STATES OF JERSEY

COMMITTEE OF INQUIRY: REG'S SKIPS LTD. – PLANNING APPLICATIONS – SECOND REPORT

Presented to the States on 1st April 2011
by the Committee of Inquiry: Reg's Skips Ltd. – Planning Applications

STATES GREFFE

2011 Price code: C R.38

CONTENTS

REPORT

1 TERMS OF REFERENCE AND MEMBERSHIP

1.1 The Committee of Inquiry was appointed by the States on 20th October 2009 with the following terms of reference –

> *To investigate all planning matters relating to the various relevant planning applications made by, or on behalf of, Reg's Skips Ltd. in connection with the activities of the company as skip operators –*
>
> *(a) to establish whether the various planning applications were determined appropriately and to a standard expected of the Planning and Environment Department;*
>
> *(b) to establish whether the legal fees accrued by Reg's Skips Ltd. totalling nearly £300,000 were as a result of any failings in the processes or actions of the Planning and Environment Department; and*
>
> *(c) to make recommendations for changes and improvements to the planning process to ensure that any failings identified in relation to these applications are not repeated in the future.*

1.2 The membership of the Committee is as follows –

> John Mills Esq., C.B.E. (Chairman)
> Edward Trevor Esq., M.B.E., F.R.I.C.S.
> Richard Huson Esq.

1.3 The Committee's first report (R.118/2010), which addressed parts (a) and (b) of the terms of reference above, was presented to the States on 16th September 2010. The States considered the report on 3rd November 2010[1] and resolved to award £157,000.00 to Reg's Skips Limited as reimbursement of legal fees and other costs incurred until 25th February 2008. This was as we had recommended. A further £50,000 was also awarded to Mr. and Mrs. Pinel personally as compensation for the impact upon them of the failings of the then Planning and Environment Department (the Department) with regard to their company's case.

1.4 This second, and final report, addresses part (c) of our terms of reference. With its presentation the Committee of Inquiry's work is done and, pursuant to Standing Order 146(9), it is now dissolved.

1.5 The Committee's direct expenditure since it was appointed has been £4,135. £3,000 of this was for the transcription of oral evidence at 5 public hearings and most of the rest for the advertisement of those hearings in the newspaper. No monies have been paid to, or expenses claimed by, any of its 3 members. All expenditure has been found from the States Greffe budget and no additional supply has been required.

[1] *See* P.130/2010 – Reg's Skips Limited – Planning Applications (R.118/2010): compensation and further action *and* States Minutes of 3rd November 2010

2 INTRODUCTION

2.1 In our first report we identified a range of management and organisational weaknesses, and other shortcomings, in the development control function of the Department, all of which served adversely to affect Reg's Skips Limited (RSL) in its endeavours to operate its business of recycling inert waste, in a market sector of some importance to Jersey. The saga provides an interesting, but unfortunate, case study in how the regulatory environment, however legitimately established overall from a public policy perspective, can, through an insufficiently thoughtful approach to public administration and want of focus on, or even understanding of, the objectives of policy, wrongly hinder desirable, and entirely proper, economic activity. This was the worse in RSL's case because the Department's actions in relation to the company's business probably had the effect of giving an unfair competitive advantage to other firms in the same market. Within the Department we found what we described as a lack of effectual management leadership and a good deal of sloppy administrative practice that on occasions tipped over the threshold of maladministration. All this, taken in the round, served to let RSL down in a serious way and to impose upon it, or cause to be imposed, untoward costs of a high order as well as significant regulatory uncertainty. While it is possible that some of the shortcomings and failings we discerned may have been specific to RSL's case, it seemed to us not unlikely from their obviously systemic nature that they were almost certainly of a kind well able adversely to impact upon other firms and individuals in their negotiation of the hurdles and pits of the development control process generally.

2.2 In the course of our work we soon got to know that we were not alone in having identified such weaknesses in the development control function. Not dissimilar findings and comments had been reported in other relevant papers prepared in the several years before our work began. Those relevant papers that we reviewed were –

(a) the 'Trinity Infill' report of August 2004 (R.C.43/2004);

(b) two confidential, independent reports produced in 2005 in response to an unsubstantiated (and, as far as we could see, vexatious) complaint made by the then President of the former Health and Social Services Committee primarily against the Director of Planning;

(c) the Review of Planning and Building Functions by Messrs. Chris Shepley Planning, published in March 2006[2];

(d) a review of the planning process by the Environment Scrutiny Panel published in January 2007 (S.R.2/2007);

(e) an in-house review of the development control process dated 28 February 2007; and

(e) the report of the Committee of Inquiry into the Bel Royal Housing Site, published in September 2008 (R.101/2008).

[2] www.gov.je/Government/Pages/StatesReports.aspx?ReportID=125

Another report most relevant to consideration of our third term of reference, although more about the workings of the law rather than the operation of the Department, was –

(f) the report of the Committee of Inquiry to Examine the Operation of Third-Party Planning Appeals in the Royal Court (up to 31st March 2008): Final Report (R.14/2009).

2.3 Several themes emerge fairly consistently from the first 5 of these reports. They are all, variously, to do with weaknesses in the Department's development control function, weaknesses exacerbated if not necessarily caused by, pressure of work judged to be considerably out of kilter with available staff resources. These pressures, it was widely observed, were caused not only by high demand for planning services in a buoyant property market from both commercial and domestic applicants, or because of new burdens arising, in particular, from the entry into force in 2006 of the Planning and Building (Jersey) Law 2002, but also because the development control regime itself was probably too burdensome from a regulatory perspective, especially with regard to quite extensive requirements in respect of applications concerning 'small' matters (such as modest house extensions or garage conversions) that in many other places, notably the UK, were likely to be outwith the development control net altogether. The impact of such factors on quality and efficacy of service was then, no doubt, exacerbated by the managerial and organisational weaknesses and by the sheer administrative sloppiness of the kind on which we have already reported. All this was not a good mix for a Department in the frontline of public service delivery and whose decision-making had, and has, such potential to affect the quantum and pace of economic activity.

2.4 The Shepley Report, for example, concluded from a thorough review of things that 3 main, generic, issues stood out from the evidence received in its preparation. The Department, according to its findings –

(a) was too focussed on minutiae and failed to take a strategic view (that is, it was overwhelmed with small, essentially uncontroversial cases and unable often or always to give more complex cases (perhaps like RSL's) requisite time and care);

(b) lacked 'confidence' as well as resources, and failed to show leadership on planning matters; and

(c) had failed to 'change with the times', especially with regard to giving priority in planning policy to economic growth.

The report also offered the considered view that there was a degree of public concern about the planning process, especially surrounding issues such as inconsistency of decision-making and the way consultation on planning applications was handled. This, of course, went well beyond impacts solely affecting direct users of planning services.

2.5 The report also drew attention to what was stated to be a very unsatisfactory state of affairs in Jersey regarding planning appeals. The 2002 Planning Law had created a mechanism for third party appeals but its provisions creating new machinery for enabling first party appeals on the planning merits of a case had been shelved by Ministers because of their putative cost. To-ing and fro-ing on this in the States had significantly delayed the bringing into force of the whole new Law. The 2008 Committee of Inquiry report is eloquent on the serious weaknesses of both principle and practice that therefore continued to govern citizens' ability to appeal against development control decisions. Appropriate, better and more accessible arrangements for appealing against decisions on their planning merits (rather than its being possible only to challenge their 'reasonableness' in the Court) may well, we judge, have made a big difference to RSL, and perhaps saved everyone much time, effort and angst on that one difficult case alone. We return to this in the next section of this report, and make a recommendation accordingly.

2.6 The 2007 in-house review was able to be even blunter about problems in the Department because it was intended only for confidential in-house, consumption. It focussed on the imbalance between demand for planning services and the constrained supply of resources available to meet that demand. Its conclusion, reached regrettably as the authors put it, was that the *'situation in [development control] at present is bleak.... Performance is slipping at all levels... Staff are tired and demoralised.... [if] additional resources are not provided, then the service must be reduced to meet the resource level.... [without extra resources] there will be slippage in areas [and] mistakes will become commonplace.'* This counsel of despair was being written, it should be noted, at the same moment – January and February 2007 – as the Department's maladministration concerning an improper enforcement notice imposed upon RSL, upon which we animadverted at length in our first report, was being enacted.

2.7 Similar issues and sentiments are percurrent in the other 3 of the first 5 reports noted above.

2.8 While we were preparing our first report we sought to ensure that the Minister, Senator Cohen, and his Chief Officer, Mr. Scate, were cognisant of our emerging criticisms of their Department. This did not take much seeking on our part because, not only was it fairly clear how our thinking was going from our questions to them and our requests for information, but also they themselves were thinking with expedition about how to improve matters. (It was very helpful in this regard that Mr. Scate was relatively new in post, and that both the Minister and he were (refreshingly) not defensive about the urgent need for improvement in the Department's performance.) By the time our report was published last September, they had already commissioned POS Enterprises Limited (POS), the operational arm of the UK Planning Officers Society, to carry out an independent review of the whole development control function, not only building upon all the debate and analysis of preceding years but also in expectation of upcoming criticisms from us in respect of RSL's case. We welcomed this and had conversations with the reviewers from POS at an early stage so that they knew what we had discovered from our detailed research on the one case and whether or not it might have been atypical. Their review was duly completed towards the end of last year and POS' interesting

and comprehensive report can be viewed on the States of Jersey website[3]. POS, it is fair to say, not only corroborated our own views, and indeed Mr. Shepley's, about systemic weaknesses in the development control function of the Department, but also its report offered compelling evidence that things were continuing to go less well and more ineffectually than was properly tolerable for such a key public service.

2.9 A summary of POS' main findings and recommendations is annexed to this report for ease of reference and because, despite website publication of its report, what it says warrants continuing wide notice among students of public service reform in Jersey. As already implied, none probably raises a major point that is entirely new but taken together their recommendations' comprehensiveness adds up to a 'road map' for improvement across the whole range of development control. It is worth note that the Minister and Chief Officer have readily accepted the thrust of the recommendations and recognised the need for the Department to improve its performance. This is refreshing because realistic self-examination by government departments is not always the outcome of constructive external criticism.

2.10 We have sought in this short report to illumine 4 of POS' main findings and associated recommendations. Each is germane to what we described in our first report. They concern –

- widening of the definition of permitted development to reduce regulatory burdens in 'small' planning cases and to reduce burdens upon the Department in order to release capacity to handle larger, more complex, cases better;

- clarity on delegation of powers within the Department;

- given especially the wide range of the Minister's powers under the 2002 Law, the need for a well-founded and well understood Ministerial code of conduct on pre-application advice and the determination of applications; and

- the need for something to be done on creating a sensible and proportionate 'planning merits' based planning appeals system.

To these 4 we have added 2 other issues that have seemed to us to be problematic and in need of attention by government –

- better and more systematic arrangements for consultation on planning applications (both statutory and non-statutory) among departments of government; and, arising from this,

- some modest machinery of government adjustments to eliminate overlap between the functions of the Health Protection Unit (in the Department of Health and Social Services) and the Department, and to ensure better and readier account is able to be taken of Health Protection's input to the planning process. This builds on, and indeed

[3] http://www.gov.je/Government/Pages/StatesReports.aspx?ReportID=490

reflects, work towards this end by the 2 Chief Officers concerned that we are advised is already in train.

2.11 These 6 items are addressed in the next section of this report and, in section 4, are the subject of recommendations by us to the States.

2.12 Action on the many lesser (but not unimportant) findings and recommendations of POS set out in the Annex to this report is, as already observed and as we are glad to note, being pursued expeditiously by the Chief Officer and his team at the Environment Department. We note in particular that a more rigorous approach on the recording of decisions, a new enforcement policy and operational changes to bring the enforcement function closer to the 'planning' side, have recently been implemented within the Department. These are positive developments, particularly important in the wake of RSL's case, and we welcome them. To help sustain such changes and to keep up the momentum of change, and taking account too of a high level of public interest in the good working of the development control function, we also recommend in section 4 a regular process of reportage to the States on development control activities generally.

2.13 The remit given to us by the States in our third term of reference was particularly opportune in view of the broader context of concerns about the development control process in Jersey and the various analyses in recent years of its shortcomings, both general and specific. Change is already taking place in the Department. Our aim in this second and final report is to put what further weight we can behind this process of change and improvement and to seek to ensure that action upon it, and further appropriate reform, is sustained. This has the potential to be one good outcome of the very hard time had by RSL at the Department's hands over the 5 years or so from 2003.

3 CONSIDERATION OF KEY ISSUES

(i) Widening the Definition of Permitted Development

3.1 Permitted development is that development for which a planning permission is not necessary (although consent under the Building Bye-Laws may be). At present in Jersey this is governed by the Planning and Building (General Development) (Jersey) Order 2008 (the GDO), as amended in 2009.

3.2 Broadly speaking, the GDO permits a number of classes of development without need for planning permission. The main ones of these are –

(a) installation of a bathroom or water closet within the curtilage of a dwelling-house;

(b) erection, construction or placing, and the maintenance, improvement or other alteration, within the curtilage of a dwelling-house, of –

(i) a conservatory or an extension to the house (subject to certain restrictions, including a maximum external size of

25 square metres and a maximum height of 3.5 metres for a pitched roof);

(ii) replacement of a window with a door or vice versa (excluding listed buildings);

(c) installation of a geo-thermal heating system (excluding Sites of Special Interest or sites of archaeological importance); and

(d) installation of additional or replacement plant or machinery on an industrial site (excluding Sites of Special Interest and installations that would materially affect the premises concerned).

The key element of the 'freedoms' included in the above is small (really quite small) extensions to premises. The further amendment in 2009 was a minor change to exempt window and door replacements in buildings built before 1920 that are not on the Minister's 'Register of Architectural or Historic Buildings'.

3.3 There were 2 reasons for the changes introduced in 2008. The first was a reduction in the regulatory burden facing mainly householders and small firms. More minor development to premises with little or no impact upon neighbouring properties, or upon the streetscape or landscape, could thus be undertaken without the costs, delays and possible uncertainties of the planning process. The second was a reduction in the regulatory task facing the Department through reducing the number of planning applications handled by the Department in order (hopefully) better to match workload to available resources. This applied, by definition, not only to applications themselves but also to such things as dealing with pre-application advice and requests for reconsideration, in both of which spheres 'small' planning applications were generating a deal of work[4]. Underpinning this policy objective was the criticism in the Shepley report, already noted, that the Department was mired in minutiae to the detriment of its view of, and ability to influence, the bigger picture (especially through dealing well and firmly with 'large' applications) and the realities of the Department' parlous position as evidenced by the 2007 in-house review and, indeed, our own first report.

3.4 It is, however, not evident to us that the 2008 changes were either excogitative or founded on clear principles as to what, and what not, citizens and businesses might or should be able to do on or to their properties absent a public policy interest as manifested through development control. It does rather appear that the changes made were not far-reaching in any sense of the word, or thought through from first principles of planning policy in a deeply considered manner. It comes over that trying to get the workload down by ceding as little regulatory ground as possible seems to have been the driving force, and even if this insinuation is perceived to be a little unfair that seems to be a not wholly inaccurate description of the result. And so, notwithstanding the changes made, the Jersey GDO can still be regarded as fairly narrow, more restrictive by some way, for example, than the comparable arrangements in the UK (which, we understand, might be relaxed further following the relevant announcement made in the 2011 UK Budget

[4] Ministerial Decision MD-PE-2008-0198 refers

Statement). This point was well made in POS' report. Furthermore, POS concluded that the 2008 changes, while welcome, had not really addressed the workload problem. That was hardly surprising since, whatever the rules, forecasting demand for development control services is obviously an inexact science.

3.5 The following short extract from POS' report helps elucidate the position –

> *'In his 2005 report for the States on the Review of the Planning and Building Functions, Shepley explained that the system tended to get bogged down in detail and concentrated on minutiae... [M]atters which require a specific planning permit in Jersey but are permitted in most areas in the UK, subject to standard conditions, are:*
>
> - *house loft conversions;*
> - *replacement and new windows above first floor and roof level;*
> - *larger rear extensions, conservatories, garages and outbuildings;*
> - *garage conversions (unless conditioned to remain as garaging).*
>
> *'Industrial or Warehouse buildings can also, in most cases, be extended by 1000 sq m or 25% subject to standard conditions. These higher exempt development levels in the UK have been introduced without raising great concerns, even in densely developed mature residential areas.'*

3.6 The position in Jersey over the last decade or so on numbers of planning applications is also worth brief adduction. In each of the 4 years 2001 – 2004 the Department registered over 2,400 applications. In 2005 (when we note, the Department gave permission for RSL to relocate to Heatherbrae Farm and when the recent economic cycle in the construction sector was close to a nadir), just under 2,000 applications were registered. The annual number increased to over 2,200 in 2006 as economic activity intensified, and stayed around that level until the downturn of 2009. (It was around this time, early 2007, that the Department made its 'bleak' assessment of its ability to cope with demand for development control services, thus setting the scene for the modest reform of 2008.) Last year, some 1,800 applications (of which just over 260 were pre-application enquiries) were registered by the Department, the lowest annual number of applications in the last decade. That, for the last year of a decade, was but about 75% of the annual average in its first half. As events turned out it is hard to know whether or not the reduction in the number of applications since the GDO was made, and subsequently amended, was mainly due to the change in policy as opposed to a diminution in the level of economic activity generally. The difficulties that this fluctuating demand for services presents to the Department is very clear from such figures, even before factors such as complexity of applications are taken into account.

3.7 POS concluded that the Department was not resourced even for the 'lower' volume of work apparent in 2010 and thus recommended, as one key response to this, that there should be a yet further widening of permitted development. Its proposals were –

(a) that free-standing single-storey outbuildings including sheds, detached garages, greenhouses, freestanding conservatories, and summer houses, all of which would be ancillary to the enjoyment of a dwelling house, should be permitted to the rear of the front elevation of dwellings, subject to standard conditions to protect neighbouring properties, and provided that less than half of the rear garden area was developed with such outbuildings; and

(b) that the case for the equivalent of UK permitted development rights for rear and side extensions should be considered further (other than for registered historic buildings) subject to a detailed examination of the impact of the same for residential extensions of one or two storeys, and certain caveats to do with aiming to ensure high standards of design.

3.8 The Minister appreciated the imperative signalled by POS and announced on 2nd February 2011 his intention further to amend the GDO[5]. The changes he has proposed include –

(a) a 25cm increase in the maximum permitted roof height of a conservatory or other domestic extension;

(b) a 5 square metre increase in the permitted total aggregated external area of a conservatory or other domestic extension;

(c) a 25cm increase in the maximum permitted height of a domestic fuel storage tank;

(d) exemption of domestic loft conversions in properties not listed or being considered for listing (with certain additional restrictions);

(e) the exemption of extensions to industrial and warehouse buildings where the extension would not exceed 5% of the existing building area;

(f) a 50cm increase (to 2.5 metres) in the permitted sweep of the blades of a wind turbine installed for electricity generation;

(g) a tightening of the restriction on the painting of building exteriors to include all listed buildings or buildings being considered for listing;

(h) a tightening of the restriction on creating new accesses to a road to include all listed buildings or places, or buildings or places being considered for listing;

[5] See www.gov.je/News/2011/Pages/PermittedDevelopment.aspx

(i) a tightening of the restriction on the installation of ground/air-source heating systems to include all listed buildings or places, or buildings or places being considered for listing; and

(j) the exemption of bus shelters installed by a public or parochial authority.

We are advised by the Department that these changes are expected to result in around 400 fewer planning applications being submitted each year than the average number in recent years, though it is not clear how this rather broad brush estimate has been derived.

3.9 Given the workload pressures the Department has faced, and which played their part in the way it made mistakes in RSL's case, we do not disguise our owning to some concern that what is now proposed by the Minister does not go far enough to enable a sufficient reduction in workload to be achieved, let alone an appropriate regulatory loosening. Certainly some quite significant, considered, recommendations by POS for greater liberalisation – for example, on exempting from control replacement windows and doors above ground floor level, and on external appearance criteria for industrial and warehouse buildings – have not been accepted at this time.

3.10 The reasons for this, and the pros and cons of a more generous loosening, badly need to be well evinced. We think that the Environment Scrutiny Panel should resolve to take an interest in this subject, something it has not done to date in any guise, in order to seek to establish the drivers of policy in this area and their real or imagined rationale. To start things off, we recommend that the Minister invites his recently formed Political Steering Group to report on the matter for the Scrutiny Panel's benefit. This would in our opinion be a very good subject for what we understand could well be the distinguished new Group's first published report.

(ii) Delegation of Powers

3.11 POS recommended that more development control decision-making should be delegated to officers, with the proper caveat that the existing delegation of powers agreement signed by the Minister needed revision in order to clarify precisely what powers had been delegated and in what circumstances. We certainly agree that greater clarity is needed about the scope of decision-making delegated by the Minister, both to the Planning Applications Panel and to officers, and greater precision about the limitations of those powers or otherwise and we recommend accordingly in congruence with POS.

3.12 There were several instances in the RSL case where it was not at all clear where formal decision-making power lay; indeed, we were of the view that the initial permission itself, in 2005, that allowed the company to establish operations at Heatherbrae Farm was improperly decided at officer level. To say the least, furthermore, the delegations agreement then extant did not seem to be universally well comprehended by staff. In this vein we consider that taking time now to get the delegation of powers agreement right will help to reassure applicants and the wider public that necessary degrees of transparency and accountability within the Department are in play. We

suggest that the Department seeks to follow the format of not dissimilar agreements signed by the Ministers for Home Affairs (R.10/2009) and for Treasury and Resources (R.10/2011). Those adopt a tabular format and they summarise both the individual power delegated and, where relevant, the scope of individual delegations, in a manner that is easy to follow.

(iii) Ministerial Code of Conduct

3.13 This concerns exposition of the role and the powers of the Minister for Environment under the Planning and Building (Jersey) Law 2002, for the benefit not only of consumers of development control services, but also planning officers themselves. Lack of understanding about this – or, perhaps, confusion about that understanding – was truly problematic at certain stages of the RSL case, notably in 2006, just after the new Planning Law was brought into force, when it was evident, and damaging to due process, that officers had not properly taken on board what had thus changed. The Minister had one view of how he wished to conduct a site visit and was clear that he was empowered to proceed as he would under the new Law; the case officer to whom fell the duty to advise the Minister had another, based on the Code of Practice for site visits under the old Law. The ensuing muddle was, by any standards of development control practice, bad.

3.14 Our strong sense from that particular episode was that the Members' Code of Conduct for Development Control required further work, not only on getting its content right, but also on its implementation in the sense that everyone involved with it understood its purpose and how it worked. We saw, moreover, good reasons why the Minister should equally be bound by that Code of Conduct or by a suitably tailored version of it. We refer any doubters to section 10 of our first report (specifically, paragraph 10.28 onwards), which sets out in some detail how the Minister's honourable but ultimately ineffectual intervention at a site visit of 20th September 2006 to RSL's premises represented a notable departure from the 'old' norm and caught the Department entirely off-guard. (It should of course, have been fully prepared for the introduction of the new Law, but wasn't.)

3.15 Incidentally, we have also got to know that the Members' Code of Conduct for Development Control was revised during 2007. The revision reveals that at least someone within the Department believed it continued to apply to both the Minister and the Planning Applications Panel members during that time, despite the Minister's clear view of his different position (since mid-2006) under the new Law as the sole taker of decisions on those applications he had reserved to himself to decide or on which he had perforce intervened. There is no evidence, however, to indicate that the 2007 revision was ever formally put to the Minister, so perhaps realisation was by then emerging of the change that had happened as a result of the new Planning Law. It was, moreover, not disclosed to us by the Department during all our work on the RSL case. We do not think that this was a wilful omission; the Department's confusion was such that it simply did not know the true status of the Code of Conduct and, in particular, whether the Minister was in any sense bound to follow it. If nothing else, this makes our point about its systemic organisational weakness.

3.16 The Code of Conduct as revised in 2007 is regarded by POS as very satisfactory in the main, including its guidance on the conduct of site visits. That seems to us to be a very reasonable conclusion, and the same goes for POS' views on the need for structured and transparent Ministerial involvement, with officer support in all cases. POS have set out one suitable way forward in the form of a draft code for the Minister and we consider very strongly that this should now be put into effect with promptitude. Everyone involved in a planning application should have the opportunity to understand the process in which they are obliged to engage and the clarity such a code would bring to the Minister's role could in contested circumstances be of meaningful benefit to her or him. And, perhaps even more important, it ought to help, and protect if need be, the Minister himself.

(iv) Consultation with other Government Departments (statutory and non-statutory) about Planning Applications

3.17 Of all the various problems of due process and administration that we identified in our first report, ensuring the effectiveness of consultation with other departments of government, and indeed parts of the Department itself other than Development Control, was one of the most notable in the context of RSL's case. The consultative relationship between the Department and the Health Protection Unit of the Health and Social Services Department is uppermost in our minds here (wherein we are pleased to have been advised that relations between them are now much better than hitherto), but the broader issue remains to be managed: how should it be ensured not only that the Department secures good and timely responses from any or all other departments, and equally that other departments understand the importance of the same and act accordingly? During the preparation of our first report we had cause on several occasions to review the position on consultation responses submitted to the Department by other States departments. In some cases it seemed that only cursory thought had been put into responses so that, consequently, they were of a practical value to the planning process that did not match the prominence they may have been given in planning reports, the template for which gave fair space for the inclusion of such responses. We sensed that in other departments this was mainly seen as just another, rather formulaic, task to be done, not worthy of any particular oversight from a policy perspective and perhaps unaccompanied by much understanding on the part of the officers concerned of the private rights potentially at stake.

3.18 This was not at all helped, it should be said, by the mechanistic way in which the Department circulated applications for comment in the first place (or indeed, in RSL's case, failed to communicate at all with requisite consultees, whether or not 'statutory') absent any initial advice from planning officers to help colleagues by drawing out factors or issues that particularly mattered from a planning perspective. POS' report suggests clearly that this state of affairs still obtains, the process of circulation for comment being instituted before a case file has reached the desk of the designated planning officer. We see a strong case for more ordered arrangements across government in this important sphere and we so recommend in the next section of this report.

3.19 In the case, however, however, of Health Protection, which is a particularly critical consultee on many planning applications, we think there is a case for going somewhat further and making some changes to departmental responsibilities to remove overlap with the Environment Department's functions generally and to bring it, Health Protection, closer organisationally not only to the development control side of the Department but also to its, the latter's, 'environment' function as a whole. This is certainly not the first time that this has been proposed but the time seems particularly ripe now for some change to be made, not only because of the shortcomings in consultation between the two in the RSL case and the intrinsic case for change to which this gives rise, but also on simple grounds of economy, efficiency and effectiveness. To this end we were pleased to be advised that action was already in train between the 2 departments. Our purpose here is simply to commend that having regard to our findings in the RSL case and to seek to urge that this small but useful 'machinery of government' adjustment is effected satisfactorily and timeously.

(v) Appeals

3.20 This is a difficult subject, on which, as noted in the previous section, we are far from being the first to opine in recent years. Our starting point is that we believe that things in RSL's case could have turned out differently, and probably for the better in terms of the regulatory outcome secured by the company, had machinery been in place to allow 'planning merits' appeals against planning decisions to be made in a straightforward, low cost, manner. This led us to thinking that some reflection afresh on the current position might not be without value.

3.21 The current position is as follows. Planning applications rejected by officers of the Department under delegated authority can be heard again by the Planning Applications Panel if the applicant considers that the refusal was unreasonable. This is the 'Request for Reconsideration' procedure. In practice, anyone who seeks reconsideration by this means is given it. Those, however, whose applications are decided directly by either the Planning Applications Panel or the Minister (something, of course, over which applicants do not have control) do not benefit from a 'request for reconsideration' option. They have the option only to appeal to the Royal Court or to request that their 'case' is heard by a Complaints Board under the Administrative Decisions (Review) (Jersey) Law 1982.

3.22 Appeals to the Court on such matters are governed by the Royal Court's Practice Direction RC6/03. This put in place a 'modified' procedure for certain planning appeals and was introduced as a consequence of the decision, already noted, to drop the proposed appeals mechanism – an 'Appeals Commission' – that had originally been included in the new 2002 Planning Law. The Direction enables appeals to be heard primarily by affidavit evidence, enables applicants to be represented other than by an advocate (and indeed sets out the expectation that this should be the norm), and sets out that an award of costs would be made only in exceptional circumstances. These are not insignificant modifications to the normal rules of the Court, but nonetheless the procedure involved remains a 'legal' one with all the dauntlessness for ordinary citizens implied by that.

3.23 And it is not, and cannot be, for the Court to substitute one 'planning merits' judgement for another; under the Planning and Building Law (Article 109) an appeal to the Royal Court can be made only on the grounds that the action taken by or on behalf of the Minister was unreasonable having regard to all the circumstances of the case. As established in case law, the Court cannot intervene if it believes a planning decision was merely mistaken; the decision has to be unreasonable. In the judgemental and qualitative area that is planning, and where the Law deliberately gives the Minister wide discretion in his decision-making role, that is an extremely high hurdle. We certainly incline to the view that it is probably therefore an unreasonable one from a public policy perspective, although in RSL's own case things went so wrong that, who knows, the Assistant Minister's eventual decision on the 'roofing over' application may well have been susceptible to intervention by the Court had the moment of relevance not in practice passed for other reasons.

3.24 The provisions of the Planning Law enabling 'third party' appeals against decisions by the Minister or Panel to approve planning applications submitted by others require similar tests of 'reasonableness'. It is not within our remit to consider the pros and cons of Jersey's having introduced arrangements for third party appeals, but it is hard not to remark that it is curious, to say the least, that such effort was put by the States into protecting the rights of third parties against decisions taken by the Department or Ministers aimed at others when attention to those of first parties, whose property rights are those in question in any decision-making, seems, relatively, to have been really quite wanting. (This is, moreover, the worse in our view given that since April 2009, applicants whose applications had been considered and turned down by the Panel have lost even the option of being able to request a 'voluntary' reconsideration by the Minister – a change that was reportedly motivated by an internal departmental review that advocated rationalising the process.[6])

3.25 All the arguments on this are excellently set out in the 2008 Committee of Inquiry's report already referenced and those interested should go back to that. The evidence collected and analysed there is clearly the starting point for any reconsideration of the law or practice in this area anew.

3.26 The procedure regarding a Complaints Board is a little different. Such a Board is empowered to consider whether a planning decision –

(a) was contrary to law;

(b) was unjust, oppressive or improperly discriminatory, or was in accordance with a provision of any enactment or practice which is or might be unjust, oppressive or improperly discriminatory;

(c) was based wholly or partly on a mistake of law or fact;

(d) could not have been made by a reasonable body of persons after proper consideration of all the facts; or

(e) was contrary to the generally accepted principles of natural justice.

[6] See Ministerial Decision MD-PE-2009-0059

These are wide powers of investigation and inquiry. But although there is no reason to doubt that Complaints Board decisions are weighed carefully by Ministers, they are manifestly not bound by those decisions. This is not therefore a route by which the Minister's or the Panel's view on the planning merits of a case, as compared with the process surrounding it, could ordinarily be challenged, although (and it is perhaps quite an important saving) the very fact of an appellant's having invoked such a process could well have its own impact on the Minister's or the Department's practical thinking about the merits of a case challenged through this particular means. There are examples of this effect from other areas such as the provision of information under the States Code of Practice on that subject, which wisely provides an appeal mechanism through the Complaints Board route.

3.27 The 2005 Shepley Report encouraged a revisiting of the arrangements for planning appeals. Ditto, with RSL's case in mind, it seems to us to be fairly indubitable that the existence of a viable and accessible 'first-party' appeals system with powers in place for the revisiting of the planning merits of a case and the overturning or amending of poorly rationalised planning decisions (including planning conditions affecting the terms of an approval) would act as a constant deterrent against sloppy standards and poor decisions. This is certainly a crucial factor in the UK system, testified by the 2 members of the Committee with experience of English local government; English local authorities have very great incentives, financial and political, to get decisions, and decision-making, 'right' first time.

3.28 POS observed in its more recent report that *'Jersey is now unique in the British Isles in not having an independent planning merits based appeal process.'* Its report discusses several options for change in respect of first-party appeals. It recommends the establishment of an independent appeals commission (and the consequent discontinuation of the 'request for reconsideration' process which, it rightly observes, though not being without merit falls short of being truly independent. If a 'commission' approach were to be deemed unworkable, POS suggests that it might be better to reinstate ministerial 'request for reconsideration' hearings at which decisions of the Panel could be reviewed from a purely planning perspective. That would still leave a potential problem with decisions decided in the first instance by the Minister herself or himself, but it would certainly narrow down the size of the problem, especially if it is envisioned that in coming years the Minister may (not least through a new code of practice on ministerial involvement in decision-making) be directly involved in fewer cases than in the recent past. We make this point not to detract from the fair point of principle that would or should be given effect by establishing a wholly 'independent' appeals body, but in recognition of the practical and financial constraints that would inevitably surround taking forward such a proposal in a reasonable timescale.

3.29 Whatever, if the idea of an independent appeals body were to be taken forward once more, it would be important in our view that it was given no role at all in determining third party appeals. Those are different beasts, and should continue to be governed by the rules of the Royal Court so that there is a fairly high bar to be crossed by anyone contemplating such action. The intrinsicality of this from our own perspective apart, that would be in keeping with the significant weight of legal and professional evidence presented in the 2008

Committee of Inquiry's report which was critical in principle of the third-party arrangements that the States had chosen to put in place.

3.30 The conclusion we have reached from reviewing the position on this in line with our own terms of reference is really that 'something must be done'. The present situation is manifestly unsatisfactory. People should be able to challenge, without significant ado, regulatory decisions that affect or curtail their rights to enjoy their property as they would, and possibly too their business interests and even their rights to family life. The Court should, as ever, be a place of last resort in probably only a handful of special or unusual cases where points of law arose.

3.31 What might a realistic appeals system look like? One option might be the model lately introduced in Guernsey, tantamount to utilising a specialist Panel including at least one person not from there. Another is to keep it within the Department but with strong and deliberate steps taken to ensure, and to be seen to ensure, fairness and transparency, and of course accessibility. Crucially, on such a model, no appeal could be considered or decided by any officer, Minister or Assistant Minister who had been involved in the original decision. It needs also to be emphasized that that 'decision' may not only be a decision to have rejected an application. It could equally concern the inteneration of a condition on an approval or (as might have needed to occur in RSL's case) a seemingly improper enforcement notice.

3.32 The machinery for this does not need to be complex; it needs to be reasonable, having regard to the arguably slightly peculiar circumstances of a small place such as Jersey. We were very struck, for example, when investigating what went wrong on RSL's case, that there was one 'independent' area of the Department, the section dealing with cases where an appeal to the Court had been made or proposed, that was very well able to cut through previous poor thinking and practice and get a bad decision – in that instance, the unwarranted issuing of a enforcement notice – readily reversed by the Minister. We suspect there is something good to build on there, especially when account is taken of the not inconsiderable costs already perforce tied up within the Department in handling 'independently' appeals made to the Court. Equally, it is possible to contemplate some improvements to the 'Request for Reconsideration' procedure to make it more robust and credible. Coupled, moreover, with measures such as an effectual widening of permitted development and restraint on the number of cases decided at first instance by the Minister or the Panel, we cannot believe that it would not be possible to go a long way towards achieving sensible and acceptable arrangements for 'planning merits' appeals that would be neither onerous or costly. Citizens, one suspects, would mainly want assurance, as tangible as possible, that although their appeal was being handled administratively that was being done in good faith and according to basic rules of natural justice.

3.33 Our recommendation on this in the next section is not designed to provide a blueprint for what a 'planning merits' appeals system might look like but rather, having regard to our thoughts above, to enjoin the States to accept that suitable change in this area is now needed and to get thinking going seriously on what exactly it should comprise.

4 RECOMMENDATIONS

4.1 We make the following recommendations to the States pursuant to our third term of reference:

Permitted Development

(i) before making the planned further revision of the General Development Order to enable a greater widening of 'permitted development', the Minister for Environment should refer to the Environment Scrutiny Panel both the draft Order and an accompanying report. This report should be agreed by the Minister's new Political Steering Group and confirm that the Minister has had the closest regard to all POS' recommendations on extending 'exempt' development in section 6 of its report, and explain the reasons with exactitude if he does not propose implementing the POS recommendations in their entirety. The referral to the Scrutiny Panel should be made no later than the start of the coming summer in order to give it time to consider the matter before the States breaks up for its holidays;

Delegation of Powers

(ii) the Minister and the Chief Officer, Environment Department, should satisfy the States that the Department's current delegation of powers agreement has been revised authoritatively, especially in order to clarify beyond peradventure what development control powers are delegated by the Minister to the Planning Applications Panel and officers respectively, and the limits of those delegated powers;

Code of Conduct for the Minister re Planning Decisions

(iii) the Minister should adopt, by formal Ministerial Decision no later than 31st May 2011, after appropriate consultation, a code of conduct regarding his involvement in pre-application advice and determination of applications. This should follow, as closely as reasonably practicable, the template for such a code of conduct set out at Annex F of POS' report;

Consultation within Government on Planning Applications

(iv) the Chief Officer, Environment Department should, without delay, prepare a policy document for the endorsement of the Corporate Management Board governing the way in which statutory and non-statutory consultation on planning applications should in all cases be undertaken between and among government departments and related agencies. This should cover the way the Department itself goes about initiating consultation requests and set out a mechanism for ensuring that a cadre of officers across all departments is identified as having responsibility, each person in her or his own department, for responding to consultation requests and for engaging with the Department on them as necessary. The cadre should be identified by

name in a list kept by the Chief Officer and brought together from time to time by his Department so that it has credence and those who comprise can understand and appreciate all requisite factors and procedures to which they must have regard when commenting on planning applications. The Corporate Management Board should keep such arrangements under regular review on the advice of the Chief Officer, Environment Department;

Health Protection Unit, Department for Health and Social Services

(v) current discussions (that we understand to be positive) between the chief officers of the Environment Department and the Health and Social Services Department about (a) eliminating overlap between the former and the Health Protection service within the latter and (b) ensuring better interaction between the two on development control issues having been concluded, the 2 relevant Ministers should bring forward a substantive proposal to the Council of Ministers, and thence the States, to implement the agreed changes. The aim of such changes should be, first, to make things go better through eliminating any overlap of activities and thus utilising resources better, and, secondly, to ensure the best possible Health Protection input to the development control process in a joined-up manner;

A 'Planning Merits' Appeals System

(vi) taking account of comments in this report and in the relevant parts of the other reports referred to in paragraph 2.2 above, and indeed the whole 'history' of the matter over the last number of years, the Minister should publish, within four months from the date of this report, a public discussion document on introducing a 'first-party' planning appeals system (that is, concerning appeals against any decisions on or relating to planning applications taking account only of 'planning merits'). The discussion document should set out a clear putative timetable for progress to be made to a satisfactory conclusion. Once public views have been gathered and assessed the States should have an orientation debate on the whole issue and remit the Minister to work with the Environment Scrutiny Panel and all interested parties to prepare specific proposals;

Momentum

(vii) the Chief Officer, Environment Department, should report to the States, through the Minister, before the end of the First Session of 2011, on progress made in taking forward and implementing the above recommendations together with all the main ones made by POS; and thence should report similarly at least annually on all aspects of the performance and improvement of the development control function in Jersey, and on related matters.

5 ANNEX A – THE POS RECOMMENDATIONS

Section 4 – Document and Process Review

Screening and validation

4.28 Review performance targets for the screening of applications to avoid unnecessary rejection of applications causing more work in the long run.

Fee structure

4.31 A formal protocol should be put in place to deal with variances from the published fee rates, which ensures that individual officers cannot be challenged about such decisions.

Application registration

4.38 Review whether the five working days target for registration is too long, given that the initial screening must be completed within 24 hours.

4.39 Further consideration should be given to a neighbour notification system as proposed in the Les Ormes report to avoid issues arising in the future.

4.40 Review the practice of not commencing to work on an application until the certification process is complete to assist smarter working.

Consultation process

4.46 The "trialing" of the revised process for despatch of consultee responses should be prioritised and the letters should include as much detail as possible regarding timescales to inform the applicant/agent.

Allocation of applications to case officers

4.59 All case files should be allocated within five working days of registration to a named case officer.

4.60 Case officers should (as standard practice) be identified on the Merlin system (or any replacement) rather than simply to a team.

4.61 The Asst Director, Development Control should be involved with the team leaders, in the allocation of applications to case officers and briefing upon them, immediately after registration. This will ensure that political involvement is managed, that consistent decisions are made across the teams and that planning obligations and percentage for art contributions are handled appropriately.

4.62 Following the early briefing referred to above, day to day managing of cases should be dealt with directly by the team leaders, with the Asst Director only being involved as a back up or in cases of particular sensitivity.

4.63 Team leader case loads should be reduced as appropriate to allow them to take on the effective management and support of their staff. Until delegation and exempt development levels can be increased, and new IT introduced, there will need to be an additional temporary case officer post to allow for this, to deal with backlogs and to allow the re-instatement of pre-application advice as outlined in Section 7.

13 weeks target

4.70 Reduce the minor applications target incrementally back to 8 weeks once related recommendations in other sections of the report are implemented.

Signing off of officer recommendations – "Four eyes and six eyes"

4.76 All applications should be counter-signed by either the appropriate team leader or the Assistant Director, Development Control.

4.77 Standardise the signing of decision notices to ensure that junior staff are not allowed to sign them on behalf of the Director or Assistant Director.

4.78 Attach draft conditions to the application assessment sheet, with an extra copy provided to the Applications Team, and ensure that delegated decision draft conditions/reasons are counter-signed.

Delegation levels

4.84 Levels of delegation should be reviewed to allow applications to be determined by officers when there are fewer than three outstanding representations to which the officers have responded and shown how they have balanced those representations in their decision (not necessarily resolved these representations).

4.85 Completely re-draft the current delegation scheme, in a tabular format, in consultation with the States legal team.

Conditions

4.92 All appropriate non standard conditions that are currently being used should be collated together so that an immediate review and updating of the existing standard conditions can be undertaken by the Director of Planning, utilising the experience of the Appeals Team.

4.93 In the short term all case officers should be required to input conditions into the Merlin system because any new IT system will import data from Merlin and this should be as complete and up to date as possible.

4.94 In addition, in the short term, adding the conditions will allow the scale of the use of non-standard conditions to be accurately quantified.

4.95 Once the revised list of standard conditions has been adopted, any officer proposing to use a non-standard condition should consult with the Appeals Team to check its enforceability before it is included in the officer's report, and the Assistant Director, Development Control and team leaders should sign off all non standard

conditions and regularly review any which should be added to the standard condition list.

Site visits

4.100 Revise para 11 of the PAP Code of Conduct to reflect the current arrangements made for site visits.

4.101 Regularly review the conduct of site visits to ensure that no impression of pre-emption of the decision is taken.

Decision recording

4.116 Put in place an agreed timetable for service between the department and the States Greffe for production, checking and publication of minutes of PAP and Ministerial hearings.

Decision letters

4.122 Standardise the production and despatch of decision letters and permits across all three teams to avoid problems arising.

4.123 Clarify the legal wording in respect of time period allowed for objectors to lodge third party appeals.

4.124 Review whether the 14 days currently allowed for third parties to lodge appeals should be extended to 21 or 28 days.

Percentage for Art

4.129 Produce, agree and publish the revised guidance on PFA as soon as possible to provide clarity to both applicants/agents and case officers. See also recommendations on PFA in Section 5.

Planning Obligations

4.137 The "one stop shop" group, or an ad hoc inter departmental group, should be asked to:

- *Recommend types of development and thresholds of sizes of development above which infrastructure and service provision planning obligations should be sought*
- *Identify the infrastructure and service provision requirements generated by major development and appropriate standards to be sought by planning obligations*
- *Provide indicative tariff rates for these*
- *Revise SPGPN 13 to incorporate the above to ensure the policy objectives can be met.*

4.138 A procedure should be adopted whereby the ADDC & team leaders identify to case officers at the case allocation stage (or in pre-application discussions) that a planning obligation should be sought, and the law officers are alerted to this requirement as soon as possible.

4.139 The Law Officers should be asked to produce standard agreements capable of being offered by applicants in simpler cases to seek to avoid delays in permits being issued awaiting the preparation of agreements.

Enforcement

4.144 An agreed enforcement policy and procedure should be produced as a matter of urgency and provided to the current Committee of Inquiry for information.

4.145 Consideration should be given to extending the Enforcement Team's role to cover checks on conditions compliance, following briefing from the individual case officers.

DC procedures manual

4.153 The content of the procedures manual should be reviewed thoroughly, completed and re-ordered in a sequential order with an index that shows clearly where process elements are still missing.

4.154 At the same time, there should be a critical review of all the processes in place to identify any simplification or "smarter" working that could be achieved linked to the introduction of new IT systems (See Resources Section recommendations).

4.155 Responsibility should be given to one of the team leaders to review and resolve issues arising as well as prioritising the production of the missing procedures.

4.156 The manual requires some introductory context. Some of the content currently relates to the minutiae of the payments system ("how to do" training documents) whilst other documents provide overall policies and operational issues for case officers.

4.157 The completion of the manual should be treated as a matter of real urgency.

Public information literature and forms.

4.164 Provide a front sheet to the application form incorporating a comprehensive check list of items required for applications of various types and which requires either the applicant or their agent, to sign and certify that all information required has been submitted.

4.165 Give consideration to designing a simpler, shorter form for minor householder applications.

Section 5 – Consistency of Conditions and policy interpretation in decisions – file review

Methodology & Standard Conditions/Reasons List Review

5.8 The time taken to draft conditions or reasons which are clear appropriate, necessary and enforceable can be considerable and a revised standard set of conditions/reasons (with appropriate inserts to customise the condition to the circumstances) should help to reduce the time taken and ensure greater consistency. That is not to say that purpose designed conditions will not need to be carefully written in circumstances where a standard condition may not be precise enough to achieve the objective. However a list of tested enforceable conditions built on best practice of the DC staff would avoid weak and unenforceable conditions, which have caused criticisms in past reports on planning decisions.

Percentage for Art Conditions

5.26 It is understood that the department is reviewing details of the percentage for art policy, and it is recommended that the adequacy of percentage for art statements at permit stage is considered further in the review. If there are a significant number of permits granted before the percentage for art statements are completed, a legal agreement for the artworks is desirable.

5.27 If a planning obligation agreement is needed for a scheme to cover other matters, the agreement could include the percentage for art statement without delaying the development. If only the percentage for art statement triggered the need for a legal agreement then the current standard condition could form the basis of a legal agreement template, with the detail set out on page 10 of advice note 3 (or its successor) added. The developer could complete this as a unilateral agreement to save time but leave appropriate control with the States.

5.28 It is suggested that to ensure consistency of implementation of the policy and condition, a department seminar/training event is organised when the revised advice note 3 is adopted.

Consistency of Decision-Making with Approved Policy and Completeness of Material Considerations

5.39 It is recommended that the Assistant Directors are asked to review the intended application of policy and then run an in house seminar to agree a consistent approach to rural policy interpretation. Other measures recommended elsewhere relating to team changes and joint front loaded Assistant Director/Team Leader allocation will also help align rural policy interpretation, by providing consistent early advice in discussion with the case officer.

5.45 In relation to the consistent application of policy it is considered desirable for major schemes, that would be a departure from approved policy (if approved), to be advertised as major departures and so identified in the weekly application list, in the Jersey Evening Post and on the website, at the time of an application's registration. A decision as to whether they were "not insubstantial" departures, when a public inquiry would be required, should be made at this stage. A definition of a "major" scheme would be required. For statistical purposes in the UK jurisdictions, "major"

is defined as 10 or more dwellings or the equivalent quantum of commercial development. That may be appropriate for Jersey or a higher threshold might be set.

5.46 Development proposals below this major threshold, which are (potential insubstantial) departures, should be identified in the weekly application list, in the Jersey Evening Post and on the website, as possible insubstantial departures (if approved).

5.47 This publicity for substantial and insubstantial departures, is recommended to:

- *reinforce the need for early recognition of such important considerations in the processing of an application.*
- *reduce the risk of case officers not putting adequate weight on the approved Plan*
- *help address the criticism of inconsistent rural policy interpretation by officers which was identified both inside and outside the department and*
- *help the Minister by providing early advice on whether an application is a departure.*

Section 6 – Minor development: review of exempt development in Jersey

Extending exempt development

Dwelling house extensions, attached conservatories, and outbuildings

6.18 There would be likely to be significant benefits in: allowing free standing single storey outbuildings including sheds, detached garages, greenhouses, freestanding conservatories, and summer houses, all of which would be ancillary to the enjoyment of the dwelling house, to be permitted to the rear of the front elevation of dwellings, subject to standard conditions to protect neighbouring properties, and provided that less than half of the rear garden area remained undeveloped with these ancillary outbuildings, such freestanding single storey outbuildings would not affect the greater extension of permitted development rights suggested below.

6.19 The UK permitted development rights for rear and side extensions be considered further (other than for registered historic buildings) subject to a detailed examination of the impact of such levels for residential extensions of one and two storeys on decisions taken over a three month period. To seek to ensure that high standards of design are achieved for rear and side extensions, it would be possible under Jersey law to make such extensions permitted development if they met the requirements of the proposed residential design guide and were designed and fully supervised by a member of the RICS or AJA.

6.20 After a trial period had assessed the success of RICS or AJA supervision a permanent scheme could then be introduced, if the Minister is satisfied that those levels of exempt development would not cause unacceptable impacts on neighbouring properties, subject to standard conditions to protect neighbouring properties.

Loft and Roof Conversions

6.23 There would be likely to be significant benefits (except for registered historic buildings) in:

- *allowing garages to be converted to ancillary residential accommodation subject to closure of any openings in the structure being finished to match the adjoining wall finish of the parent property;*
- *allowing loft/roof conversions to be converted to ancillary residential accommodation, including the insertion of windows in rear and side slopes, and velux style flush windows in front roof slopes, subject to no alteration to existing roof slopes or ridges or external roofing materials, and subject to standard conditions to protect neighbouring properties.*

6.24 The above measures would be likely to significantly reduce the number of applications (currently 22%) falling into those categories of description, although a large number would still be large enough to require planning applications.

New or replacement windows or doors

6.26 There would be likely to be significant benefits in exempting replacement windows and doors of dwellings above ground floor level, and only requiring applications for replacement windows in the historic elements of registered buildings.

Satellite Dishes

6.29 Further consideration should be given to a possible increase of exemptions to avoid the need for applications for dishes which are not on registered buildings.

New vehicular accesses to a highway

6.31 If it is considered desirable to raise exemption levels further, consideration should be given to only requiring applications for new accesses to principal roads.

Other possible exemptions

6.34 The external appearance criterion of the Jersey policy for industrial and warehouse buildings is unnecessary, and should be deleted from the Order.

Section 7 – Pre-Application Advice

Officer Pre-Application Advice

7.8 Charging should be considered to provide additional resources for major scheme pre-application advice, although the level of such charge and resource needs to be determined.

Ministerial pre-application role

7.23 The template Code of Conduct recommended by POS is reproduced at the end of this report.

Section 8 – Protocols for advice to and involvement of Ministers and Panel Members in decisions and arrangements for appeals

Pre-application engagement

8.13 PAP should be asked to determine most controversial applications. It should be able to make a decision on all applications other than a major proposal of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre-application guidance, or any proposal not in accordance with the Island Plan.

8.14 The Minister should retain reserve powers to determine applications by exception when not in accordance with the Island Plan and the PAP are minded not to accept an officer recommendation (known as the cooling off period) as set out in Ministerial decision PE 2006/0012. (Substantial departures are required by article 12 of the Jersey (Planning and Building) Law 2002 to be subject to a public inquiry after which the Minister would receive a report from the independent inquiry chairperson and issue a written decision.)

8.15 Training should be provided for any new members of the PAP and for all following the 2009 Island Plan's adoption, and the issue of any new Ministerial guidance (see also recommendation for including staff in such training in the Staff Section).

8.16 The 2007 PAP Code of Conduct should be amended to omit references to possible PAP discussions with applicants, and to update the site visit procedures section to reflect PAP site visits which now take place before the Panel meetings.

8.17 Where a Member of PAP is conflicted it will assist the public if the Member explains this when withdrawing from the Panel for that item. This will pass a clear message about standards and behaviour to any public present and ensure that there is no misunderstanding or perceived of lack of interest on the Member's part.

8.18 If independent planning appeal arrangements are introduced (see below), RFRs should be deleted from the delegation agreement.

8.40 Planning and Environment Minister roles in guiding pre-application discussions on major schemes and promoting development to implement the Island Plan for the benefit of Jersey can be vital. Departmental staff resources need to be harnessed to supporting the Minister in this role. To avoid unstructured approaches and promote transparent inclusive pre-application discussions we commend to the Minister that for major sites:

- *inclusive ministerial guidance is developed through masterplans, planning and development briefs*
- *initial pre-application meetings should always involve officers and the Minister, in order that the Minister always has appropriate officer*

advice available when first involved in any pre-application meeting (even if this means arranging a later meeting)

- *a Ministerial guidance output is published following forums or other appropriate consultation, for guidance of PAP, the public, and developers, and*
- *the Minister needs to refer other enquiries for minor development to the officers to avoid getting drawn into such extensive involvement as previously and reduce the unreasonable expectations on the Minister's time on minor matters.*
- *To assist the Minister in changing expectations the proposed Code needs to make it clear that the Minister would only be expected to engage in pre-application discussions on minor applications if asked to do so by the Chief Executive Officer, Director or by an Assistant Director.*

8.41 Planning and Environment Ministers should determine major proposals of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre-application guidance, or a major or substantial proposal not in accordance with the Island Plan.

8.42 All other non delegated decisions should be made by the PAP.

8.43 The principles of a Ministerial Protocol or Code needed to give effect to the above are set out in a draft template (reproduced at the end of this report). They require:

- *A clear indication in pre-application meetings and notes of meetings that the Minister is not making or pre-empting decisions on applications.*
- *Officer presence in all pre-application meetings to ensure public notes of meetings are produced and actions or negotiations following meetings are understood and implemented by officers.*
- *An indication at any Hearing that any statement of ministerial guidance, or other pre-application advice has been given.*
- *An indication that a Minister has not predetermined their position when determining an application, or recognition of being conflicted and withdrawal.*

8.44 The Commission for Architecture's role should be recognised and built in to pre-application and application process as a full consultee, to ensure appropriate weight is given to its recommendations.

Appeals

8.62 Promote legislative amendments to introduce appeals into planning merits and failure to determine an application through an independent appeals commission or environmental branch/panel of the Royal Court, and consider appropriate fees to offset the costs.

Section 9 – Resource Issues

Office accommodation

9.9 If possible, the long talked about move to more purpose-built accommodation for the entire Planning Team should be made as soon as possible. The accommodation should if possible be more open plan and should enable at least all Development Control Team members to be together on one floor (including enforcement and appeals staff).

9.10 It is recognised that both enforcement and appeals staff have special requirements (see above) and so these staff should either have interview rooms and quiet space available or be housed in separate offices to allow confidential discussions. Lockable storage space for enforcement records needs to be provided.

9.11 The Policy Team with the Historic Building Team should be accommodated as close to the Development Control Team as possible to allow a much closer dialogue to develop between the teams.

9.12 A significantly larger reception area with small interview rooms should be made available for personal callers to the department

Information systems

9.23 Take immediate advantage of the States IT investment money that is available to purchase a new purpose-built system rather than continuing to customise the Merlin system This will be more cost-effective in the long run.

9.24 Write a detailed specification for such a system prior to purchase covering all areas within the department which overlap with the development control process.

9.25 Include a secure module for protected enforcement records which should not be made available via the website.

9.26 Ensure that any new system fully and accurately integrates the data layers for GIS, zones, water table, flood risk and historic buildings.

9.27 Any system purchased should have the facility for bespoke reports to be easily generated to provide accurate figures for monitoring purposes.

9.28 A small team should identify and visit a selection of local authorities in England to look at their use of various IT and web based services before deciding which system to purchase.

Section 10 – Staff Resources

10.38 Undertake a month's study to quantify the number of calls and personal visits to the South Hill reception relating to planning applications.

10.39 Undertake a month's study within the DC Team to quantify the additional time being spent on applications subject to Ministerial interventions.

10.40 Review the levels of delegation to allow those applications capable of being determined by officers when there are fewer than three outstanding representations; and the officers have responded to and shown how they have balanced those representations in their decision (not necessarily resolved these representations).

10.41 Amalgamate teams into one generic Development Control Team when they move to new accommodation to ensure more consistency and in the meantime introduce regular cross team meetings to reinforce messages about consistency.

10.42 Resolve the situation regarding officers "acting up" as a matter of urgency (referred to in 10.11).

10.43 Ask the Director of Planning to take the following issues forward before his departure:

- *Writing guidance notes*
- *Updating and reviewing standard conditions and reasons*
- *Revision of GDO with increased levels of exempt development*
- *Enforcement policy.*

10.44 Identify a team leader to take day to day managerial responsibility for validation, registration and new IT including all of the technicians and the Applications Team, to ensure consistency of screening and increase efficiency, with the other team leader responsible for case management progression.

10.45 Consider further how resources can be found to organise the production of better management information and monitor performance, and implement a modern planning application management IT system as outlined in the previous section. This needs to be by one or both of the Assistant Directors (Development Control or Performance and Operations) in view of its high priority.

10.46 Increase the delegation of the management of cases from the Assistant Director to permanent Team Leaders.

10.47 Arrange more formalised networking opportunities with staff on Guernsey, Alderney and the Isle of Man and explore the opportunities for short term job swaps.

10.48 Encourage more involvement by staff with peers in POS and the RTPI SW Region.

10.49 Explore the opportunities for staff to participate in the POS Development Management Committee and for specific issues that are raising concerns to be informally discussed at such meetings with planners from England.

10.50 Formalise arrangements for a regular seminar when the Appeals Team can feed back lessons to the Development Control case officers.

10.51 Provide in-house training sessions to tackle issues where problems and inconsistencies have arisen.

10.52 Provide joint training for staff and PAP Members on the 2009 Island Plan, once it has been formally adopted, and other Ministerial guidance that is published.

10.53 Ensure complete formal training is provided for new IT system for all case officers, administrators and technicians.

10.54 Continue with the "back to the floor" initiative and develop it further.

10.55 Continue to encourage staff team building and social events.

6 ANNEX B – POS TEMPLATE FOR A CODE OF CONDUCT FOR THE MINISTER IN PRE-APPLICATION AND APPLICATION DETERMINATION

Pre-Application Role

The Minister should only be involved in pre-application discussions and guidance on major proposals or proposals of Island-wide significance, unless requested to become involved by the officers. All pre-applications with Ministerial involvement should, in every case:

- be with officers present
- be by appointment to allow time for preparation
- be with ministerial guidance, officer note of advice and/or conclusions sent to proposer and recorded on file
- avoid lobbying and explain the Minister will not be able to determine an application on which lobbying has occurred
- include a statement in the note of the pre-application discussion that the Minister has not made or pre-empted any decision on the application
- include a statement in the hearing report of the Minister's recorded pre-application advice or guidance and that the Minister has not pre-determined him or herself on the application.

If either of the last two bullet points cannot be included then the Minister is conflicted and should not determine the application.

The Minister should pass requests for advice or representations on minor proposals to the case officer without comment.

If pre-application discussion and guidance is of the following categories, either:

- A substantial or major departure, or
- proposal of Island-wide significance.

The Minister will publish guidance and make it publicly available as soon thereafter as possible, following planning forums or other inclusive public consultation.

If pre-application discussions or guidance are offered on lesser applications, the officers will record that advice and ensure it is publicly available when any ensuing application is submitted, and incorporated in the officer report to a PAP or Ministerial Hearing.

Potential Interests and Pre-application and Application Stages

If there is:

- a direct or indirect financial interest or a prejudicial interest, or
- where the Minister has been lobbied, or
- has been subject to personal approaches or personal interests he or she would not be comfortable disclosing,

the Minister should regard him/herself as conflicted on receipt of the application and not determine the application, to ensure public misconceptions of undue influence do not arise.

If the Minister is conflicted the PAP or Asst Minister, subject to PAP Code of Conduct, will be responsible for determining the decision.

Application Determination

The Minister should only use call in powers exceptionally. The exceptions will normally be:

- Substantial departures from the Island Plan
- Proposals of Island-wide significance
- Proposals where there is published ministerial guidance or recorded pre-application advice for major proposals.

In all cases when the Minister does decide to use call-in procedures, the reasons for the intervention will be publicly recorded, and any proposed "call-in" will be discussed with the officers prior to the Minister using reserve call-in powers.

All applications determined by the Minister will be determined after a Public Inquiry or Ministerial Hearing with the Minister supported by at least 2 Members. The Members at a Ministerial Hearing need to allow a full explanation of all material considerations to be given by the presenting officer, followed by a full audible debate to assist all those present to see how material considerations are being balanced and a decision is made.

Full reasons for a decision should normally be given in writing, after the Hearing, as part of the public record of the decision.

Where the Minister does not propose to follow officer recommendations, then the decision should be deferred to ensure a full record of considerations and professional advice on appropriate enforceable conditions or reasons can be given to the Minister and considered at a further Hearing or in a subsequent written Ministerial Decision.

Footnote:
Whereas, prior to October 2010 the Minister became involved to varying degrees in 24% of all applications, the Minister has indicated that he will only become involved in applications where he has called in the application using his reserve powers or formally requested to be consulted.