

STATES OF JERSEY

Committee of Inquiry Reg's Skips Limited

FRIDAY, 19th MARCH 2010

Panel:

Mr. J. Mills (Chairman)

Mr. E. Trevor M.B.E., F.R.I.C.S.

Mr. R. Huson

Clerk:

Mr. I. Clarkson (States Greffe)

Witnesses:

Senator F.E. Cohen (The Minister for Planning and Environment)

Mr. A. Scate (Chief Officer, Planning and Environment Department)

[14:17]

Mr. J. Mills (Chairman):

Could I ask you to stand and to either take an oath or an affirmation? Which is your preference?

The Minister for Planning and Environment:

I will take an affirmation.

Mr. J. Mills:

All right. What about you, sir?

Chief Officer for Planning and Environment:

I will do an oath.

The Minister for Planning and Environment:

The reason for that is that Jews usually only take the affirmation.

Mr. J. Mills:

Exactly so. Senator Cohen first, if you could just raise your right hand. If you could read that second ... the witness has to give the affirmation.

The Minister for Planning and Environment:

I, Freddie Cohen, do solemnly, sincerely and truly declare and affirm that I will, in the proceedings before this Committee of Inquiry before which I am called to testify this day, declare the truth, the whole truth and nothing but the truth.

Mr. J. Mills:

Mr. Scate, I have to read this one. Do you swear that you will declare the truth, the whole truth and nothing but the truth in the present proceedings before this Committee of Inquiry, that you will do so without favour, hatred or partiality as you will answer to Almighty God at your peril?

Chief Officer, Planning and Environment Department:

I do.

Mr. J. Mills:

I think it is a slightly older form of words than the affirmation.

Chief Officer, Planning and Environment Department:

Certainly the last line of it.

Mr. J. Mills:

Exactly so. Welcome, Senator, and welcome, Mr. Scate. The 3 of us, I am John Mills, the Chairman of the inquiry. This is Mr. Edward Trevor and Mr. Richard Huson. If you could just, for the purposes of the recording, say who you are, please?

The Minister for Planning and Environment:

Do you want me to go first?

Mr. J. Mills:

Yes.

The Minister for Planning and Environment:

I am Freddie Cohen. I am the Minister for Planning and Environment.

Chief Officer, Planning and Environment Department:

I am Andy Scate, Chief Officer for Planning and Environment.

Mr. J. Mills:

Thank you very much. This is a public hearing but there are no recording devices in the audience, I hope. Thank you. Thank you very much for coming. As you probably know, we have had quite a number of hearings and much evidence received from various people and now we are keen to get your sort of version of events. So I think if I could say quite a lot of the story we know and there is no point in repeating it. I think what we are more concerned is to get your take on events and on the issues to which it gives rise. If I could just start, firstly, by asking you, Senator, you came in as Minister at the end of 2005, I think, as the first Minister under the new regime. Could you just describe, very briefly, how you found the department that you were now master of and what are some of the key changes or reforms that you felt you wanted to make in the immediate period? Just in a very broad sense because I think other people have commented on the problems faced by the Planning Department at this time when the Reg's Skips case was current.

The Minister for Planning and Environment:

It is quite a difficult question for me because I had no previous political experience of any sort and, of course, had no experience of the working of the Ministerial system, because it was new, or indeed the previous Committee system. It was compounded by the fact that I only had a part-time Chief Officer because the department had just been split and the Chief Officer, while an excellent chap, was clearly spending most of his time in T.T.S. (Transport and Technical Services) because that was his primary job. I was sort of left as part-Minister learning the job and part-Chief Officer, also learning the job. It seemed as though it was ... although there had been quite a lot of work done in the previous months, particularly by Chris Shepley, a man for whom I have enormous respect, to try and sort out the problems in the Department. I would not say the Department was a department in disarray but it was a department without very clear focus. I am not sure that that has very much to do with the background in relation to the problems that materialised over the whole of the Reg's Skips affair because those, to my mind, are more matters of detail. But the Department did not have very firm direction. So, for example, there was not ... I have a particular interest in architecture. So we now have a focus on better architecture in the Island. There were not any particular focuses within the working of the Department. People just got on with their work. Having said that, the team is an excellent team and always has been. The people, with virtually no exception, are first-class people. They are committed to their work. They do a job to the best of their ability and the majority of them would do jolly well in the private sector as well. They are not people who are sort of languishing in the public sector because they would not do well elsewhere. So I think it was a department without clear direction, a department with jolly good people but not particularly focused on anything.

Mr. J. Mills:

Were you conscious, in saying that, that the Department was not perhaps taking account of wider policy sufficiently? For example, the waste management strategy, we have heard quite a lot about that in this inquiry which, in that period of 2005-2006, was becoming big or had become big, you know, with the States decision on the solid waste strategy and so forth.

The Minister for Planning and Environment:

I think that is a very fair point. I think that part of the problem, and it is something that Andy Scate has sought to try and resolve, is that people within the Department get on with doing their thing. If their thing is not waste management they do not bother doing anything about waste management because there is no purpose in doing something about waste management. There is no mechanism of policies up here and policies permeating through to the various different levels. I think that is a very fair point.

Mr. J. Mills:

I mean, Mr. Scate, is that still roughly the position or is it improving?

Chief Officer, Planning and Environment Department:

I think it is improving. Certainly in relation to waste it was a new area to the States itself as a ... the Island itself has a Waste Management Law coming in through 2005 and onwards. So that is still invariably, I think, an immature - and that is used in the nicest sense of the word - part of the process because this is a new area. We have sought to bring legislation in from an environmental protection perspective and, as a result, I think the thought process of that filtering throughout the psyche of the whole Department and other State departments. I think we are getting better. I do not think we are certainly there yet.

Mr. J. Mills:

One other point has cropped up in evidence and that is that several people have said that there was less than a wholly good relationship between the Planning Department and the Environmental Health Department, which is now part of the Health and Social Services Department.

The Minister for Planning and Environment:

I think I would maybe know a little more about that than Andy because he, of course, only came more recently. I think the history of that is that there had been, before my time, an attempt to incorporate the Health Protection Department within the Planning Department and it had not happened. There was always a bit of feeling within the Department that they really should be part of our team and that they were not. Their view was that they should remain wholly independent and I have had relatively little to do with the Health Protection Department but have sort of sensed a feeling occasionally, in the few dealings I have had with them, that they do not want us to interfere, which I understand.

Mr. J. Mills:

Okay. Let us go to the particular, the Reg's Skips case. You first got to know about it, we read from the files, when Constable Dupre mentioned it to you in May 2006. I think that is on the chronology that we provided to you. Is that right, Ian?

Mr. I. Clarkson:

I am just looking for the date, Mr. Chairman.

Mr. J. Mills:

25th May 2006, I think.

Mr. I. Clarkson:

Yes.

Mr. J. Mills:

If I can find it. It is such a long chronology now.

The Minister for Planning and Environment:

It is at the top of whatever the page number is.

Mr. J. Mills:

Yes, it is the top of the page. It is 25th May. It says: "Senator Cohen records in an email to Peter Thorne" ...

The Minister for Planning and Environment:

"I know Chris Taylor ..."

Mr. J. Mills:

“I know Chris Taylor but do not get on very well with him and I have never met Reg from Reg’s Skips, assuming that is his name. Please let me know what this is all about.” You got a short brief from Mike Porter, the enforcement officer, later that day just giving you the bare bones of the issue. That, in a sense, is by the by. I know you had a lot of cases on your agenda, a lot of difficult cases. Was this one that was, at that point or in those few months in 2006, in your consciousness?

The Minister for Planning and Environment:

No, not at all.

Mr. J. Mills:

Not at all?

The Minister for Planning and Environment:

Not at all. This, until the very later stages, while it has had calamitous effects upon the Pinels, and I understand that, from my perspective was just one of the things that goes on in the Planning Department. The Planning Department, from my job within the Planning Department for much of my 4 years there, has been crisis management and I am the chap, when everything goes wrong, who gets the e-mails and has to try and reconstruct some common sense. Fortunately I have now got Andy to help me do that but it certainly was not a major issue, from my perspective, at that time.

Mr. J. Mills:

Going to the summer of 2006, the papers appear to indicate that you had asked Senator Ozouf if he would take responsibility for dealing with the decision on the case rather than yourself. Was that simply because you were away on holiday?

The Minister for Planning and Environment:

I do not remember. Looking through the chronology of this, there are an awful lot of things in this that I am afraid I do not remember.

Mr. J. Mills:

Okay, that is fine. I just think that that was something that struck us as slightly unusual.

The Minister for Planning and Environment:

Well, very often I do get Senator Ozouf to deal with things while I am away. He is always appointed as Acting Minister while I am away. But it may also have something to do with the fact that I have said that I know Chris Taylor.

Mr. J. Mills:

I think that is what was behind it.

The Minister for Planning and Environment:

Yes. I think, if you would allow me, I would like to explain that.

Mr. J. Mills:

Please do.

The Minister for Planning and Environment:

I say here that I know Chris but do not get on very well with him. I am not sure that that is quite an accurate reflection. The position is that I have known Chris for most of my life. We used to play together as children. We were at school together and, more importantly, we were in the Honorary Police

together. Looking through this, I have taken a very curious position, one could argue, in relation to whether there was a conflict in my relationship with Chris. As this matter became hotter I took the view that someone from the outside may look in and say: "Hang on a moment. The landowner here and the Minister were at school together, were in the Honorary Police together and it is completely inappropriate for the Minister to be making decisions in relation to that." So I, for periods, sought to avoid being involved in making decisions. I do remember there were one or 2 occasions where I was told there was no choice; I had to make the decisions. So I think that is why you have got this position.

Mr. J. Mills:

Okay. Can we jump then to September 2006 which was the ... you went up to Heatherbrae. 20th September 2006 you went up to Heatherbrae Farm with Mrs. Ashworth and Mr. Porter for a site visit and this was in relation to the then current request for reconsideration on various things. Can you recollect that site visit?

[14:30]

The Minister for Planning and Environment:

Yes. If it is the same one, I do recollect a site visit where Health Protection officers were present.

Mr. J. Mills:

Mr. Binet was there as well, from Health Protection.

The Minister for Planning and Environment:

Yes, right.

Mr. J. Mills:

That is right. This was to look at the area that Reg's Skips were occupying.

The Minister for Planning and Environment:

Yes.

Mr. J. Mills:

I think about the noise issue and so forth.

The Minister for Planning and Environment:

Yes. That is the time that we came up with the suggestion of covering the area.

Mr. J. Mills:

Exactly so. Can you remember quite sort of clearly how you approached this?

The Minister for Planning and Environment:

Yes, I do.

Mr. J. Mills:

Yes.

The Minister for Planning and Environment:

I remember saying, in effect, that: "I would suggest that if you are to cover the area you need to make absolutely sure that it is going to work. Do not go to the effort of paying to cover the area unless you have pre-acoustic testing to ensure that you are going to meet the requirements." Because, as I understood it at the time, these were statutory limits. You either meet them or you do not meet them and

I did not want to see them - I was not sure who was paying for it, whether it was Mr. Taylor or whether it was the Pinels - go to the effort of covering unless they were sure it was going to meet the requirements and remove the nuisance.

Mr. J. Mills:

Okay.

The Minister for Planning and Environment:

I do remember giving a very clear indication that if it was going to resolve the problems I was perfectly happy to give a consent and I would take responsibility myself.

Mr. J. Mills:

Okay. So if it solved the problem ...

The Minister for Planning and Environment:

If it solved the problem.

Mr. J. Mills:

Okay. That is all. Do you want to comment on that, Edward or Richard, at this point?

Mr. R. Huson:

No, I am happy with that answer.

Mr. J. Mills:

Okay. Now, after that, the issue continues to be batted forwards and backwards and eventually ... Sorry, that would be after that. After that, as part of that site visit, you said: "We will put a stop on things for 3 months while they try and sort all these things out," and that instruction was permeated around the organisation. Eventually though, for various reasons, it did not come to pass. Ian, give me the date, please, of the Enforcement Notice?

Mr. I. Clarkson:

9th January 2007.

Mr. J. Mills:

Yes. By 9th January 2007, about 4 months later, you authorised the serving of an enforcement notice on Reg's Skips ordering cessation of use of the mechanical digger and intensification of operations together with a reduction in skip sorting. In the meantime, there had been an attempt by the complainant, Mr. Yates, to judicially review you the Minister or you the Planning Department, which had been rejected by the Bailiff in court. There had also been a ... pursuant to what you had said at the site visit, Mr. Taylor had submitted a planning application to roof over the skip sorting in the silage clamp area. Do you recollect the Enforcement Notice decision?

The Minister for Planning and Environment:

No, I do not. But I do recollect being very reluctant at all times to issue any orders that prevented the Pinels from operating their business, to the frustration of officers who had to keep coming back to me time and time again. I was very conscious that whatever we were doing was removing their livelihood or certainly significantly affecting their livelihood and I was reluctant to do so. I remember clearly only agreeing to actions when I was told by officers I had absolutely no alternative other than to do so.

Mr. J. Mills:

You were told that on that occasion?

The Minister for Planning and Environment:

I cannot remember that.

Mr. J. Mills:

No, okay. In such a situation where you are taking a decision like that, how do you normally operate, may I ask? Do you operate in a formal way around the table with a clearly recorded decision-making or more informally?

The Minister for Planning and Environment:

It depends when it is made. If it is made at the Monday morning meeting - we have a formal meeting on Monday morning - then it is a formal structure or within a formal structure. If it is in addition to that or at a separate time then usually it is more informal. Officers will come in and see me, will sit down and explain. Only on very rare occasions will I ask them for further advice but I will ensure that I clearly understand the decision that I am being asked to make.

Mr. J. Mills:

That is how you still operate?

The Minister for Planning and Environment:

That is how I still operate.

Mr. J. Mills:

Do you regard that as a satisfactory way to make decisions of this kind of import?

The Minister for Planning and Environment:

A lot of planning decisions have huge effects on the individuals and, whether they are made formally or informally, the important issue is that you do your very best to get the decisions right. I am not convinced that a more formal structure would ensure that decisions are better. The decisions are good or bad because the decision-maker is good or bad and if the decision is wrong it is my responsibility and I am not sure that a more formal structure would improve my decision making, if that is any help.

Mr. J. Mills:

That is helpful.

The Minister for Planning and Environment:

The flaw would be my own.

Mr. J. Mills:

Were you in the Department at that point?

Chief Officer, Planning and Environment Department:

I joined the department in August 2008.

Mr. J. Mills:

Right. So you are the later period in this.

Mr. E. Trevor:

Following on your point, Mr. Chairman. Even when it is a less formal method of obtaining a decision from you, would you expect the officers to produce a proper written note of your decision?

The Minister for Planning and Environment:

Oh yes. I expect either a proper written note or very clear oral explanations that are then incorporated in the formal decision, always. I do tend to operate on a more informal basis. I had a planning hearing this morning. I think you would find my planning hearings are more informal certainly than the Planning Applications Panel because I find people are more relaxed and I think you can make better decisions sometimes.

Mr. E. Trevor:

I was thinking of the result of the decision, i.e. a note afterwards.

The Minister for Planning and Environment:

Well there certainly should be.

Mr. E. Trevor:

After you say yes or no, somebody would write up why you said yes or no?

The Minister for Planning and Environment:

And I will have to sign it. However, you are at a very difficult stage here because, as best as I recollect, this is right in the middle of a very difficult period when, for some reason or another - I never got to the bottom of it - ministerial decisions were not being properly recorded. I was being asked in 2008 to sign off ministerial decisions, formally sign off ministerial decisions, for the States' computer system that had been made a year before.

Mr. J. Mills:

Was that a problem with your department or a more general problem?

The Minister for Planning and Environment:

I do not know. It certainly was a problem in my department but whether it was in any other departments, Ian would know better than me.

Mr. J. Mills:

We have observed it was a problem because, I mean, some of these decisions were not well-recorded.

The Minister for Planning and Environment:

Right.

Mr. J. Mills:

I think that caused some of the confusion as well.

The Minister for Planning and Environment:

I think it was 2008, I was getting pretty frustrated because I was constantly being brought decisions that related to many, many months earlier and being told: "These are the last ones," and then 2 or 3 weeks later another pile would turn up.

Mr. J. Mills:

Okay. You approved the Enforcement Notice on 9th January 2007 and then on 28th February 2007, about sort of 7 or so weeks later, you withdrew it on advice from officers again. Do you recollect that?

The Minister for Planning and Environment:

No, I do not recollect it. I do not recollect the circumstances surrounding the withdrawal of the Ministerial Decision and I do not know the circumstances behind it. I cannot remember it, I am sorry to say.

Mr. J. Mills:

Okay. We will note that but I do not think there much point in questioning you on it in that case.

The Minister for Planning and Environment:

No. It was one of the things that I found very curious when I saw the chronology.

Mr. J. Mills:

Well, what in essence happened is that as soon as the Pinels' lawyers appealed the Enforcement Notice Mr. Webster of your department, who handles the appeals, advised very speedily - and he has given his testimony on this - that the Enforcement Notice was unenforceable.

The Minister for Planning and Environment:

Right. I do not remember that, I am sorry.

Mr. J. Mills:

This revealed a number of weaknesses in the procedure, which we will report on.

The Minister for Planning and Environment:

There is an interesting issue here. Very often Roy Webster comes in rather late and he is very skilled on appeals issues, and I have asked for Roy to be brought in at the beginning of situations rather than right at the end because he always seems to be in a position of trying to sort out difficult situations.

Mr. J. Mills:

I think that might have made a significant difference in this case.

The Minister for Planning and Environment:

It may have done, yes. We are still not there now. I can tell you that.

Mr. J. Mills:

Ian, just help me a second with the chronology. Where do we go next?

Mr. I. Clarkson:

28th February the notice is withdrawn. You are then into an extended period of emails between Planning and various other parties, including Health and Protection, until 24th April 2007 when the Planning Department refuses the roofing-over application submitted at the beginning of the year and it is refused under delegated authority.

Mr. J. Mills:

Yes. This was the application that followed your site visit.

Chief Officer, Planning and Environment Department:

Yes.

Mr. J. Mills:

Okay. That was obviously not brought to your attention.

The Minister for Planning and Environment:

No.

Mr. I. Clarkson:

The next significant development is that the Minister does not have the Ministerial Decisions from January and February put in front of him until 7th June 2007.

Mr. J. Mills:

This is a symptom of the problem you have just described?

The Minister for Planning and Environment:

It may very well be. I cannot tell you that this is exactly in that time but it sounds about right.

Mr. J. Mills:

Yes. Okay. I think it is giving us ... looking at the evidence in detail is revealing that there were some real weaknesses in the procedure.

The Minister for Planning and Environment:

I am sure that is the case.

Mr. J. Mills:

Carry on, Ian, please. Just tell me where we jump to next.

Mr. I. Clarkson:

Shortly after those ministerial decisions are formally signed Mr. Taylor notified the Planning Department in writing that he wished to appeal against the decision that was taken in April 2007 to refuse and he observes that there is a pending court case between Reg's Skips Limited and Mr. and Mrs. Yates.

Mr. J. Mills:

Right. So that process rolls on and as far as Senator Cohen is concerned, he is not involved again in that, according to our papers here, until ...

Mr. I. Clarkson:

There is a public hearing on 3rd August 2007 at which a decision on the request for reconsideration is deferred and legal advice or further information is sought.

Mr. J. Mills:

At what point ... Sorry, I am having to question you, Ian, because we are all getting lost in this long chronology. At what point did the Minister decide to stand away from the decision-making? That is what I want to ask him about.

Mr. I. Clarkson:

I have a record on 24th August 2007 that the Assistant Minister would then be dealing with the request.

Mr. J. Mills:

That is what I am looking at. Have you found that, 24th August?

The Minister for Planning and Environment:

Yes, 24th August.

Mr. J. Mills:

Yes. Can we just ask you about this? I mean, this obviously goes back to what you said earlier about your being acquainted with Mr. Taylor and the issue getting hotter. Is that a fair comment?

The Minister for Planning and Environment:

Yes, definitely.

Mr. J. Mills:

Yes.

The Minister for Planning and Environment:

Definitely.

Mr. J. Mills:

So there was nothing more to it than that. Okay.

The Minister for Planning and Environment:

I am surprised that that is not a little earlier than August. I would have thought it fitted more with the last issue of the request for reconsideration but maybe it does not.

Mr. J. Mills:

Do we know anything more about that, Ian?

Mr. I. Clarkson:

There is an exchange of correspondence between Mr. Yates and the Planning Department between the public hearing that occurred on 3rd August 2007 and the notification that the Assistant Minister is now dealing with it. One item of correspondence is from Mr. Yates in which he advises that he effectively requires or asks the Minister to stand aside and let somebody else deal with the application.

Mr. J. Mills:

Because he felt you ... okay. But I am not too worried about it. This is relative detail in a sense.

The Minister for Planning and Environment:

Right.

Mr. J. Mills:

I am just concerned to pick up the points where this case really touched you directly as Minister. So once you had stood aside after August 2007, between then and the request for reconsideration finally being refused again by the Assistant Minister, 24th April 2008, you presumably had nothing at all to do with the case?

The Minister for Planning and Environment:

Nothing active to do with the case. My only involvement, as best I remember, was numerous conversations with other politicians who had an interest in it and felt sorry for the Pinels.

Mr. J. Mills:

That was part of the getting hotter?

The Minister for Planning and Environment:

That is ongoing.

Mr. J. Mills:

Yes. Did you have any discussions inside the Department, with Deputy Pryke and the chief officers?

The Minister for Planning and Environment:

If they did they would have been casual and I do not remember them.

Mr. J. Mills:

All right. Okay. So, I mean, the view that we have really formed here, Senator, is that you, as we all know from just reading the newspaper, have had a very hard and long tough ride as being Minister for Planning with a number of big issues on your agenda and this was relatively low on the radar but it bubbled up at points.

The Minister for Planning and Environment:

Yes.

Mr. J. Mills:

You felt you should stand away when it was particularly bubbling.

The Minister for Planning and Environment:

Yes.

Mr. J. Mills:

That was almost the extent of your involvement.

The Minister for Planning and Environment:

Yes. Certainly at the more recent stages, I think probably after Deputy Pryke had moved on and become Minister for Health, I certainly became involved again and did everything I could to try and delay actions against the Pinels; as I have said, to the frustration of the officers.

Mr. J. Mills:

So this was after she had turned down the request for reconsideration?

The Minister for Planning and Environment:

Yes, it was.

Mr. J. Mills:

April 2008. Can you just describe what you did?

The Minister for Planning and Environment:

Effectively my idea was to try and find a mechanism to allow the Pinels to continue to operate, either from one location or from another location, not particularly related to Heatherbrae but after they have moved on, and to try and see if there was some suitable site. The problem is that we promote recycling and we promote the proper management of waste but yet we never tell anyone where there is a suitable site to do it.

[14:45]

It is really rather unfair for those who are attempting to operate businesses within that framework. I mean I would not like one operating next door to me, so I do understand it but still, as a society and as a government, we do have a responsibility to match the delivery of policy with the principle of policy.

Mr. R. Huson:

I think this will be one of the things in our report; that Government has not thought it through to the nth degree.

The Minister for Planning and Environment:

Yes.

Mr. R. Huson:

It is just a wonderful idea and very nice but it is not been thought through.

The Minister for Planning and Environment:

No.

Mr. E. Trevor:

Did you feel you had undue pressure from Mr. Yates, who appears to have been in touch with you quite often from the chronology?

The Minister for Planning and Environment:

I do not recall ever meeting Mr. Yates. I certainly do not regard or have a recollection of him putting me under undue pressure. I certainly regarded some of the intervention as being pretty much at the limit of what one would regard as normal and somewhat obsessive. But I cannot point to anything specific and say: "There is the evidence." Clearly he had a bee in his bonnet about it and he was going to do what he could to stop the nuisance, as he saw it. But I do not think I personally felt any particular pressure.

Mr. E. Trevor:

Thank you.

Mr. J. Mills:

Mr. Scate, just remind us when you came into this frame again?

Chief Officer, Planning and Environment Department:

I came in in August 2008.

Mr. J. Mills:

Okay. So this is right at the point where Senator Cohen was just saying he was trying to do his best to sort of find a solution.

Chief Officer, Planning and Environment Department:

Yes.

Mr. J. Mills:

After the refusal of the planning permission.

Chief Officer, Planning and Environment Department:

Yes.

Mr. J. Mills:

Can you comment at all on that? Is there anything that ...

Chief Officer, Planning and Environment Department:

What I can comment on I think certainly is both my view of regulation as well as the Minister's view of regulation, I think, in terms of we need to regulate. We also need to be compassionate with those regulatory powers in mind and that is a very hard balance to strike, between being incredibly officious and delivering the law as per the letter and also, I think, needing to bear in mind the human implications

of that as well. I think it is magnified in an Island context because, as already highlighted, trying to find solutions for some of these much-needed facilities is incredibly hard; especially where you do have a vociferous third-party lobby group on the Island which are more than able and often do make their comments known about the planning process. So in many senses the planning process can never win. We will always upset either applicants or objector and we try and find a middle on balance here. I think most of our reports - we produce written reports now - will often use the phrase: "on balance we recommend", and I think it is that very balancing issue which is incredibly hard to do. I think when you do balance I do think you need to balance compassion in there as well as pure regulatory power.

Mr. J. Mills:

Can I just ask you one question? One question that has been put to us, indeed by Senator Shenton last week, was that the Island needs to get its act together on planning appeals. I think his view is that the process of people being able to go to the court is perhaps not the most appropriate way forward on this. I mean, do you have a view about this? One of our terms of reference is to think about improvements to the process and we have been giving a little bit of thought to this.

The Minister for Planning and Environment:

Well, we have a pretty customer-based appeal process in that we have first party appeals and third party appeals and sometimes a mixture of the 2. An appeal system is always going to be difficult. It is always going to be expensive and if you give complainants free access to the court, the court would be log-jammed with appeals. We do have a system where there is an appeal. There is a proper appeal process that has served well for a very long period of time. I do not see how you can fundamentally improve it. I think it works. Evidence recently is that you can succeed in an appeal, either as a third party or first party, against the Planning Department. It is a system that works in other places. I think it is adequate.

Mr. J. Mills:

Okay. Any statement to that?

Chief Officer, Planning and Environment Department:

Yes, I think we have a court-based appeal system. I think that is fairly clear. I think as a result of the court-based system an appellant incurs a lot of cost in going through that system. I think they are very clear in terms of what we have got. I think we have tried to bring in other mechanisms to give other alternatives. So we have the third party appeals for third parties, clearly. We have a request for reconsideration process which is now being refined to, you know, basically a right to be heard in public which overcomes some of the officer delegated decisions versus decisions made in public. There are examples of a lighter-touch appeal system sitting outside of a court process certainly and if you look at the U.K. (United Kingdom) planning appeals system there is a Planning Inspectorate which is an independent body and you can have written representations at your formal inquiries or a full-blown planning appeal. We are tending to have obviously a full-blown planning appeal here because that is what the court, in effect, structure or process demands. I think it is worth looking into a lighter weight appeal process, possibly a written approach, but that would necessarily need to balance off the rights of the court to make decisions, change the planning laws certainly and also the cost implications of that. You know, funding of an appeals commission here would create a cost. It would invariably be ... you know, whether that is a user pays type approach and the appellants still pay a cost, I think it is something that is worth looking into. We are keeping an eye quite importantly with Guernsey with the Appeals Commission that they have set up and is fairly immature at the moment but is developing. I think it is worth us keeping an eye on. I think, you know, if I was a consumer and an appellant, it is quite a heavy-weight process to go through to have a first party appeal dealt with in a formal manner. The other mechanisms we have in place are more informal and if you really do want to assert your rights as a first party appellant you will incur a lot of cost and I think it is only right that we would look at a lighter weight situation for that. But invariably that would still incur cost. Not so much for the appellant but it

would incur cost to the States. So there is a balance to be struck.

Mr. J. Mills:

Okay. Well, thank you for that. I mean it is an area we might want to just comment on but it is not an area one could rush into rapidly and I think one can readily see that.

Mr. E. Trevor:

Following that; presumably something like the Planning Inspectorate in the U.K. would not be economic in a small place like Jersey because they have got the whole of England and I think Wales, I cannot remember now.

Chief Officer, Planning and Environment Department:

That is correct, yes.

Mr. E. Trevor:

To look at, whereas here you have just got the 45 square miles.

Chief Officer, Planning and Environment Department:

Yes. You know, the way that is funded obviously there are fees to appeal. You still have to pay a fee to appeal. It is invariable though that ... the majority of appeals in the U.K. are done via a written representation route and it is a lighter touch. It is more often dealt with smaller scale schemes. Now the big schemes, which incur a lot of potential gain for a developer or a big impact on an objector, invariably end up in a more formal setting somewhere and invariably end up with a lot of costs. But I think, you know, 80 per cent of appeal decisions primarily are done at a written approach.

Mr. J. Mills:

I think one point that struck us is that in the U.K. the Planning Inspectorate is like a referee among about 200 planning departments, whereas you have not got that 200 here.

Chief Officer, Planning and Environment Department:

Yes.

Mr. J. Mills:

So that is the difference. That is helpful. That gives us a few pointers. If we have no more questions then I think, unless there is anything you want to say to us about this in conclusion, we can wrap up this public session.

The Minister for Planning and Environment:

I would simply say that planning decisions are always very difficult decisions and yesterday I went to witness the Planning Applications Panel in operation. I do not often go. Two of the decisions I saw, I would have made completely different decisions. Therefore, there is always going to be a necessity to have an appeals process and the easier you can make the appeals process the better it will be and the more accessible it will be.

Mr. J. Mills:

Okay. Well, we note that with interest. There are no more questions. We end the public session. Thank you very much.

The Minister for Planning and Environment:

Thank you.

Mr. J. Mills:

Thank you.

[14:54]