STATES OF JERSEY

r

THE PLANNING PROCESS (S.R.2/2007): RESPONSE OF THE MINISTER FOR PLANNING AND ENVIRONMENT

Presented to the States on 15th March 2007
by the Minister for Planning and Environment

STATES GREFFE

RESPONSE

Introduction

I should like to compliment the Environment Scrutiny Panel on its hard work in undertaking this Review. I know that many written submissions were made and considered, together with many hours of public sessions when evidence was given. The outcome is a thorough investigation of the planning process. The points raised are relevant and will greatly add to a better planning process.

I am pleased that the Panel found that the effectiveness of the planning process had improved since I became Minister of Planning and Environment at the end of 2005. I have made considerable efforts to address some of the concerns that have been expressed in the past and to tighten up procedures in the Planning Department.

The bringing into force of the Planning and Building (Jersey) Law 2002, whilst leading to significant benefits for users of the system has, nevertheless, presented its own challenges to myself, the Planning Application Panel, and the Planning Department, particularly as we seek to deal with these changes, and the additional work that has arisen, against a background of diminishing resources and rising application numbers.

The Findings

The Panel gave consideration to the full range of planning activities undertaken by the former Committees and Application Sub-Committees and latterly myself, the Planning Applications Panel and the Planning Department, and concludes with 19 findings on those activities, on which I comment below:

1. Although the pre-application advice service offered by the Department was potentially very useful, only those individuals and organizations that had contact with the Department on a regular and professional basis tended to be well aware that it existed.

   This is acknowledged, although nearly all applications are submitted by agents who know of the pre-application advice service.

2. There was a marked shortage of evidence that officers had in recent years taken decisions, either directly or by way of more informal undertakings given during the course of negotiations, which had subsequently restricted the ability of the Minister or his Applications Panel, or the former Committee, to determine an application appropriately.

   I would have been surprised had this not been the case. Officers have, for many years, been keenly aware that they cannot commit the politicians to an application decision. At the commencement of my office, I issued instructions to this effect, and subsequently have re-issued them at the same time as instituting a system where all decisions delegated to the Department are endorsed not only by the person dealing with the matter, but also by one of the senior members of the Department .

3. Pre-application advice given by officers to prospective applicants was not normally made public following submission of a formal planning application.

   That is correct, although it will often be referred to in the later (public) report to the Panel or me on the application. Such advice that is given, in any case, contains a "without prejudice" clause.

4. Development briefs produced since 2002 had proved to be highly controversial. Interpretations of various Island Plan policies within those briefs, was often questioned and the manner in which they were consulted on and subsequently finalized was open to criticism.

   A commitment was given by the Committee in 2001 that there would be full public consultation on the development briefs and this has been observed. To put the issue into context, it is worth stressing that not all the briefs were controversial. Indeed, only three of the sites proved highly controversial, and in each case there was local opposition to the principle of development.

Nevertheless, I accept that the system can be improved. There were too many stages to public consultation on similar matters. I do not favour the type of development briefs previously approved by former Planning Committees. Too often they were a baseline for developers to negotiate yields upwards.

In future, I propose to simplify the process without reducing the opportunities for the public to contribute to the debate. The new Planning Law introduces the requirement for Island Plan representations to be examined formally and in public on the principle of development, before the Plan is adopted. This will provide a firmer basis for ironing out issues associated with the principle of development.

Future Development Briefs, particularly those under Policy H2 of the Island Plan, will be simpler. They should deal with planning obligation requirements (e.g. for infrastructure improvements) and provide generic, rather than site specific, advice on design and layout. This will need to accord with new Design of Homes guidance (following the Scrutiny Panel's findings on its other current planning review) and technical matters such as access and drainage.

5. The bringing into force of the Planning and Building (Jersey) Law 2002 was a welcome, if long overdue, development.

I agree. The consolidated version of the Law is due to published shortly by the States Greffe.

6. The Panel agreed that the introduction of a requirement for applicants to produce scale models in support of more significant applications would be most welcome.

I agree, and it has already proved worthwhile. Accurate physical models make proposals so much clearer to the layman, and enable the development to considered in its physical context.

7. The 'Island Plan Roadshow' based consultation failed to provide many Islanders with a meaningful understanding of the Island Plan 2002.

The parish "roadshows" were not an effective method of consultation on the Island Plan. There will be new procedures for dealing with the 2007/8 Review, in addition to the statutory processes referred to in my answer to item (4) above.

8. During the course of 2006 the Department repeatedly failed to publish Ministerial Decisions in a timely manner. Flaws in its Web site caused the public to suffer restricted access to a number of Applications Panel minutes throughout much of the year.

I recognise that this has been a problem and I have been implementing improvements in this area.

The new system of recording of ministerial decisions (on reconsiderations of application decisions) has further stretched resources of the development control team, but I can report that improvements are imminent.

The Website problems were technical and related to problems linking the States Website to Planning's applications monitoring system. There have been improvements, but there are still minor problems from time to time which I am committed to resolving. CSG intend to write new software to overcome the problems.

9. Some planning obligations required in recent years had been poorly defined or were ill considered, leaving developers with the impression that such obligations were nothing more than a thinly disguised and arbitrary tax on development.

Planning obligations are a widely used tool to ensure that the infrastructure requirements of new developments are properly addressed and I believe them to be a key feature of our planning system. But clearly they must be properly applied.

The Island Plan was approved before the Law was amended to allow planning obligation agreements

(POAs) to be entered into. Accordingly, the subjects of the agreements were initially requested retrospectively. The former Committee agreed a policy for POAs, and I have introduced a Percentage for Art Policy which supplements it.

I am firmly of the view that the requirements for POAs are now identified as early as possible in the application process.

I do not regard them as a tax on development. The Law requires that they must reasonably relate to the development that is proposed, and they are a legitimate means of offsetting the costs to the community of private development.

10. A review of housing density and specifications, as outlined in Policy H7 of the Island Plan 2002 (Housing Density and Standards), was long overdue.

I agree, but the Department needs to produce this review in the light of the Environment Scrutiny Panel's work on this subject in the Design for Homes review.

11. The number of individual policies in the Island Plan, coupled with a number of ambiguous descriptions within the Plan of those policies, had allowed for excessive variations in the overall interpretation of planning policy since 2002.

I do not see any particular problem with the number of policies in the Plan and the policies are drafted in a professionally competent manner. However, it is in the nature of planning policies that there will be a degree of flexibility, with the potential for variations in interpretation and for different weightings of the various planning considerations in particular cases.

Changes in political leadership of the planning function can lead to some legitimate variations in the way policies are applied, as well as to the amendment of existing policy and adoption of new policies and guidance. For my own part, I readily admit to having introduced different interpretations of policies, as my predecessors have done before me. Given that the Island Plan needs to guide development over a relatively long period, during which changes of political control are likely, this element of flexibility and an ability to update and review policy is an important part of the democratic process, in my view.

12. It was too early to determine whether the new planning appeals mechanism, coupled with the forthcoming limited third party appeals system, was delivering meaningful benefits.

I agree, and it will take some time yet for the new system to bed down. The introduction of third party appeals in March will have a further impact.

The Shepley report suggested that it could take 5 years for the system to develop to maturity.

13. A clear majority of the powers delegated to officers was found to be both sensible and proportionate.

I agree, but I regularly monitor the delegated powers to ensure they remain so.

14. During 2006 the Minister for Planning and Environment took positive action to limit the extent to which officers could sanction changes to schemes previously approved at a political level.

I have put in place a procedure I call the four-eye principle, where any alteration to any approved plan, even those approved by the officers under delegated powers, is endorsed not only by the case-officer but by one of the Department's senior officers.

15. Several States decisions made since 2003, requesting a Minister or Committee to take certain actions in respect of a particular planning application, had been ignored.

I cannot agree with this finding. To my knowledge, States decisions of this nature have never been ignored, and invariably a States decision was taken into account before the Committee made its decision.

The duty to make application decisions resided with the Committee under the former system of government, and its duty, as it is for me now, is to make its own decision based only on the relevant material factors. While a States decision is clearly relevant and material, it is not the only consideration to be taken into account.

16. The delegation of power from the States to the Minister for Planning and Environment resulting from the enactment of the Planning and Building (Jersey) Law 2002 was excessive in that it overly restricted the right of the States Assembly to intervene on specific planning matters.

This finding is noted. I have given evidence to the Scrutiny Panel looking into the Machinery of Government on this matter.

17. The efficiency and effectiveness of the planning process was suffering due to the limited resources made available to the Department.

I agree. This remains the case, and has not been helped by year-on-year disproportionate cuts in P&E's budget, combined with increases in the work of the Department, particularly since the new Planning Law was introduced. I am determined to improve service levels, but this can only be achieved by increasing the resources available to the planning team.

18. The Department suffers from the lack of a suitable meeting room on site to service the legal requirement to hold open Applications Panel meetings.

I agree. It is to be hoped that Property Holdings is successful in finding suitable premises for the Department and for Panel meetings.

19. States members require –

(a) – further training and familiarisation with the underlying philosophy and the policies of the Island Plan; and

(b) – a mechanism for raising concerns and initiating a debate concerning the policies of the Island Plan

I agree with both these findings.

The Island Plan is currently under review, as a Strategic Plan requirement. This provides an opportunity to engage States Members in the preparation of the draft Plan policies. I will be happy to arrange sessions to explain the new policies and underlying philosophies, once the draft Plan is complete.

As a general point, it is important that Members take the opportunity to involve themselves in the wider public consultation processes that will form part of the Island Plan Review process, so that their views can be considered before the Plan comes to the states for approval.

I agree that there should be opportunities for Members to raise concerns about policies or their application, once the new Plan is adopted. The Island Plan is already monitored for its effectiveness and current relevance, and reviewed as necessary. I shall ensure that appropriate procedures are put in place to enable Members' views to be canvassed at regular intervals.