

3.6 Deputy J.H. Young of the Minister for Planning and Environment regarding the costs of defending Planning Appeals since his appointment:

Will the Minister inform the Assembly of the cost incurred by his department and the Law Officers' Department in defending planning appeals since his appointment and the number of cases in costs incurred where he has initiated appeals against the Royal Court judgment made against him, and advise how he justifies spending money to ensure, via costs imposed on the appellants, that he has the final say in such decisions?

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

I have taken it as read that the Deputy is not asking for full details of the costs of defending appeals as these were discussed in the debates on the new appeals system. However I can re-forward details to the Deputy and other Members if required. The new issue raised is challenges made by the Minister against Royal Court judgments. Now there is currently one live case before the Court of Appeal. I am sure that the Deputy will acknowledge that it would be inappropriate for me to make reference to any live proceedings in answering his question. Historically the cases are rare. I pursued one appeal last year and prior to that the previous one was in 2009 by my predecessor. That such appeals to the Court of Appeal are so few in number underlines that both I and my predecessor have only pursued them where important matters of principle had to be clarified in the public interest, such as the legal basis upon which a Minister can make a decision. The case in 2013 concerned the listing of a site as one of special interest and I brought an appeal as I was concerned that the Royal Court's judgment undermined the whole process of listing important buildings and places and therefore put those buildings and places at risk. The Court of Appeal found that the Royal Court's judgment was legally incorrect, justifying my decision and ensuring these important buildings and places remain protected. These cases are handled by the Law Officers' Department and I am unable to give the Deputy an indication of their expenses. I accept that the current system is legalistic in its nature. The States have decided to pursue a new merits-based appeal system with appeals heard by independent expert inspectors. I hope that this will largely do away with the Royal Court process and issues such as these.

3.6.1 Deputy J.H. Young:

As it is not the first time that Deputy Duhamel has said he will circulate figures separately, I would ask that he circulates those details that he said to all Members please, as part of the answer requested. But would he not accept that he has in fact made public comments recently about 2 such cases, not one, and that while one accepts that the system is going to change, can he really say that this test of important matters of principle applies to both those cases?

Deputy R.C. Duhamel:

I am happy to re-send the details as requested by the Deputy to all Members and will circulate them henceforth. The Deputy makes a point about 2 cases. He is absolutely right and one of those, the second case, is still live so I cannot comment on it.

3.6.2 Deputy M.R. Higgins:

It is a question for you, if I may.

[10:15]

The Minister says he cannot discuss these cases as they are *sub judice*. Surely that does not extend to the name of the case. We do not need to know any details or any comments on

them. Surely the Minister should be allowed to give us the name of the cases that are currently in dispute.

The Bailiff:

Yes, he can do that if you wish.

Deputy M.R. Higgins:

In that case, can I ask the Minister to tell us the name of the cases?

Deputy R.C. Duhamel:

The 2 cases I was referring to where appeals had been made by third parties which had been submitted of late is the *Herald* case with Capital Tower and the Parish of St. Ouen over the fields at Plemont.

3.6.3 Deputy R.G. Le Hérissier:

I am not sure this is the remit. Could the Minister tell the House, other than the Crown Officers from whom does he take advice when he makes a decision within the department to proceed with legal action?

Deputy R.C. Duhamel:

I am not sure that I am able to answer that because I think under the Ministerial protocol I am not allowed to advise anyone that I have taken legal advice or indeed what that legal advice contains.

Deputy R.G. Le Hérissier:

Could we have some procedural advice on that? It sounds a very strange answer.

The Bailiff:

You are entitled to say you take advice from the Law Office if that is the case, Deputy. You are entitled to say you take advice from officials in your department if that is the case.

Deputy R.C. Duhamel:

Very well worded, Sir. I repeat every word without repeating.

3.6.4 Deputy J.H. Young:

I have to confess to being rather confused. The Minister started off saying there was one case he could not talk about because there was only one case; now he says there are 2 and he has given us their names. But we still do not know the numbers. Will he at least produce a report on this? Will he confirm or give us the information because otherwise we are in an impossible position when we are approached by constituents who ask us: "How is it that these cases are one-sided cases when a Minister has all the resources and the appellants have none?"

Deputy R.C. Duhamel:

I think from the recent media offerings hares have been set running in this particular area and I think it is absolutely right that I apply the correct Ministerial pressure on the departmental officers to ensure that States Members are properly or correctly advised and brought up to date so that any potential fears that they have that the system is not being applied properly can be allayed.