well, that has come out, it seems the government is not very good at keeping its word. So with things like the obligation agreements, we have seen hyperinflation. So should J.I.L come in you could see that they could do whatever they want with it almost and things will increase and it could be an absolute disaster, it is just mapped to be one.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

In practical terms, when you initially identify sites and you go on to plan your site, everybody has a dip in from all the different departments and you would be quite amazed to see what happens because they can see the developers there, they have got pots of money, we are going to have some of it. That is the mindset. It just gets worse and worse and worse, like we have said. We are going on a bit about it now but fundamentally if I was in government and I had the facts in front of me I would say: "Why are we even bothering doing this?" Like when you are running a business, you always look at your latest proposal and if it does not work you do not do it, simple. Why is he relentlessly pushing forward with it, I just do not understand it.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I think a stark fact as well is that my banking clients would not lend on the margins that are in the viability assessment, so the presumptions that are here do not work in the Jersey marketplace. Again, you have U.K. consultants who have taken the U.K. system and they have sort of poked it a bit and then said: "That will work for Jersey" without speaking to the people who live, work and develop here. Then when you do, you are not listened to. We are not to be listened to. So if developers are telling you they will not be able to do this at this profit margin, if landowners and the Farmers' Union are telling you that nobody is going to be giving up their land on the basis of the viability figures that underlie this tack, and if we can tell you - and I am sure you can speak to them - the banks will not lend at this level, it just is a fundamentally flawed idea for Jersey. The principle of what it could achieve, I quite understand, but it simply is not going to. It has not been sufficiently thought out and, if you like, it has not been sufficiently "Jersey-ified". They have taken something incredibly complex from England, presumed it will be very easy to simplify it - which simply is not the case because otherwise it would have happened in England too - and rather than speaking to local authorities and finding out that they are getting less money, less receipts in from C.I.L. than from section 106 agreements, so ultimately they are in a worse-off position, we are piling ahead with an idea that is really not in favour anymore in England at all. Common practice in England now is for local authorities, quite wrongly, because it is contrary to the law, band together with the developer in order to try to avoid the money coming in C.I.L. So they, themselves are trying to say that all impacts are site specific to get it under the section 106 agreement because it is cheaper for them to administer and there is certainty of money. That is practical experience that I can refer you to.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Likewise.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Genuinely, and that is sitting on the other side of the fence, that is not wearing a developer hat. It is acting for local authorities who need these monies in and are not getting them under C.I.L. because it is so complicated, they are ending up with much less than they were promised by the government. I firmly believe that that would be your experience, I genuinely do.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

One of the Minister's problems, as well, is that he has promised the Constables that they will have ...

The Deputy of St. Mary:

Ten per cent in the Parish.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Ten per cent of nothing is still nothing.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It is, but that promise has been made, on the grapevine they are spending it already, even though we do not have it, they cannot get it from P.O.A.s so that is going to cause him a big problem as well politically.

The Deputy of St. Mary:

So if I follow that ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Well, he has promised the Constables that they are going to get ...

The Deputy of St. Mary:

On each project, yes, I understand that.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

So if they cannot give it with C.I.L. then that is not going to happen. So that potentially ...

The Deputy of St. Mary:

So 10 per cent of nil is nil.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Yes, exactly. That can cause him problems, can it not, because he made the promise there?

The Deputy of St. Mary:

Okay, but it is conditional on providing something ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It's a specific point.

The Deputy of St. Mary:

Okay. I go back to the proposition, it is an in principle one, you told me it is unusual to have this brief, is it not? It usually has more detail or some regulations.

The Deputy of St. John:

It is becoming a new thing, this in principle stuff. It was very rare in my early ... I mean, I have been the States for 9 years ...

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It sounds like a foot in the door.

The Deputy of St. John:

We had the issue with waste management charges as well, so it worries me when I see in principle.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I think, from your perspective, knowing that this legislation has been amended as many times as it has and how incredibly difficult this is legally to administer and how you balance all the interests, the things that the Farmers' Union were describing there, which things are going to be exempted, which things are not, without that detail and without sight of the draft legislation, I do not know how you and your colleagues can genuinely form a view about this. The spectrum within which it would be acceptable ...

The Deputy of St. John:

That is politics.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

... of course at one end of the spectrum there is going to be a wonderful pot of money and it is in the public interests and it will all be spent on public good works, that is great. But once you work out all the detail or all the options that it could cover or might not cover, it is almost infinite. Without that information I really struggle to see how you are properly informed.

The Deputy of St. Mary:

That is the point, when you have a chicken and egg situation we are not. So what would happen ... Tracey just mentioned the waste charges, that was approved in principle within the M.T.F.P. (Medium Term Financial Plan) which I think was a mistake. We did scrutinise the detail and it has been temporarily shelved because we raised so many points on it that it was not fit for purpose and they had to go back. That could happen here.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I think that is the position that we are in. I think we are just despondent that we have provided expert evidence, every bit as expert as the consultants that have been used by the Minister, setting out the reasons why it is flawed. I do not think that has been given sufficient weight.

Representative, Jersey Construction Council:

I think that is right. We were invited to respond on an evidence-based response. We have given that evidence, as Claire says. That evidence should now be considered fairly. It should go to a public inquiry for all the evidence to come out and be considered in front of somebody independent.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Yes, this is not an emotive response, it genuinely is not. This is us saying that this simply will not work and as taxpayers we do not want to see our tax paying money wasted on something that is fundamentally flawed, so that even in principle this should not, at this stage, be going forward. That is our view.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Well summed up.

The Deputy of St. Mary:

Going back to principles, the purpose of this is to raise a certain amount of money that they are not getting through central funds. They are saying some money could be raised through ... you probably would not like it any more if the ... or would you be more amenable if at least part of that money was being raised through P.O.A.s if it could be shown to be benefiting a particular development?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Absolutely, that is a fundamental principle of planning law that already exists. Quite whether or not the developers' industry thinks it should or should not, that already exists in the Development Law. That is a matter of fact.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It is not always about raising money, though, is it? It is also about, you know, government is a business, trimming your costs. The costs are going up and up and up and it is just: "What is the next tax we can think about?" So that is completely outside this room but that is a fundamental. You cannot just keep taxing this, taxing that, you just cannot carry on doing it.

The Deputy of St. Mary:

No, I take that point of view.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

A fundamental difference between community infrastructure levy and planning obligation agreements is within a planning obligation agreement, and your conditions to your planning permit, weight is given to the benefit to the community of the development. That is included in the decision-making process. With community infrastructure levy, it is just money that goes into a black hole for whatever it will ultimately be spent on. We are not getting any credit for the fact that as an industry we are delivering the housing that is required by the Island. We are already doing something that is to the public good and we are doing it where we are supposed to as set out in the Island Development Plan. So, as Dave has described, there is a feeling that we are being perceived as people who are making an unfair level of profit to the detriment of the community as a whole and that that is a wrong that needs to be righted. It simply is not the case. In Jersey you have the longest list now, with the new guidance, of contributions required under the P.O.A., far more even than in England, even if you set aside C.I.L., we are making our contribution and under the P.O.A. system that is recognised in part of the decision so that, for example, you can show in your viability assessment that there is only X amount of thousands of pounds available to planning gain, which is what the contributions in a P.O.A. are called. Therefore, you have a list of prioritisation of which contributions are most important towards education or whatever, which things are more significant because once the money has gone, the money has gone because the scheme itself has a value. We need the scheme to come forward. There seems to be no recognition of that any more in J.I.L., just this suggestion that a tax needs to be paid and we are the industry who should pay it. That is really very disappointing.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

On top of that as well there are other things that are not seen, like infrastructure itself. All the utilities are all owned by the government and we are providing new water mains, new substations, all things that 22 years ago when I arrived here were all provided and you just connected. Now we are paying for all of that. So that is a hidden cost but it is all contributed again to the infrastructure and the government, they are all government bodies.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I think that is the message we want to say (a) we are paying our share, we genuinely are, but (b) this system will not result in you getting a larger share from our industry.

The Deputy of St. Mary:

Also there is an amount of work, which constructurally you have to do on each development which is going to cost you. You would rather see that cost go on the P.O.A.?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Absolutely, yes.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

No, we would not rather see that cost go on the P.O.A., we do not want to pay any more costs.

The Deputy of St. Mary:

Okay.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

He has just increased the P.O.A.s, just out of the stratosphere. I do see your problem. If he does not get this he probably will increase the P.O.A.s again, I could see that happening, but we do not want any more increased costs.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Without changing the law there is a point past which he cannot increase the P.O.A., that is the thing. So someone has clearly said: "This is the way of doing that." All I am saying is that legally writing and drafting that is astronomically difficult. Astronomically difficult.

Representative, Jersey Construction Council:

But there are only so many bites of the cherry.

The Deputy of St. John:

Can I just ask this, on the actual consultation that was done in June - I just went back just to remind myself exactly what was on there - it talks about affordable homes. So my question is firstly: what do you understand to be affordable homes and did you know that they were looking at exempting affordable homes from this? Just to understand what you see as affordable homes in Jersey.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Affordable homes, everybody's affordable is different, of course, is it not? It is a fundamental thing. I think an affordable home is something that is generated by Andium who are a government body

providing homes for first-time buyers and social rented. That is my description of an affordable home.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

But, if I may, that is an exact example of what I am talking about it. Until we see the legislation that has a legal definition of affordable homes, I can give you 52 definitions just straight away from case law. Affordable is a very woolly term.

The Deputy of St. John:

That is why I ask.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

Without that detail we do not know is that helpful to our industry or is it a hindrance to our industry? Will it just mean anything produced by Andium and no one else? Because it is not the case that Andium are the only body - they may be the principal body but they are certainly not the only body.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I could say all my homes are affordable.

The Deputy of St. John:

There is an in principle decision - which I am always questioning in principle decisions anyway - but the uncertainty that this creates for the industry in the meantime, so, for example, if you look at what happened with the waste charges situation, we had an apparent in principle decision in the M.T.F.P., the detail came forward then it has gone to ... where has it gone now? Treasury. So there is that question mark hanging over us as to whether it is coming back or not. This potentially could do the same thing. What uncertainty does that create for your industry in the meantime knowing or not knowing whether there is going to be more costs coming on or more issues or the Planning Department is looking at using other ways to get money instead of this potentially?

Representative, Jersey Construction Council:

It would probably stop us buying land to carry out development. The risks are just too great. How can we go and buy a piece of land with such uncertainty?

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

You have been in planning for so long, that is the problem. If you could buy something today you think it is not a problem but I think Andy's point is that you could go into planning, you could be in

planning for 12 months, so I think that is what we mean. If you are buying it now I do not think it would matter.

President, Jersey Chamber of Commerce:

We would also see an amount of land banking or people putting planning permission in because obviously it would be ... you would have 2-tier land values so things where you sought planning permission before and after J.I.L. comes in.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

That has certainly happened in England when it was first brought in. Given that we have shortened our planning permission external life now to 3 years as well, it is just going to be unworkable.

[10:30]

The Deputy of St. Mary:

Turning that on its head, could that be regarded as incentive for more houses to be built more quickly?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I would say not, I would say it is an incentive for planning permissions to lapse unimplemented.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

It depends on the market. If you go back 10 years when we had a bad market. If you have got a permission that was due to run out then you are not going to renew it because you have no end user for your houses, because nobody is buying houses.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

If it follows the English system, on implementation of your planning permission that is the point at which it is payable.

Representative, Jersey Construction Council:

It has to be viable. Each scheme as to be viable. It is in the report from Lichfields, they say the degree to which the study underestimates likely build costs is sufficient alone to wipe out any potential viability headroom for a dual charge.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

That is what we have got, a dual charge. The P.O.A. system and the J.I.L. system, without any clear legislation as to how the 2 will work together.

The Deputy of St. Mary:

Okay. All right, we allowed you an hour, any more questions? It has been most useful from my point of view. I hope you feel you have got it off your chest, as it were. As I said at the beginning, we want to hear what you have to say, we have a counterpart with the Minister later on. So we will ...

Representative, Jersey Construction Council:

What is the process from here?

The Deputy of St. Mary:

There are difficulties, as you acknowledge, that there are principles and we have not ... the same as you, it is a principle decision to go to the States as a whole. We will take note and enshrine your comments ...

The Deputy of St. John:

The role that we play is obviously we have the Minister for the Environment coming in so we can, of course, ask questions following this hearing in terms of asking him his views in terms of details in the in principle proposition. The role that Scrutiny really can play from there is basically be able to put all of this into a comments paper or if an amendment is needed or something like that, then we can do that as a Scrutiny Panel. Our biggest role, I think, is being able to inform our colleagues - there are 49 of us. By doing a comments paper we can set out clearly the information we have come across so that Members can read it and use that as a basis for their decision making.

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

In the normal course of events, as has not happened here, we would expect the government consultants to respond to the Lichfield report. So to basically give the government, again, its reassurance that they are on the right track. But to completely disregard it is just ...

The Deputy of St. Mary:

So on that, there has been no formal response on the Lichfield report?

Ogier on behalf of Building and Development Committee, Jersey Chamber of Commerce:

No.

Grange Developments on behalf of Building and Development Committee, Jersey Chamber of Commerce:

I do not even think they have spent enough time looking at it because from us submitting it to that document was lightning fast, was it not? It was almost like it was pre-prepared.

The Deputy of St. Mary:

Okay, well as Tracey says, that is our scope to submit what you say, find out what the Minister says and put together some comments, which our colleagues can see and take their own view to a certain extent?

Representative, Jersey Construction Council:

Okay, good.

The Deputy of St. Mary:

Thank you all.

The Deputy of St. John:

Thank you very much.

[10:33]