

STATES OF JERSEY



DRAFT PLANNING AND BUILDING (JERSEY) LAW 2002 (APPOINTED DAY) (NO. 2) ACT 200 (P.156/2006): AMENDMENT (P.156/2006 AMD.)– COMMENTS

**Presented to the States on 5th December 2006
by the Minister for Planning and Environment**

STATES GREFFE

COMMENTS

I was concerned to see this proposed amendment, by Deputy Power, because of the difficulties that will arise should the Appointed Day be brought forward to 1st January 2007.

I should make it clear that the Council of Ministers has fulfilled its commitment to make funding available from the beginning of 2007, and funding is in fact in place for the whole year.

I am fully committed to the introduction of third party appeals as soon as possible. However, I am also determined that the system should be efficient and effective from the day it is introduced. To do otherwise would be unfair to applicants and objectors. I have to take account of the practicalities involved, as I explain below.

First, the specific funding and agreement to the increase in manpower numbers was only agreed by the Council of Ministers on 19th November. It was only from then that it was possible to advertise for new staff, and Members may have noticed the advertisement placed in the Jersey Evening Post 2 weeks ago. (Advertisements have also been placed concurrently in the professional magazines.)

Second, the Royal Court process under the 2004 Royal Court Rules requires very tight deadlines to be met. The nature of the process is such that the lion's share work of the work is done by the Department well before the hearing and within the first 3 weeks after the appeal is lodged.

Following the lodging, the Department is required to file an affidavit, setting out the facts material to the decision, the reasons for and responding to the grounds of appeal. The draft affidavit needs to be forwarded to the Crown officers within 2 to 3 weeks in order to meet the required 28 day deadline. This enables the Crown Officers to check the draft, making any amendments, and for the swearing of the affidavit. Some cases have complicated and lengthy site histories which need to be set out in full. If precedents are cited, it is necessary to research other case files, which can be very time-consuming. On average, it takes between one and 2 weeks' full-time work to research and produce the response on the Minister's behalf. The appellant has a right to respond to the Minister's statement, and then the Department has a further 14 days to reply to that response, which can sometimes involve further research.

As an example, a recent affidavit filed comprised 34 pages, with 45 enclosures, and required the appeals officer to work a considerable amount of unpaid overtime over a 2 week period.

Deputy Power states that "*in the worse case scenario of an appeal being brought at the beginning of January, it would be logical to assume that some resource might have to be found to temporarily process the appeal*".

The amendment enables appeals to be made from 1 January, which means that the Department must be in a position to deal with any appeals as soon as they are lodged. There is no middle ground in this. The appeal can only be processed correctly and accurately in accordance with the Royal Court Rules.

The issue of resources is central to this. The system can only be efficient and effective with proper resources – and for most appeals that means senior professional staff. With the new system of third party appeals, all planning decisions on which representations were made may be subject to appeal – not just refusals, which comprise only about a tenth of all decisions. Even by conservative estimates, we could receive 5 appeals per month. On 1st January, there will only be the existing appeals planner in post, and that resource will simply be inadequate to operate an efficient and effective appeals system.

The additional resource requirement, I estimate, is the equivalent to 2 additional experienced planners, and we need time to recruit them.

Deputy Power states that "*the consequences to the Department of bringing forward of the date are unlikely to be significant.*" Were that the case, I would be proposing 1st January myself. However, I cannot accept this statement. The prospect of having to deal with the increased numbers of appeals will have significant implications on the Department for the first 3 months of the year, requiring senior staff to be withdrawn from applications work, resulting in severe reductions in service in the handling of planning applications, which will be totally

unacceptable to our fee-paying applicants, to the Planning Applications Panel and to me. The additional provisions associated with the introduction of third party appeals will in any case create additional work for the applications team, including the requirement to notify those making representations of the reasons for granting approval.

It is also important to recognise that the Royal Court itself requires time to prepare for third party appeals. It is clear that third party appeals will be more complex than first party appeals, because there will be more parties to the appeal. New Royal Court Rules will need to be prepared, and it is extremely unlikely that these can be consulted on and approved by the Superior Number of the Royal Court before the New Year.

I am proposing 31st March 2007 in order for experienced professionals to take up their posts and to make the new service operate efficiently from the outset. I cannot support an amendment that will put a substantial extra burden on an already extremely busy and hardworking Department, and also on the Royal Court. The result would be to cause serious delay in hearings and to create a backlog of planning application decisions as well as appeals of all types.

I ask Members to vote against this unworkable amendment.