STATES OF JERSEY

ENVIRONMENT PANEL

TUESDAY, 25th JULY 2006

Panel:
Deputy R.C. Duhamel of St. Saviour (Chairman)
Deputy GC.L. Baudains of St. Clement
Deputy S. Power of St. Brelade
Deputy R.G. Le Hérissier of St. Saviour
Connétable K.A. Le Brun of St. Mary

Witnesses:
Mr. P. Grainger

Deputy R.C. Duhamel:
Welcome, Mr. Grainger. I just have to read you the notice. It is important that you fully understand the conditions under which you are appearing at this hearing. You will find a printed copy of the statement I am about to read to you on the table in front of you. The proceedings of the panel are covered by Parliamentary privilege through Article 34 of the States Jersey Law 2005 and the States of Jersey Powers, Privileges and Immunity Scrutiny Panels PAC and PPC (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted for anything said during hearings unless they say something that they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly into the panel when giving evidence without fear of legal action, although the immunity shall obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The Panel would like you to bear this in mind when answering the questions. The proceedings are being recorded and transcriptions will be made available on the Scrutiny website. Now, if I can ask you in giving your comments that you can speak to the microphone so that we have a good recording. Right, this particular Scrutiny Panel is being undertaken by Deputy Baudains as the lead member and he is being assisted by Deputy Le Hérissier. Bearing in mind your extensive experience within the planning world, when in the Planning Department and outside the Planning Department over many years, could you indicate to the Panel perhaps, to start us off, what you perceive to be the biggest problems with the planning process in Jersey at the moment?

Deputy G.C.L. Baudains:

Or strengths.

[Laughter]

Mr. P. Grainger:
I know it may be customary to make a statement at the end but could I make one at the beginning? There are defects in the system, and I would hope that the result of this Panel's investigations and any contribution that I make, providing the Minister agrees to any changes that you recommend, I would like to feel that it had 3 objectives. Firstly, as the right of a property owner to reasonably do to his property that which he wants, at the moment I think the pendulum has swung too far against property owners and I will come on to that in detail when we get on to the content of the submission. Secondly, to simplify the whole process to make it intelligible to members of the public, both the applicants themselves and for members of the public who want to express an opinion. Thirdly, to have a system that is contained within the planning process itself, in other words to keep lawyers out of it, because every time you read the documents there is legals, 'refer to lawyers', and the cost involved is totally disproportionate and, again, I will come on to that in due course as well. But if those 3 objectives could be fulfilled then I would like to temper my comments which, by their very nature, appear to be negative because they are criticisms of the existing system. They are not intended to be critical in that sense. They are meant to be constructive criticisms and hopefully what I say, and whether you agree with them or not is a different matter of course, but whatever you put to the Minister I am hoping that in the future the system will be improved for the public at large. So, going back to the question, then it is really there is too much bureaucracy, there is too much cost involved to the applicant and if those 2 issues can be addressed then I think there will be substantial progress.

Deputy R.C. Duhamel:
Do you think there is adequate training given to the political members in carrying out their duties in the application process?

Mr. P. Grainger:
In a nutshell, no. When the Island Plan was produced, and I have deliberately brought the document with me this large thing here, which all States Members have to read and unless you are a planner there are lots of elements in there which I think were very – not prejudicial, that is the wrong word - very onerous upon members of the public and property owners, et cetera, and I did take the trouble to write to all States Members and I think 3 States Members acknowledged the contribution that I'd made. At the end of the day, I think it just slipped through. For example, with the new planning law, there is a little clause in there that I will come on to later, which is quite onerous but it just slipped in. Unless you know what you are looking for, lay people, it is very difficult. I have been doing this for 30 years and therefore I think I am in a good position to assess what is being proposed, both from a professional point of view, because I agree with the principles of planning, but I can also look at it from the outside, i.e. the

applicant's perspective. This is where most of my time is spent - troubleshooting between the Committee or the Minister or the department on one hand and the individuals on the other because they get to this impasse and they have nowhere else to go, other than law and that is going to cost an arm and a leg. My overall view is that the Committee has used its almost unassailable position over the years to reach decisions knowing that the chances of anybody challenging it are exceedingly slim because of the costs involved. Unfortunately, the system that has now been reverted back to, in my opinion, does not improve the situation at all.

Deputy R.C. Duhamel:
So, in your professional opinion, how long do you think it would take to train a novice politician into the whys and wherefores of planning law and the planning process? Would it be reasonable to expect that something useful could come after 3 years or less?

Mr. P. Grainger:
No, a lot of it is just familiarisation. When a new Member is elected then they are given all the documentation and I know you have had this bundle of 13 enclosures, I think it was, from 14 enclosure or appendices on the Minister's statement. If you were just given 3 months to go through all that discuss it with the officers as to your understanding of it, so that you got a much better understanding of the intricacies of it all, because you can look at it superficially but it is really the nitty-gritty that we are talking about. The questions that you posed to Jacqui Hilton about the officers involvement - I spent 4 years training to be a planning officer and much the same as when Peter Thorne and the Minister were giving a presentation, Peter Thorne I know can just do a quick doodle and he said, right, that is the answer to the problem, much the same as I do. But it only comes with 30 years of experience and you cannot do it overnight. So, if you have a basic understanding of the system, I think, the political input is to ensure that it is fairly administered as much as anything because you can't hope to be a planner or an architect or a designer or a landscape architect or whatever and that is why you seek the expertise from the individuals and from the consultations to produce a solution that, hopefully, will please everybody.

Deputy R.C. Duhamel:
So, should then in that case, bearing in mind your comments, imply that perhaps the more difficult cases, which are the cases that are undertaken by the politicians as part of the process, perhaps be undertaken by some planning ombudsman, or somebody else who is not necessarily a politician, to bring the necessary expertise and professionalism into the group?

Mr. P. Grainger:
Do you mean in appeals or large projects?

Deputy R.C. Duhamel:
In large projects. At the moment we are told that, under the delegated powers, most of the decisions are

undertaken by the department. Now, the Applications Panel, which has politicians on it, look at maybe 5 per cent of the difficult applications and then there is an appeal mechanism that comes direct throug to the Minister or indeed, if it's taken further, through the Royal Court. So, bearing mind the comments that are being made, do you think that perhaps the time has come for the difficult decisions, in terms of planning applications, perhaps to be taken by somebody with more expertise than perhaps is demonstrated by the individual politicians within the group?

Mr. P. Grainger:

I do not think they should make the decision. I see nothing wrong with having an independent professional planner assess an application both from the States' perspective and from the applicant's perspective and then make a recommendation to the Minister because it does take a lot of the, shall we say, personality out of it.

Deputy R.C. Duhamel:

I was thinking more in terms of, perhaps to help you out, perhaps you were not here at the previous meeting but we were being told, for example, that the quality of the information put forward to be presented to the politicians on the Applications Panel was sometimes deficient and, indeed, in certain cases, and we were talking about Lezardrieux at St. Clements, the politicians didn't actually pick up, for example, on the relevance of the jacking up of the building in terms of the height difference and the implications that that would have had on the skyline views. Now, one would surely have expected, I certainly would have expected from my time on Planning, that anybody who is particularly interested in the planning function would have pounced upon that and raised it as an issue at the meeting, whether they had been given the information or not. But apparently in the evidence that we have had the suggestion was that some of these things do not necessarily happen.

Mr. P. Grainger:

That particular one, I see it from my home and it has not grown to the extent that people think it has. It is primarily because they chopped some of the hedges down around it which screened it. Now, I accept it has grown but if the trees had been chopped down and no development had taken place, you would have still seen the building on the top. Now, I accept that it has gone up and the Minister of the day, the previous incumbent, informed the States that it had risen by 7 feet, 6 inches, I think was the figure which is a whole floor, in reality. The building did exist. Now, one of the things I find odd is that going back, and I do not like harping back really, but when I was up there and we were asking for applications, there was a clear statement on the application form that said you had to show the difference between the original and the proposed and you had to show the adjacent property in sufficient detail to assess the relationship between the 2 properties. Now, when you look at a planning application you would think it was a desert island because it does not show the adjacent properties at all and, again, from a professional perspective, if I was given a plan which was correctly submitted and looked at it, I should be able to assess it in 2 or 3 minutes. If I had a problem I would go and look at it on site. Peter Thorne is that sort

of guy but he is now in a managerial rôle. He does not deal with day to day applications and I get the impression that he feels frustrated himself that he cannot get the quality of staff that he wants in order to do the job efficiently and, because I am at the coal face between the public and the Planning Department, some of the correspondence I get from some of the departments is very, very poor indeed. If I was not a professional lay person, I would not understand it at all. I know the Minister acknowledged, in his presentations here, that there were communication problems from the departments and I would entirely agree.

Deputy R.C. Duhamel:
So, the calibre of the planning staff has gone down, has it?

Mr. P. Grainger:
I think so, being blunt about it, yes.

Deputy G.C.L. Baudains:
If I could come in there, a question that has come up before in our interviews, could it be that planners are not spending enough time actually planning without getting bogged down in attending to detail on applications or other work, they are not doing what they should be doing and that is looking at the planning of Jersey?

Mr. P. Grainger:
Well, there are 2 elements to that, there is the planning of Jersey and there is the development control function. On the planning side, the Island Plan document itself, to my mind, is far too complicated and it creates a rod for your own back. As I mentioned in my comment, I can reject any application on this document, I would find something in it and say, sorry, I do not agree with that. Yet a lot of this is opinion, much the same as design is an opinion and I do not necessarily agree, for example, with the Minister wanted to say 'design will be this'. But for example, under the Island Plan, there is Policy G2-General Development Consideration, and it compromises 16 elements. In reality, that could be the bible. If you just said to 2 architects, there is the site; here is your brief, come up with something. But they do not. They produce all this, these design guides, in order to tell architects what they should be doing. Now, if you are an architect worth your salt, you should know what you are doing. But, having said that, this is why the design issue is a bit of a problem because if you give it to 5 architects they will come up with 5 different schemes. Which one is the correct one? Therefore, the arbiter of taste at the moment is the Minister. He may change and, as he said in his address to you, the next guy may have a totally different idea to it all but there should be consistency. Unfortunately, the way the system runs at the moment, I do not think you can achieve that.

Deputy S. Power:
Can I ask a supplementary on that? Rob asked you a series of questions relating to the training and

experience that politicians bring to the previous Planning Sub-Committee and now the Planning Applications Panel. He also alluded to the fact and I think you agreed that there may be a deterioration in the standard of the officer, the level of officer professionalism at South Hill. How do you think a new planning minister who obviously has very little planning background but has some development background, or a new Member of the States of Jersey who was on the Planning Applications Panel, how do we get them up to full speed quickly and how would you engineer officer support so that mistakes that have been made in the past are not repeated?

Mr. P. Grainger:

I think the Minister is making the right noises for going in the right direction and I was encouraged by some of his comments to you. The report from Shepley – again, done by a planner, externally - a number of his comments reflect my views and the fact that the Minister is having regard to those, I think, is a positive step forward and if, as a result of the work that you are doing, that a lot of the issues, that Shepley addresses, that I have addressed and other people who have made representations to you, if they can be dealt with then the system itself should become simpler. Therefore, there is more officer time to spend on important things. At the moment they get bogged down in detail. The size of a window bar, for example, a glazing bar. I mean, I have various examples I needed to go through, if I was going to through, for example, my comments here, but it really is the level of involvement that the officers get involved with. Bearing in mind, that the painting of buildings is exempted development, for example, it does make you wonder they should get involved with the size of glazing bars when you can buildings any colour you like. But that is the system and, as Jacqui Hilton said, a lot of it comes down to the law itself and that really needs looking at. Some of it - the overall concept is right but there are certain nuances within it that probably need addressing, much the same as the policies of the Island Plan do.

Deputy R.G. Le Hérissier:

Going back, Peter, building on the question the Chairman asked at the very beginning, you have alluded to the Island Plan and you said in some ways it is an unsatisfactory document. With Deputy Hilton we tried to analyse the process of - she was not in the States then but she has reflected on it obviously - the Island Plan, how consultation took place, the cynicism that set in from the public who felt they had been consulted when great professor had arrived, then they felt, you know, their views had not been considered and all this sort of thing. If you had a blank sheet and somebody said to you, like Mr. Cohen: “Look, tell me a new way of handling an island plan or island planning,” what advise would you give him? Sorry, I caught you in between your papers. Sort out your papers and then…

Mr. P. Grainger:

I thought you might ask the question. This is the original Island Plan. [displays a map]

Deputy G.C.L. Baudains:

What year plan is that?

Mr. P. Grainger:
It is 1974.

Deputy G.C.L. Baudains:
Maybe the rustling of the paper is going to affect the recording quality.

Mr. P. Grainger:
Keep it simple is really what I would have suggested. It is too complicated a document. The officers appear to pick this document up and go along as if to tick, tick, tick and it is a succession filling boxes in and if you do not fill a box in you get a letter saying, 'sorry, it does not comply with policy G3(5), do something about it' or they reject it for that reason as well. Planning, to me, should be positive, it should be creative, not negative. This is what you cannot do. That document, when I first joined the department 30 years ago, you knew basically where you could put development but it was up to the individuals to create a solution that was acceptable. Now, architects would come in and say 'is this okay?' Does it have regard to surroundings, does it have regard to its neighbours? Yes. Therefore, you recommended it for approval. Again, the comment that you touched on with Jacqui Hilton, that there is too much detail, that the members of the public come in saying: "I've tried to conform with all these," but as a planner your rule is to try and get a scheme that is approvable. Therefore, you are going to recommend to the applicant, no, I am sorry but yes, put 10 on here because, in my professional opinion, 10 houses will fit on this site. Now, the politician may not agree with it but in a planning context it may take 10. Now, if an application comes in for 10, then you go to the Committee or the Minister or the Panel and you recommend it. Now, if the politicians do not agree with it then that is their prerogative because they are the ones who make the decision under the law. But as a professional planner I would not put an application in that I did not feel could be supported. I am not going to support an application that I know is going to be rejected. That is a total and utter waste of everybody's time but the officers are there to try and get the best out of an application. Now, unfortunately, a lot of the junior officers are nitpicking and 'this window is a little bit too big', etc. It is a matter of opinion. In a planning context, i.e. having regard to the principles of the planning law, and that is where they all seem to fail to grasp that that is the objective for the whole exercise, the amenities of the Island. It is really the public of the Island, i.e. the community, which the planning law is based. It is not there to protect private individuals but you get more and more of the private individuals feeling aggrieved by an application. Now, this is a political issue that you people have to deal with as to how much involvement you want in the neighbours being able to influence the outcome of a planning application. If, in a planning context, design terms, space about, parking, et cetera, it is acceptable. Now, they may not like it but we all know nobody has a right to view over someone else's land but, nevertheless, they still complain and say, 'sorry, my view is impeded by that extension'. But if you are a designer, you try to build in that, knowing that it was going to be a criticism. You are not asked to do it in the document. It should be just part of the overall design exercise, having regard to everything that surrounds the building itself.

But there are oddballs and the one that we all know about in St. Clements, there is no answer to that one, really, because it is oddball. But, for example, the idea of having a third party appeal for all properties within 50 metres of it, then it is a nonsense because you and I can see this from half a mile away. So, if we have made representations we could not have a third party appeal if we wanted to. I do not agree with third party appeals but I can touch on that later if you want me to. So, really, it is simple. Keep it simple and I think, at the moment, it has gone over the top.

Deputy R.G. Le Hérissier:
Do you think though, Peter -- sorry.

Deputy G.C.L. Baudains:
Could I just develop that point slightly more because you said in your opening remarks that there was too much bureaucracy and cost involved. How would you streamline it, in less than half an hour?

Mr. P. Grainger:
I have really got to touch on my notes. To put a planning application in when it went to the States originally - and this was way back in 1996 - the basis of fees was to put the money into environmental improvements in the Island and to help with listed buildings. It went to the States and the States agreed that the cost of applications, particularly in some situations, should come down and at the time the need to limit costs to a minimum for modest dwellings had been recognised. There was a subsidised fee of £150 being introduced, the reduction from the £280 originally proposed. But what happened, of course, was that they then moved the threshold of the house so that the house of 120 square metres was £150 but the house over 120 square metres was then £300 odd. So, they got the money by changing the parameters between the 2. So, taking that as an example of a house, £150, the fees this year for a house for planning and a house for building regulations is now just over £1,100 from £150.

Deputy G.C.L. Baudains:
What date was the £150?

Mr. P. Grainger:
1997. In fact, it went up on 23 July 1996. It went -- just 2 days ago, 10 years. So, in 10 years it has gone from £150 to £1,100 but in 2003 a substantial increase was put forward to justify increasing the number of staff to try and improve the system while the number of applications was actually falling. So, they did not take up all the 10 posts that they were allocated by virtue of the increased remuneration that they got from planning application fees but they still continued to put the fees up and kept the money. So, these fees now have gone up by, probably with inflation, since 2003. But the system or the product that is being served is no better than it was 10 years ago in terms of the public's perception of the planning system, despite all this cost, and they get something like £1 million from planning and £1 million from building regulations. When I was originally asked about fees, going back a number of

years, my view was that, as I said earlier, the planning law is in the public interest, therefore the public should pay for it. Now it is being paid for by the applicant to the tune of £2 million a year. Now, again, it is a political decision as to whether it is in the public interest. Why should applicants have to pay this amount of money to put in a planning application? Now, if I just give you a little bit of further information to that because it is relevant to what I was going to say. There are a number of features worthy of note. For instance, "it is not planned to charge for an application for any minor alterations on an approved plan providing they are submitted within 12 months of divisional approval. Further, an applicant perceiving a refusal of development permission would have 75 per cent of the Building Control fee refunded and would be entitled to make one revised application at 50 per cent of the Planning fee." That does not apply. Now, it does with building regulations that they now charge for revisions to minor applications, despite the fact that when they had the approval fees they were not going to do it. You get the impression that every opportunity is taken in order to increase the revenue of the department from the poor applicant. Now, on top of all that, again I would like to touch on, is not only the cost of preparing an application, it begs the question whether some applications need approval at all, because they are exempt developments, but the department encourage them to be submitted because there is a fee coming. So, the poor applicant has to pay for the drawings, has to pay for the submission fee and then, if he gets it rejected for any reason, what does he do? My biggest criticism is the appeals system which I would like to touch on in due course. So, the cost is one thing and, again, I mention that under 2(2) on here about the cost of applications. Can I also just touch on another element of costs in that I have an applicant who submitted some revised plans with a fee for £70. It took 10 months-- sorry, if I go back a stage. It had to borrow £800,000 in order to buy this site. It submitted a revised plan for £70 and, despite pestering and pestering, it took 10 months to reach a decision. The Department lost the file twice. We asked for a Review Board on it and the Review Board declined because they had reached a decision. They had approved it. But it cost my clients about £36,000 in interest during that 10 months. For fairness, we then took off 3 months and said: "Look, it was reasonable for you to have 3 months determining this application, therefore we are going to reduce it to £24,000." They wrote back and said: "Sorry, we are not paying you anything at all" because the one little clause which is the one I am referring to in here, which states under Article 19: "Action taken by the committee under this Article does not give any person the right to claim compensation in respect of any loss or damage a person may suffer as a result of that action." In other words, the Committee or the Minister can do what the hell they like and procrastinate for ever and the applicant has no financial recourse. Having pursued it with the Greffe, what did they say? "Go to a lawyer and sue them." Going back to my opening comment, everything always finishes going to a lawyer. Going back to the Royal Court system of appeals, although it is intended not to involve a lawyer even the Department's own statement says: "You are advised to consult a lawyer." I put in my paper, you apply for a window and it gets turned down, what recourse do you have? None whatsoever because the window is going to cost you £500 and, therefore, who is going to appeal? Now, as an experiment, 2 weeks ago I started to tackle an appeal to the Royal Court from a layperson's perspective. Now, I do not know whether you know how it works but it was an eye-opener to me and I am a professional. But in order to submit an appeal, I

had to submit an appeal in the given format to the Viscount's Office. So, I go to the Viscount's Office and they say: "Have you got a £50 stamp?" "No. Can you sell me one?" "Oh, no. You have to go to Cyril Le Marquand House." So, I troop to Cyril Le Marquand House for a £50 stamp, go back to Viscount's Office and the notice was duly served. But it was defective. Then we have a letter from the Solicitor General saying: "Sorry, it is out of time and it is defective because of this, that and the other, et cetera." Fine, if you are a lawyer you would understand all these things that you are doing. But a layperson has not a hope in hell, in my opinion, of appealing against the present system and Shepley made this point in his comments that there must be an alternative to the Royal Court route. The one that was advocated, an independent inspector, in my opinion, was the correct one. This is to say it is keeping it within the professional playing field. Keeping the lawyers out of it. But because the States would not come up with £600,000 in order to set the system up, the previous Committee reverted back to the Royal Court way. On top of the £50 you can either pay £200 fee as well to the Royal Court to have the application heard by affidavit.

Deputy G.C.L. Baudains:
Could I press you on that? Is this the new appeal procedure for the Royal Court which is supposed to be cheap and easy access -

Mr. P. Grainger:
Yes.

Deputy G.C.L. Baudains:
- or is it the old process?

Mr. P. Grainger:
It is not easier because this is the one we tried to pursue. The only difference being is that the fee has come down from £350 to £200. So, it costs you £250 simply to lodge an appeal. Now, if you lose the appeal, the Minister can claim their abortive costs if you lose the appeal. I have asked the Crown Officers and they refuse to waive the elements of costs. In the UK an appeal costs nothing. They can apportion costs against the local authority in favour of the applicant if they have been messed around, as is the case with my client. But here again, it is just another negative element from the applicant's perspective. So, not only has he had to pay for his application, he can be messed around until the cows come home and then when he appeals in the proper window, he has to pay £250. If he loses then the States can claim their costs back from the applicant. Who in their right mind is going to appeal with those sorts of prices? You, as States Members, were not told this when the document was put to you. It simply said, "We want to revert back to the Royal Court." What it did not tell you was the nuances that I have now explained to you of what that particular decision entails.

Deputy R.C. Duhamel:

A new subject if I may. Professor McAuslan, in commenting on the Island Plan, warned us against ad hoc development taking place and he did, however, have a lot of favourable comments in terms of asking the Island, as far as possible, to stick to kind of planned communities that had been built and in terms of adding to that. To what extent is the Island Plan and planning process encouraging developers at the moment to work within area development plans to produce the style of development that he was recommending? Or are they being encouraged to continue along the path of ad hoc developments and just to take full advantage?

Mr. P. Grainger:
You mean ad hoc in the sense of pepper-potting?

Deputy R.C. Duhamel:
Pepper-potting. Yes. Specifically I mean -

Mr. P. Grainger:
I think the policies of the Island Plan are creating a divided community. This is an extract from an English report: "Rural homes cost more than urban." Because of the town policies, they are pushing all new housing into the urban areas and none into the rural areas, basically. The result means that the average house in a rural area - this is UK - is 6.7 times average annual earnings and in urban areas it is 5.6 times average earnings. Therefore, you are creating the haves and the have-nots. If, for example, you wanted to live in the countryside with a young family, you cannot because the price differential of rural properties is increasing at a greater rate than ones in the urban areas and this divide - this social divide - is getting ever bigger. Now, when we did the Island Plan here, they produced areas - built in areas - so there is the large built areas, St. Helier and around all the village halls, the Parish halls. Then there were smaller areas like round Sion, for example, where you have a nucleus of development. In my opinion, it did not take that enclosure principle far enough because if you take, for example, Les Ifs up Trinity Hill, there you have a group of buildings where you could probably put 3 or 4 tucked into that group, but because it is in the countryside zone, it is rejected. I have had two applicants in St. Mary who again within a nucleus of buildings, but they are not defined as a nucleus of buildings, then they are rejected. There are inconsistencies because they allowed 2 in but not a third one. So, I think in answer to your question is there is an opportunity to take existing settlements and let them grow, not out of all proportion, obviously, but because they already exist and if they have services… St. John is probably a good example. St. Mary is continuing to grow even now but it has not any facilities, really, in the way of shops or anything like that, they have to go further afield. If there was a nucleus of basic commodities within that nucleus then they could build a little bigger and, therefore, spread the load so the urban areas, i.e. St. Helier, St. Clement and St. Saviour, did not simply bulge at the side and keep encroaching and becoming bigger and bigger in their own right.

Deputy R.C. Duhamel:

So, do you consider we are building dormitory suburbs at the moment?

Mr. P. Grainger:
At the moment, or the proposal?

Deputy R.C. Duhamel:
At the moment.

Mr. P. Grainger:
At the moment I wouldn't… You could probably call them dormitories, yes, because the fringe ones necessitate travel. Because they are only housing on the fringe, by definition, the centre is over here somewhere and, therefore, each time you move out the residents have further to travel to the services that are provided at the nucleus until you create a new nucleus somewhere else. I have always taken the view, for example, that St. Brelade should be allowed to develop more as a proper urban centre, to allow more offices, more employment opportunities there, to stop people commuting into town. But, no. Nothing doing. So, there are opportunities to stop traffic movement and, therefore, improve the whole infrastructure of the Island from a traffic perspective. Then I think there are opportunities by spreading the development around the Island and not having the 150 here or 200 here or 20 over there as in Rue de Samares. I mean Rue des Samares has no facilities at all.

Deputy R.C. Duhamel:
From our point of view, there does not seem to be any overall emphasis on behalf of the Planning Department into developing along the lines that you are suggesting in terms of doing very very good planning briefs for particular areas. It seems to be an area that is disregarded. In fact we have evidence from the Minister and one of the chief officers that, in fact, they are pressed for staff in that area and it is an area that is under-utilised or under-committed.

Mr. P. Grainger:
It could well be under-staffed, I agree with you. Because the coalface of Development Control takes all the aggravation, takes the majority of the resources. I agree with you that if one takes St. Mary as an example, if you wanted to do something with St. Mary then, yes, you could do a very good local plan for St. Mary. They have had them in the past. Or St. Brelade's Bay for example, infills, sorting traffic out, tourism, those sorts of things. So, it is not new but if they could ease the load on Development Control and put some other resources into doing more positive planning, which is what you were talking about, then I would agree entirely with that which leads me on exempted development regulations. Because they themselves -- let me just -- I have just picked this up. This was 18th July. I just whizzed through the applications on the list. If I could read some of them: "Construct conservatory to south-west elevation." Now, if you are looking at the exempted development regulations, this is exempt development. However, if it has a flat roof it cannot be above, I think, 2.5 metres, something like that.

But in order to meet building regulations, it cannot be less than 2.6 metres, therefore you have got to apply anyway. So, what is the point of making this exempt development under one hat and making you apply under another hat? What has already been addressed, I believe, is this lack of communication between the two. You have planning permission for one, the building regulation guy says: "Sorry. You need a window there to get light and ventilation." It mysteriously appears and the neighbours do not know anything about it. But it is this joined up thinking between the two. Again, it is harping back but when I was there, it was one entity. I was the Development Officer in charge of Building Control and Development Control and, therefore, we co-ordinated the whole thing. It is sub-divided now and I do not think it works. But, if I just whiz through just to: "Convert part of loft to habitable space; replace flat roof with pitched roof for outbuilding; display one retractable canopy; erect chain-link fence on party wall; construct single-storey extension to east elevation; replacement windows." The majority of these should be exempt development. They have no material impact on anybody else and there are about 10 here. When they did try to do it, to make them exempt, in fact they made them more complicated. Again, keep it simple. If they just produced a well-defined list of exempted development they could probably lose half of the minor stuff that they are bogged down with. Having got them they then go to great pains to try and manipulate them. Well, I would have said, "Look, fine. Do it". Out of the door. Same day. Three weeks later they are still dealing with it. So, I think in answer to your question, the exempted development regulations need extending in order to ease officer time on development control to allow those resources to be put on to more positive planning.

Deputy R.G. Le Hérissier:

Thank you, Peter, these are excellent insights. It is very good, obviously, having someone like you who has seen the whole system at work. But I wonder if I could come back to the Island Plan and your notion, Peter, that somehow we can designate areas for development and then within those areas there can be more flexibility. Would you not accept there has been this enormous rock and a hard face situation where supply and demand got seriously out of kilter in terms of housing demands and, of course, population growth had obviously not really been controlled for various reasons? This had to be rectified to bring a slight degree of sanity back into the market so, in other words, all sorts of sites then had to be designated. Then around these sites, to try and deal with this, we put this massive iron corset and these massive controls which - in your view – seem to have, in very many cases, spectacularly missed the target but have kept an awful lot of officers busy enforcing them and new VPC windows were to be controlled and this sort of stuff. What I do not get from your alternative scenario of bringing in more flexibility is that I think it would put even more pressure on to the system and we would find it very, very hard to control it. In other words, I cannot see a way forward without all this pedantic rule enforcement which clearly you do not like. How can we come with another kind of system that would enable us to keep the lid on things and keep proper design motoring and all this sort of stuff yet not interfere with people to the degree that we are interfering. In other words, a different kind of compromise.

Mr. P. Grainger:

You still have to have zones. There is no way around that. It is the fringe of the zones, where the line is drawn, and I accept there has been criticism between the two and this idea of having the previous Plan and the new Plan, or the extended areas defined so when people looked at it there was no doubt as to where those extensions were. This is what happened here. I mean, bearing in mind we are two on from this particular drawing now, but if you compare them you can see the green zone has grown. The white zone was the nondescript area, if you like, where obviously anything went. It was now described as the countryside zone. Within those areas, when you are looking here, the countryside zone, again it is a presumption against development throughout the countryside zone. Fine. But it is allowed discretion and the only real argument that I can ever recall having was: "When was an infill not an infill" and we had the battle of Piece Mauger, which Dick Shenton's Committee, as to how big a gap had to be before you could say: "That is an infill. We will allow a plot on it." One. But is it big enough to for two, in which it is not an infill. So, each application is assessed on its merits. Because you had this flexibility you were not tied down to a specific policy and that is why you just said: "Let us do G2 and on the plan as simple as that in terms of the first one: "will not unreasonably affect the character and amenity of the area", or "will not have an unreasonable impact on neighbouring uses and the local environment by reason of visual intrusion" or other amenity considerations. With that basic brief and that plan you should be able to come up with applications and you allow the creativity to come out and the flexibility. It is not a negative. It is a positive way of going about it. But you cannot get away the fact that you must have zones. I cannot think of any other way.

Deputy R. C. Duhamel:

Do you think perhaps there is not a call for being more prescriptive? Because if you go along with the system that you are suggesting, the key words are "not unreasonably affect." But you have to have a pretty good idea as to what it is you are protecting or not protecting. I had an instance in the evidence the other day. We were talking about a particular part of the Island that was built with bungalows and there is a site next door where the advice has been given to the applicant that they would accept a different range of styles of development which would not necessarily be single storey bungalows. So, to what extent do you allow something that has been given permission pre-war or just after the war, low level buildings to be infiltrated or built next door to with building design forms that perhaps were not intended?

Mr. P. Grainger:

It goes back to the Article 2 of the law:"Development for land in the manner that best serves the interest of the community." Now, does a bungalow serve the best interest of the community?

Deputy R.C. Duhamel:

It depends. Things may change, surely. If we go -

Mr. P. Grainger:
If you can have a bungalow you can take the roof off and make it into a house. Therefore, simply because you have bungalows does not or should not preclude a house next door.

Deputy R.C. Duhamel:
No. I think that the interpretation of what is good or what is not good, or what is reasonable or unreasonable, in cases of bungalows, is that because bungalows have been built in a particular position then bungalows must stay there for ever and a day. That is, perhaps, taking the interpretation of the law to the extreme.

Mr. P. Grainger:
No, but I do not prescribe to that view because the site of the bungalow is not making the best use of land in the best interests of the community.

Deputy R.C. Duhamel:
Right. Good.

Mr. P. Grainger:
Because it could, theoretically, take 2 or 3 on that particular block. Now, the more that you can utilise land that is already developed for housing purposes minimises the need to rezone open land for additional housing.

Deputy R.C. Duhamel:
So, how do actually reconcile that with the statement that it must not: "Unreasonably affect the character of the development" because, presumably, the character of the development, if it is bungalows predominantly, will change if you allow one or 2 bungalows within that particular development to go up another storey or another 2 stories.

Mr. P. Grainger:
Well, you do. But I would say between single storey and a 2 storey is not unreasonable. If you put a 3 storey with pitched roof on it then, yes, it is unreasonable. It comes down to balance.

Deputy R.C. Duhamel:
Okay.

Mr. P. Grainger:
In a visual sense, you have to accept that in the fullness of time circumstances will change. If you allow one house in an area of bungalows, it is inevitable that in the fullness of time the rest of them will become houses.

Connétable K.A. Le Brun:

Yes. Could we come back to the zoning? You are saying that naturally it has got to be zoned within the Island Plan and that was the original intention, I think, of the draft to your plans that you had there. One slight problem I have with that is that, as you say, you always have on the fringe of the line, so extend on the fringes and so on. It does not mean to say that that zone initially is getting bigger and bigger and also I know what happens as well, and that has happened, is that as you allow these extra fringes to expand you then create infill sites as you go along and it does seem to me that it is a gradual enlargement all the time. The concept of within the Parishes and within the communities was good. Your point also regarding if you extend out you have then to create because there is no shops. It is a question of chicken and egg situation because if you extend on the zones you are then extending the infill sites and as you extend the infill sites you are extending the zones and I cannot quite see -- there has to be an overall plan, surely, otherwise it would be just gradual infiltration into the green zones.

Mr. P. Grainger:

Not necessarily. If you take the full extent of the edge of the built up area it is a phenomenal length and it does not extend all along the edge of the Built-up Area, it only extends in certain locations so that when they have rezoned land they have usually looked at the edges of the Built-up Area and said, "Here are 50 sites. We need to rezone 20 of them. Which have less damage to the environment?" Therefore, going through this whole planning thing we are talking about, then that is the exercise that they will have gone through when they were doing this particular -- the latest Island Plan for the rezonings. The biggest problem is the edges of them and I know you have mentioned the Magnolia Hotel in your deliberations. It is appalling. The field next to it is Countryside. Right? Magnolia was Built-up Area and the previous incumbent, when I raised this with him, that was his answer: "Oh, I am not accepting that as an argument because that is in a Built-up Area and this is the Countryside." There is no transition between the urban area and the countryside and there should be. And Maufant is the best example I can think of. All the houses, if you look on the back of them there is a mishmash of fences and sheds and all sorts of things. If you drive towards Maufant all you can see is the proliferation of rubbish. There should be a barrier between the two; landscapes, strips, whatever. So, you did create it. Now, if you then extended this again then you have created another landscape barrier. But this defined line is ridiculous, much the same as the present plan because if you take the north coast road between St. Mary and St. John, for example, on the north side is Green Zone and on the south side is the Countryside Zone. So, as you drive along the planning systems there are different to the planning systems there. How can that be? Visually, it is exactly the same. But they have taken these roads as being the dividing line between green zone and countryside zone and various other zones. What they should be using are escarpments and saying: "Up to that point is Green Zone. On the other side it is Countryside Zone or urban" or whatever it is. So, they were not very well defined, in other words, the boundaries.

The Connétable of St. Mary:

Yes, but coming to that, though, it is an ever-changing boundary that would mean, then, would not it?

Mr. P. Grainger:
No.

The Connétable of St. Mary:
You have to have a drawn line somewhere.

Mr. P. Grainger:
It is only changed once every ten years.

The Connétable of St. Mary:
You have to have a drawn line somewhere. So, what you are saying, therefore, is that it should be done according to a ten yearly Island Plan.

Mr. P. Grainger:
Yes. That is right.

The Connétable of St. Mary:
So, to extend the limits all the time.

Mr. P. Grainger:
No. Not all the time. No. Only in those areas where it is considered desirable for the overall impacts of the Island to extend as opposed to just extending St. Helier or St. Saviour or St. Clement. I keep picking those three because we get it all.
But if you then decide there is a need for additional housing then you have to take an Island-wide view as to where it goes which, in turn, is related to services and the infrastructure. It is not only roads and shops, of course. It is sewers as well.

The Connétable of St. Mary:
Well, that is the other point that I was coming to. I asked the previous person the very same question because it gives the impression that -- would you be more in favour then of large -- because it seems at the present time that we have large sites being developed because of the short financial reasons from developers or would it be preferable to have an extension on smaller sites into the rural area rather than big, large sites which is advantageous to the developers and it gives me the impression that the planners are preferring that because they can do an overall plan of the situation rather than an individual small site. If I can just enlarge on that because I still feel that there is a certain amount of conflict between - I am sorry if this is an extra question - which comes first, the architect or the developers? Because I do feel at times that the architects are controlled by developers on large sites.

Mr. P. Grainger:
It is a big question. From a design perspective you can take a large site, there is no reason why it should be a monolithic whole. You could split the large site of, say, 100 houses into 4 communities, different designs of 25 units each. You can create smaller units within them. I was involved with the St. Martin development, the extension, where we tried to use more traditional forms. There was nothing straight in it at all. It is not an estate in a convention sense of the word, but it comes down to design. You can design small into large. An alternative is, as you suggest, instead of having one large site of 100 houses you could fit, let us say, 5 all in each of the Parishes and put 10 houses in 5 of the Parishes.

The Connétable of St. Mary:
I think that would be more preferable then because obviously it depends on the services that are there but do you think that would be more preferable on the overall plan to have smaller sites rather than bigger sites?

Mr. P. Grainger:
The sites are only determined by the size of the field to start with.

The Connétable of St. Mary:
True.

Mr. P. Grainger:
That was all. The majority of the fields in the Parishes are smaller than the ones on the periphery of the urban areas but I think that is just historical.

The Connétable of St. Mary:
But you can easily make a larger site by incorporating 2 smaller ones.

Mr. P. Grainger:
You could do, but you could do a design for each of the 2 small ones to keep them individual in terms of character and you can put landscape in between them so they are not perceived as a whole unit. But it comes down to design again. The estate at Jambart Lane, the house that the Deputy knows about, this 3-storey monstrosity on the end is the most ridiculous thing that I have ever seen on a new estate. It is an absolute nonsense. As a planner I am embarrassed how anybody could approve that particular unit on the end, looking straight into the house opposite.

The Connétable of St. Mary:
But it comes back to my point that possibly, as I just said before, do you think that was the idea of the actual developer and planner or the architect? There has to be decision made. Who makes that decision,

and who controls who?

Deputy G.C.L. Baudains:
Can I come in there? Because from what I have discovered recently it is neither of those, it is the planning. Coming back to the comment that you made about that house on the new Jambart estate, the developer did not want to put that there, nor did his architect. It was a requirement in the design brief from the department. So, in actual fact the Planning Department are planning the vast majority of housing estates and I wonder how appropriate that is?

Mr. P. Grainger:
Yes, that is true. I read the statements on that; not only is it 3-storey where nothing else is 3-storey, it has an awful blank façade looking the right way and all the windows look into the house on the other side of the road. It is total nonsense that particular one. But, I agree with the Deputy, I think it was part of the planning brief. But having said that, the Development Control officer dealing with it should have picked it up and, again, a brief is a brief. It is not cast in stone. It is for the architect to work to.

Deputy R.C. Duhamel:
Just recently the department have moved toward the idea of using planning gains or incentives to try and bring about infrastructure costs being picked up by the developer. Do you think this is having a material affect on the quality of the developments, the fact that things are being passed or being given permission in order to pay for the infrastructure cost which, if we did not have this particular concept in place, would not happen?

Mr. P. Grainger:
It is a very difficult question. It happens in the UK and it is open to abuse. The principle of planning gain is so fraught with difficulty because it is almost impossible to draw any lines as to when you should or should not apply it. Again, just on the end of Jacqui Hilton's presentation, this question of land and the cost of land for housing development, as an alternative to having betterment through development, that it -- well you are aware than an agricultural land, say one vergée is worth £5,000 if it is good agricultural land. Immediately the Minister takes it to be rezoned it becomes £500,000, but only because the builder/developer will pay the £500,000 for it knowing that he can build a house and sell it for £360,000 and make a profit. If the States in its wisdom decided to tax such development profit at, say, 75 per cent, it would get whatever 75 per cent of £500,000 is. The guy who had the field would still get over £100,000 by virtue of the public interest being served in rezoning it for residential development. The £400,000-odd is the betterment that can be then used by the States to provide infrastructure. So, the way it works at the moment is that it is the purchaser of the house who is paying for this other cost because it is in the price of the house. I think that is wrong. The alternative a) will keep house prices down and b) the money that is gained from betterment can be put to community use because it was only zoned in the first place for community purposes.

Deputy R.C. Duhamel:
Thank you for that. That is very good.

Deputy R.G. Le Hérissier:
You said earlier, Peter, that you were not happy with third party appeals and you have given us some of your arguments. Namely that it was ridiculous setting a boundary but the boundary was set for pragmatic reasons so the system would not be flooded with everybody and their auntie, so to speak, appealing I am afraid. So, presumably, if you were beyond the 50 metres you would basically have to knobble somebody within the 50 metres to carry your appeal forward, do you know what I mean?

Mr. P. Grainger:
Yes. You would.

Deputy R.G. Le Hérissier:
It is a way of managing numbers, I am afraid, and a very arbitrary line was drawn around it. Numbers and cost. I know you have been involved, of course, in the administrative appeal review, or you have been involved in one or 2 cases that have flowed from that review. From your notes and from the way you speak you seem to be implying that the administrative review is a good system whereas most people complain it has absolutely no teeth and they do not like it and yet you are against the perfect third party appeal system that we are looking at?

Mr. P. Grainger:
I differentiated between the Review Board and third party appeals. Another anomaly of the appeals system is that you have only 2 months to appeal to the Royal Court against a decision. You have 12 months under the review system. It seems perverse to me that a Planning Minister or Committee can take - and the particular case I am thinking of it was 6 months - to hear the application and reject it, which was 10 weeks. Went to appeal which was 16 weeks and maintained the rejection. So, during that 6 months period, there were 2 attempts to reach a solution. On top of that, we then asked the planning officer, the Director of Planning to intervene to try and avoid it going to the Royal Court and he comes back and says: "No, I am not prepared to intervene. That is the decision." When does the 2 months run from? The Solicitor General maintains it is from the date of the decision. My view is that it should be from the last communication from the Department having endeavoured to avoid going to an appeal. So, it is an anomaly of the law again that needs clarifying as to when this period runs from. The Solicitor General also appears to make it mandatory that 2 months is 2 months. If you are a day over, forget it. No discretion in the matter at all. That is not justice. I also touch on, in my notes, about human rights because the system, at the moment, of appeals does not allow a member of the public sufficient recourse against a decision of the Committee. Now, because the planning law is, as I said earlier, in the public interest. Providing neighbours have the right to be aware of the application, make representations about

it, and to address the Panel, then that decision should be final. Now, I accept that an appellant, the owner of the property, can appeal - but, after all, it is his property. So, I do not believe the 3rd party, having been given these rights - and this is where I was encouraged that these have evolved over the last couple of years - should not be able to slow it down even more. I know the Irish system did knock applications back a year because of this threat of third party appeals and I think the concept of them, providing you have proper consultation and awareness, there is no need for it. But that is on the appeals system. The Review Board is a problem because it has no teeth, but it does not cost anything to the applicant so he is caught between the devil and the deep blue sea. Now, you can go to the Review Board and they find in his favour and the Minister says: "Not interested." Or he goes to the Royal Court and it costs him money. So, the system is in need of attention. Whichever it is.

Deputy S. Power:

Can I bring you back to your analysis and interpretation of the Island Plan 2002 that we are currently dealing with and the process that you have to go through. I am talking about development on a domestic scale, now. Can I put it to you that when you deal with an application for and on behalf of a client of yours, on a domestic scale - small stuff that we were talking about, conservatories, extensions, windows, doors, elevational treatment, that kind of thing - to a large extent you gave me the impression, certainly, that the book is thrown at that type of application. But when a large developer comes in - they shall remain nameless - or a commercial developer comes in, they seem to have a far easier time. Do you think there is any element of truth in that?

Mr. P. Grainger:

Yes. It is much the same as if the Department puts a vote into the States for £5 million for something as opposed to £5,000 for some computers. Nature being what it is, people can more readily understand how much computers cost. Why do you want to spend £5,000 on 10 computers? It becomes an issue. The larger they are, the more difficult they are to appreciate in their entirety, from a lay person's perspective. Therefore there is an element of truth in that a large scheme, and the Jambart Lane application is probably a good example, that this large scheme comes in, it looks okay and, therefore, it is approved. Whereas if you want to put a window in one of these things, then: "Oh, it is the wrong size." They do not look at that as part of the original application. It is also that a senior officer is dealing with the larger applications and the junior officers are dealing with the smaller applications and the junior officers, I do not think, are given sufficient instruction as to what they can and cannot do within the planning law. They are asking people to change the size of glazing bars and things like that because they do not like them and they think that their proportions are wrong. But that is not what the planning law is about. Not that sort of nitty-gritty detail.

Deputy S. Power:

I cam across a planning application recently, to do with an SSI (Site of Special Interest) in the middle of St. Helier. This gentleman has spent a great deal of money in restoring this building to its former glory

and what he wanted to do also was put in solar panels in the roof and put in replacement wooden sliding sash windows but they would be double glazed. He was refused. Would this be another area where you think that the system is not working?

Mr. P. Grainger:

Yes. I can think of a good example where it was a building which was of local interest and if I can touch on those in passing. Let us say it was this room, for example, it was parts of a building of local interest that you wanted to convert from a barn into a dwelling. There are the original windows. You can have 2 new windows there. They are single glazed. They are double glazed because that is part of the original structure but they have to comply with the by-laws. It is a ridiculous situation. Totally inconsistent. There is nothing wrong with producing a double-glazed window. Okay, the mouldings may be slightly larger but in the context, it is not materially, and that is the emphasis in planning law, materially different. If I could just touch on a list of buildings. Again, Chris Shepley touched on historic buildings, and feels the numbers should be reduced. Almost by stealth there is a huge volume in of loads of registry buildings and sites of architectural and historical interest in the Island. The law is quite specific. They are supposed to be special. Buildings of special architectural or historical interest are supposed to be protected and in order to do that there is a procedure to be followed whereby you are supposed to inform the applicant, give them the opportunity, et cetera. Ninety-five per cent of the properties in there, I bet the owners do not know that they are listed. In the new Regulations, the new Orders that have come out, the Minister has now called a protected site "a site of special interest", which is what the Law requires if the building is of special architectural interest, but he has also slipped on to the end of that, a site of special interest: " a building, including a register published by the Minister, of buildings of architectural, archaeological or historical interest." Now, that to me has no basis in law because the law does not allow them to simply list properties because they are old. They have to be special and if they are special and going to be listed there is a procedure to follow. I fully maintain that the majority of people who have got a property in that book do not know it is in there. The department deal with the buildings of local interest much the same as they do with buildings from SSI. They are trying to preserve them. The one I am talking about is, where you have these windows, is the building of local interest, not an SSI.

Deputy G.C.L. Baudains:

There is a public toilet at Plat Douet which is a building of local interest. Why?

Mr. P. Grainger:

But, as I said in my report, there are 3,000 properties in here. York, where I originated from, has 1,000 buildings which are listed because they have gone through the correct procedure. Every time I raised this issue the answer is that the Crown Offices has advised the Department that they can legitimately take these buildings into account when assessing the application. Therefore this list has been produced for information purposes to applicants so when they do submit an application they will have regard to its

historic or architectural interest et cetera. I still think it is a back door way of doing it.

Deputy G.C.L. Baudains:
What are your comments on Historic Building Control in general? There have been many complaints from the public, as you have already highlighted some. There used to be one particular officer who was not appreciated for his comments on 6 pane sash windows and things like that. Are they going overboard? I know there is compensation, or grants, should I say, available but that only covers a fraction of what is required and sometimes it would seem that what is required is unreasonable?

Mr. P. Grainger:
SSIs should be given the protection that is needed. They are special. By the very nature of them they should be preserved. Where you have buildings of local interest, and of course we have 2 here which are well known cases, [shows pictures to the Panel] there is no rhyme or reason --

Deputy G.C.L. Baudains:
I declare an interest on the bottom one. That is a relative that owns it.

Mr. P. Grainger:
There is no rhyme or reason why a more pragmatic view cannot be taken over the development of those sites. None whatsoever. This attitude: "We have got to preserve it" is the wrong starting point. You could knock that down and replicate it, proper foundations, et cetera. That particular one, the idea was to move it back away from the corner but again replicate further back. But, no, the fact that it is right on the junction, there has been deaths there, all manner of things on that building, it is ridiculous that that was the starting point; that it has to be preserved. They will not move on it, that is the problem. They are both buildings of local interest. They are not special. But they do take the view that they are special and that is their starting point.

The Connétable of St. Mary:
Can I just come in there quickly, when you say "they", who do you mean by "they"?

Mr. P. Grainger:
Well, it is difficult because, being a professional, I try to do everything in a professional manner and therefore the majority of my discussions are with the officers. I very rarely have politicians involved because I think it is a planning rather than a political issue and I do not agree they should put political pressure on the planning system just to get an approval. Either it is right in planning terms or it is not. That is my professional view on it. Sorry, I have lost my train of thought. Can you ask the question again?

The Connétable of St. Mary:

Who are “they”?

Mr. P. Grainger:
Sorry, the majority of comments I have put in my notes have already been made to the Department. I have had letters from the President, or whoever, back in response but of course they have been written by the officers, and the politicians are influenced by what the officers have told them. Therefore, they try to defend the status quo and there is no doubt, in my mind, that where an application is refused they do not want to change their minds. They do not want to be seen to have made a wrong decision. Because I am an arbiter in some ways, I have to try and find a way of pacifying the Committee to approve something but at the same time get what the applicant is looking for, such that both can save face. There is this: “I have made a decision. Come hell or high water, we are not changing it.” I have one at the moment. It has been going on for a year now and it may well finish up in the Royal Court but in my professional opinion it is pure bloody-mindedness on the part of -- and I say the Department because the Department is advising the Minister.

Deputy G.C.L. Baudains:
But is that not a culture which is fairly widespread in the public service?

Mr. P. Grainger:
Yes. I think there is this fear of making a mistake. It is easier to say: “No” to an application than it is to say: “Yes.” I mean, in my time up there, there was a couple that I probably dealt with under delegated authority that I thought with hindsight was a bit -- but nothing serious. But the problem is now that they are so fearful of a public backlash, a political backlash, to approving something. If you want to be safe, reject it.

The Connétable of St. Mary:
So really they should be accountable to somebody. They should be accountable to the Minister then? Is that what you are saying? Or who are “they”, the planners, accountable to? Or are they not accountable to anybody?

Mr. P. Grainger:
It is management. Not this management. It is management. I can remember, even now, when Dick Shenton became President. His first words were: “I do not want to see any more negativity. You are the professionals. I want you to make all applications approvable.” So, he put the onus on the professionals. When an application came in, not just reject it but try and make it approvable. Okay, if it was in the middle of a field it was rejected on policy grounds but they were allowed to use their expertise to come up with a solution that was acceptable to everybody rather than just rejecting it.

The Connétable of St. Mary:

Therefore it should be the decision of the Minister?

Mr. P. Grainger:
Well, it comes down the field. There is the Minister, there is the Director of Planning, then there ispeople Peter Le Gresley in charge of Development Control and then his officers and it is passing down the guidance and instruction to do what is necessary.

The Connétable of St. Mary:
One can reverse it the other way. There has to ultimately be somebody at the top who has to make the final decision whether that is correct or not. I always look at it from the other way. The buck has to stop somewhere so, therefore, where should it stop and who should make the final decision to say, well, that is a correct thinking or it is not? I would look at it therefore that if it goes in the reverse effect it should be the Minster that should make the final decision.

Mr. P. Grainger:
The Minister does. That is what the law says. But the Minister has delegated certain functions down to the Panel and down to officers and for 75 per cent of applications there is no reason why the officers cannot approve straightforward applications.

The Connétable of St. Mary:
Coming back to what was said earlier and the question from Deputy Power as well, it is thought that the minor applications get more thorough investigation without it going to the core of planning, shall we say, in that respect. Do you think, therefore, that those ones, the lesser planners, are more or less justifying their existence and would they therefore be… or if there a certain amount of promotion that they will become one of the senior planners after a while because it does give the impression here there are too many people making decisions. Is there a kind of promotion that goes on within the planners or do they always remain as one of the junior core of planners?

Mr. P. Grainger:
No. The can move up by virtue of, for example, Peter Thorne. I think I probably employed Peter when I was there but he has progressed up through the system to be Director of Planning. So, there is a natural progression so that people will be promoted from juniors but they have to be qualified and, therefore, the qualification process is important. There is the sense that they can deal with, let us say 10 applications a week, the junior officers, something like that. Generally, as I say I do not know how many there are. But it should not take half a day to deal with a new window or a sign or an awning, but it does. It just seems to take an inordinate amount of time to deal with trivia.

The Connétable of St. Mary:
So therefore would you justify the fact that, you are saying, they are justifying their existence?

Mr. P. Grainger:

Yes. In a straight yes or no answer, because if you want something doing give it to a busy person. When I first joined there were 3 people dealing with Development Control. I think now there is 10. They do it, in my opinion, less efficiently now than they used to do because we did not get bogged down with trivia. Now, the photographs I was looking for earlier were these 2. Just showing you these, this was re-roofed but they insisted an application went in for it which is again exempt development, and this little fence appeared on Green Road and they were told to apply retrospectively for the timber fencing. They have got 2 enforcement officers - there were none - and they, again, try to justify their existence by picking up every minor discretion that is possible and again they are exempt development. The other one I was going to show you - and that was the one I was really looking for - that is exempt development and there is no correlation between that being allowed and the size of the glazing bar on the window but that is what the law provides and it really needs to address it.

Deputy G.C.L. Baudains:

Can I press you on accountability? Are you satisfied the chain of accountability has no weak links in it? I have been concerned for some time, personally, about the -- there seems to be an area of middle management which is unaccountable, especially in certain areas. I have had complaints made to me about requirements for historic buildings which when you query the requirement there seems to be no accountability because if you take it higher up, the person higher up says: "Well, I do not know about historic buildings. You will have to have a word with so-and-so." But that is the person you just do not agree with, so you go around in circles. Is accountability adequate?

Mr. P. Grainger:

It is the fragmentation approach that, as with Building Control and Development Control, the list of building sections seems to be out on a limb as well. In my view, you should have one person responsible for an application and consult the historic building guy, consult the building control officer and consult the public health officer and at the end of the day, he is the guy who makes the decision. Whether you agree with the listed building guy or not, if you were presenting it to the Panel, you would be able to say: "The professional here has advised such-and-such but I do not agree with him because of a), b), c) and d)." It is management.

Deputy G.C.L. Baudains:

This covers the point I was going to go on to – the almost lack of an appeal against the person. These people seem to be a law unto themselves and there is little you can do about it.

Mr. P. Grainger:

They are only a law unto themselves because the politicians allow them to be. That is the problem. The inconsistency that I touched upon is really part of what you are talking about. If you went to see the

historic building guy - or lady - to give you their advice as to what you should or should not be doing but some of it is so pedantic you would think why? I just do not understand the logic behind it. There is a lottery to which I refer to here, that I know full well because I have seen it. Last month. I could not believe my eyes. Up in St. Martin I have been trying to have some stables approved. No end of problems. St. Brelade - I went there. Corner of a field. Nice stables. Almost identical to the ones that we were having an argument with. Different officers. Now, which policy are they following? Why is there no consistency in the approach? It is down to management again. I do not know internally whether they have monthly management meetings or whatever to ensure there is consistency between different applications. As I understand it, theoretically Peter Le Gresley is in charge of Development Control. It is he who should see all applications and try to, in his own mind, determine whether there has been consistency in the advice that his junior officers are giving him or the Panel. Whether it works like that I do not know. Or whether the officer for St. Brelade and the officer for St. Martin are making a presentation to the Panel direct, and nobody is overseeing this consistency of approach.

Deputy R.C. Duhamel:
I notice that we are just over our time. Are there any final comments you would like to make or any issues that you would like to bring our attention to before we bring matters to an end?

Mr. P. Grainger:
I have just been through my notes: inconsistency; pre-application, we touched on that; delays we have touched on, the costs we touched on; fees we have touched on; the policies of the Island planning we have touched on; listed buildings we have touched on; the appeals systems we have touched on; exempt developments we have touched on.

Deputy G.C.L. Baudains:
You did mention a problem clause in the new planning law. Did we cover that?

Mr. P. Grainger:
Yes, it was this cost one. This little clause which was just slipped in. We can do anything we like in that document but no cost involved. Can I just touch on one thing? Building Control. Because applicants now have to pay for what the Planning Department consider a service, which I do not think it is a service because it is imposed upon the public. Conversely, Building Control has a positive role in that it ensures that buildings are constructed to a standard. But if the States are looking to save money, I beg the question as to why that should not be privatised so that only the people who are using the service would have their buildings inspected. Because the designer should have insurance, the builder should have insurance and nobody in their right mind would build something that was substandard if they were going to sell it and have a proper search done, so as long as there is planning permission or something for a building, then the subsequent control over its erection should be done by a third party and not the States. Why is it the States' function to ensure that a building is constructed practically and they do not

see it all the time anyway? They just go periodically, so you have got 10 guys there, or however many there are, going round looking at building sites to see if it is done in accordance with the bye-laws but they have already submitted an application to confirm that it is going to be constructed to the bye-laws and, therefore, responsibility now rests with the builder and the owner to make sure that it is done in accordance with that document. If it is not then we might just have spot checks but I seriously do question whether that could be privatised. And if I may, the first public meeting last week, just for instance, where there was only one person that attended, under the Planning Law, it says they are going to give at least 3 days notice, to have a public meeting, in the *Gazette*. I looked 7 days previous to the meeting and I could not find any notice at all and I wondered if that was the reason there was nobody was at the meeting, it just was not advertised. They may say it was on the Web page, I am not entirely sure. Lastly, it was public awareness. I know there has been an issue about copies of drawings being made available to applicants. Now, at the moment, if I put an application in, the drawings are in reception, you can go and get a copy of them. As I understand it, once it has a stamp on it, it is approved, then that facility does not exist anymore. You cannot get copies of it. But, if for example, I buy a house next door to one that has an approval and they have not implemented it for 18 months, all of a sudden it starts to go up and they think: "What the hell is going on here?" You go to the planning office to say: "Can I have a copy of the approved plan?" they will not let you have it. I think you as a Panel ought to recommend that they should extend the availability of plans to third parties after the approval which, at the moment, they are not allowing to happen. Lastly, on maps; there has been a suggestion that the application process requires an extract from the current Jersey digital map to be submitted with applications but they have the copyright on it and, therefore, it denies any third party producing a map to submit with the planning application and I think that is, again, fundamentally wrong. It does not allow competition or anything like that and again, just those 2 minor points that you may wish to consider. Other than that, thank you very much.

Deputy R.C. Duhamel:

Thank you very much. On behalf of the Scrutiny Panel, I would like to thank you for your viewpoints given and comments made and personally, I have appreciated your professionalism. Thank you.