

**WRITTEN QUESTION THE MINISTER FOR PLANNING AND ENVIRONMENT
BY THE DEPUTY OF ST. MARY
ANSWER TO BE TABLED ON MONDAY 18th JULY 2011**

Question

Would the Minister explain what part, if any, does the doctrine of “legitimate expectation” play in the determination of a planning application?

Is there a principle which confers a right to develop on the existing footprint, and if so, what is the legal position relating to this?

What approach is taken when the proposed development is larger than the existing building?

Answer

This question has been asked in three parts and I shall attempt to answer each in turn.

The Royal Court has ruled in planning appeal cases that the concept of legitimate expectation will rarely be applicable to planning matters. In particular, the Minister's decision is not usually fettered by any indications given by officers at the start of the process. Legitimate expectation is a phrase which has been used by many developers when seeking to persuade the Minister that they had been ‘led to believe’ that permission would be forthcoming for a particular scheme. I can advise members that my predecessor instructed that Planning Officers issue a caveat on all communications with developers, to the effect that any advice given is done so on a ‘without prejudice’ basis. I can report that this practice is still in place. Whilst officers do try to assist developers with their best advice, in good faith, it is clear to all that this is not binding upon a future decision of the Minister.

Turning to the second part of the question, I can confirm that there is not a right to develop as such, whether on an existing footprint or not. A person who requires planning permission must apply to the Minister for it. Determining a planning application will involve the Minister having to take into account all material planning considerations. The starting point will of course be the relevant policies of the Island Plan as in general he shall grant planning permission if a proposed development is in accordance with the Island Plan. The Minister will also take into account the consultation responses that give rise to material planning considerations and site specific issues which may include matters such as the planning history of the application site and the presence of existing buildings.

Finally, the third part of the question is really rather too wide to answer in specific terms. Each planning application needs to be considered on its individual merits; material considerations will therefore depend upon the circumstances and I would not want an answer by me to the generality of the questions asked by the Deputy to be taken as answering a particular site specific issue that he may have in mind. In an attempt to assist members, I can only comment that there will be sites where a larger development will be appropriate and equally, there will be other locations where it is not.