

2.9 Senator B.E. Shenton of the Minister for Planning and Environment regarding the accountability for legal costs in planning matters:

Where the Minister or Planning Application Panel goes against the advice of planning officers and a legal action results in costs to the taxpayer, where does accountability lie?

Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Environment - rapporteur):

The planning and regulatory regime is clearly political in nature as it governs the activities of individual land owners in the public interest. As the elected Members of the States of Jersey represent the public interest, then they should be the ones making planning and building decisions, at least those decisions that are significant in their effect or raise issues of public interest. Each application is required to be considered on its planning merits having regard to the Island Plan and other relevant considerations and, therefore, applications are assessed by the department's professional staff before recommendation is made either to the Planning Applications Panel or to the Minister. It will sometimes be the case that elected Members do not agree with the recommendation of the officers, and in these cases there is a cooling-off period to consider the implications of a decision different from the recommendation. Where the politicians' decisions are subsequently confirmed, then clearly it is the Members making those decisions who are accountable both to the States and to the electorate. In the event of a successful appeal against a decision made in these circumstances, costs are likely to be awarded against the Minister. The payment of these costs cannot be budgeted for in advance, yet the clear accountability for the Planning and Environment Department's budget and expenditure lies with the Chief Officer as the department's accounting officer by virtue of financial direction 2.2. Mechanisms, however, do exist in those directions for the Chief Officer to make known his differing position in the matter to allow political decisions to be made.

2.9.1 Senator B.E. Shenton:

The department has lost 2 high-profile third party appeals and been heavily criticised by the Royal Court. How can it be in the public interest for the Minister to go against not only the planning officers' advice but also Crown Officers' advice resulting in a cost to the taxpayer of hundreds of thousands of pounds?

Deputy R.C. Duhamel:

As I said, it is a matter of political judgment and the weighing-up of what is in the public interest. The appeal procedures are a democratic function of any legislature and I certainly would be in agreement with the Minister to be telling this House that we both consider that a challenge to professional decisions from any direction and any quarter must be an acceptable part of democracy.