States of Jersey
States Assembly

États de Jersey
Assemblée des États

Environment Panel

The Planning Process

Presented to the States on 16th January 2007

S.R.2/2007

CONTENTS

1. Executive Summary
2. Panel Membership
3. Terms of Reference
4. Introduction
5. Methodology
6. Background Research
7. Written Submissions
8. Fact Finding Visits
9. Case Studies
    Conclusion
    Conclusion
    Conclusion
    Conclusion
    Conclusion
    Conclusion
10. Public Hearings
11. Term of Reference No.1 – The Pre-application Process
12. Term of Reference No.2 – The Planning Application Process
13. Term of Reference No.3 – The Decision Making Process
14. Term of Reference No.4 – Delegation of Powers
15. Term of Reference No.5 – Supremacy of the States
16. Other Issues
17. Recommendations
    Appendix – Constitution of Successive Planning Committees

1. Executive Summary

1.1 The Panel found that the effectiveness of the planning process had improved markedly following the election of Senator F.E. Cohen to the post of Minister of Planning and Environment and the subsequent appointment of the Planning Applications Panel. Bringing the new Planning and Building (Jersey) Law 2002 into force had also led to significant benefits for stakeholders. It nevertheless uncovered several issues affecting the efficiency of and the quality of service offered by the Planning and Building Services Department.

1.2 The Panel's findings included the following -

i. 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.

ii. 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.

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

iv. 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.

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

vi. 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.

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

viii. 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.

ix. 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.

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

xi. 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.

xii. 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.

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

xiv. 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.

xv. 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.

xvi. 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.

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

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

xix. States members require –

- further training and familiarisation with the underlying philosophy and the policies of the

Island Plan, and

- a mechanism for raising concerns and initiating a debate concerning the policies of the Island Plan.

2. Panel Membership

2.1 The Panel was constituted as follows –

Deputy R.C. Duhamel, Chairman
Deputy G.C.L. Baudains, Vice Chairman and Lead Member
Connétable K.A. Le Brun of St. Mary
Deputy R.G. Le Hérissier
Deputy S. Power

2.2 Officer support was provided by Mr. I.R. Clarkson.

3. Terms of Reference

3.1 The terms of reference for the review were as follows –

a) To consider the advantages and disadvantages of the current pre-application process, with particular regard to –

- the rôle performed by officers,
- the value of the process to potential applicants, and
- the degree of neighbour / public involvement.

b) To assess the effectiveness of the existing planning application process and to consider the implications arising from the forthcoming introduction of the new Planning and Building (Jersey) Law 2002.

c) To consider the degree to which decisions taken by the Minister, Applications Panel, former Committee or Sub-Committee have been influenced by –

- interpretation of Island Plan policies,
- precedent, and / or
- the prospect of litigation on the part of applicants.

d) To review the extent to which officers within the Planning and Building Services Department exercise delegated powers.

e) To assess the extent of, and the implications arising from, limitations on the ability of the States to direct the Planning Minister.

4. Introduction

4.1 In September 2005 the then Environment and Public Services Committee acknowledged that the forthcoming introduction of ministerial government and of the Planning and Building (Jersey) Law 2002 would have significant implications for the planning process in Jersey. In order to ensure that the Department of Planning and Building Services was in a fit state to meet those challenges the Committee commissioned Mr. C. Shepley, an experienced planning consultant from the United Kingdom, to conduct an independent review. In a document outlining its terms of reference for that review the Committee stated –

> *'The Planning function is one of the most controversial areas of decision making and is widely regarded as one of the most challenging political portfolios. Over the past few years there have been a number of highly contentious planning applications which have attracted considerable scrutiny.'*

4.2 With the benefit of hindsight, the Environment Scrutiny Panel regarded the above as something of an understatement. Committees responsible for overseeing the planning process since 2002 had been the subject of several resignations and had been reconstituted on a comparatively frequent basis. Although some of the difficulties experienced by those Committees had been on matters other than planning issues, the fact remained that a number of highly charged States debates had been prompted by actions and decisions of various Committees on contentious planning applications.

4.3 Shepley was requested to provide recommendations regarding organisational structure and staffing levels, quality assurance and the setting of public performance criteria against which the performance of the Planning and Building Services Department should be judged. He subsequently spent a total of 6½ days actively investigating the Planning function in the Island.

4.4 In November 2005 Shepley's report entitled 'Review of Planning and Building Functions' was published.[1] It contained 38 specific recommendations and a number of related conclusions. The report broadly endorsed the efficiency and effectiveness of the Department, although it did identify several issues of concern affecting both the Department and the planning function generally. Overall staffing levels in the Planning and Building Services Department were described as 'just about adequate', though a reallocation of existing resources was suggested. Skill levels were described as 'good' but difficulties in recruiting suitably qualified staff were highlighted. A number of quality assurance mechanisms were proposed but the performance criteria used by the Department were generally regarded as being satisfactory.

4.5 Shepley was quick to acknowledge that planning issues, and the general performance of the Planning Department in particular, remained a particularly emotive subject among Islanders. This would hardly have come as a surprise to those who had lived in Jersey either since birth or for any significant period of time. Fondness for the Island's beauty was often accompanied by recognition that Jersey had just 45 square miles of land at its disposal to accommodate almost 90,000 people – and by sadness at the expectation of growth in that population. It was perhaps inevitable that Shepley would find examples of 'strong praise as well as some strong criticism' of the department charged with managing development of a very limited resource. In fact he recorded suggestions that the Department was sacrificing strategic vision in favour of concentrating on minutiae, that there was a lack of leadership and that some of the key policies of the Island Plan 2002 had become outdated as the Island had begun to push for economic growth.

4.6 In December 2005, following a round of public elections for Senators and Deputies, Jersey's committee system of government was superseded by a new ministerial system. Senator F.E. Cohen was elected to the new post of Minister for Planning and Environment and the Environment Scrutiny Panel was constituted for the first time.

4.7 Although Senator F.E. Cohen quickly set about reviewing, and even implementing, the Shepley recommendations, a review of articles and correspondence in the local media during the end of 2005 and the early part of 2006 indicated that public confidence in the planning process remained a very major political issue. The prospect of high rise development on St. Helier Waterfront prompted numerous objections. Applications for permission to replace existing agricultural sheds in the Green Zone with new housing were being submitted, and objected to, on a comparatively regular basis. The possible siting of a shellfish processing plant in the east of the Island was causing considerable controversy among local residents. Progression of first time buyer and social rented housing developments continued to generate adverse publicity. In several cases the articles and correspondence published appeared to question whether the Department could really be relied upon to implement planning policy effectively.

4.8 Individual members of the new Scrutiny Panel broadly endorsed a number of the recommendations made in the Shepley report. Nevertheless they continued to receive representations on planning matters from constituents with some regularity. Occasionally those representations were accompanied by rumours that planning officers were taking decisions at early stages of certain planning applications in such a way as to force politicians to approve schemes they would ordinarily have been rejected. Moreover, concerns were expressed that Shepley had been given insufficient time to fully evaluate the operation of the planning function in Jersey, irrespective of his acknowledged expertise in planning matters.

4.9 It was against this backcloth that, on 16th February 2006, the Panel decided to launch a review of the planning process. Terms of reference (see Chapter 3) were formulated in accordance with an initial hypothesis that the Island Plan 2002[2], the key planning policy document, was broadly fit for purpose. After all, the document had been approved by the States in July 2002, albeit following several amendments and an extended debate. Shepley had also commented that the Plan was 'a good plan – clear, well written, easy to use' and that it compare[d] well with other documents of its kind'. States members were largely familiar with the detail of policies contained within it and the prevailing view was that those policies were numerous and comprehensive enough as to give a Minister for Planning and his or her department all the tools they could ever need to do the job.

4.10 In fact, the Panel would later discover that question marks over the content of the current Island Plan lay at the very heart of many issues that still affected the planning process after Shepley had delivered his report.

5. Methodology

5.1 The Panel formed a working party consisting of Deputy G.C.L. Baudains and Deputy R.G. Le Hérissier. It charged the working party with conducting background research and with analysing in detail written and oral evidence received.

5.2 Background research included the following –

- a review of relevant legislation, including the Island Planning (Jersey) Law 1964 and the new Planning and Building (Jersey) Law 2002[3];
- analysis of the States of Jersey Law 2005: Delegation of Functions – Planning and Environment[4]
- detailed consideration of the Canavan report, as presented to the States on 31st August 2004, concerning the Trinity infill application[5], and
- the Shepley report of November 2005 entitled 'Review of Planning and Building Functions'.

5.3 In addition to the foregoing, members reacquainted themselves with the policies of the Island Plan 2002.

5.4 Evidence was gathered using a series of methods, including a call for written evidence, case studies, fact finding visits and public hearings.

5.5 A call for written evidence was made in March 2006. As a supplementary measure, letters were sent to over 40 companies and organizations inviting written submissions. Over 30 submissions were received, several of which were made on a confidential basis.

5.6 Case studies were proposed as a way of drilling down into the detail of more contentious recent planning applications. Those selected for detailed analysis included –

- an application for an agricultural dwelling at Field No. 96, Rozel;
- the first time buyer and social rented housing site at Fields Nos. 848, 851, 853 and 854, Bel Royal, St. Lawrence;
- the first time buyer housing site at Rue de Jambart, St. Clement;
- Lezardrieux, St. Clement;
- the first time buyer and social rented housing site at Field No. 190 – 192, St. Brelade, and
- a development of new homes at Beau Regard, La Route du Petit Clos, St. Helier.

5.7 Four site visits were made. On 6th April 2006 Deputy G.C.L. Baudains observed a meeting of the Planning Applications Panel. On 7th April 2006 Deputy R.C. Duhamel and Deputy G.C.L. Baudains visited the Hodge 2 site in St. Clement, on which over 70 units of social rented housing were nearing completion. Deputy R.G. Le Hérissier also observed the first open meeting of the Planning Applications Panel following the coming into force of the Planning and Building (Jersey) Law 2002. On 17th July 2006, Deputy Le Herissier and Deputy S. Power observed the first public hearing of a major application (that which concerned the Category A housing site at Bel Royal, St. Lawrence) held under the new Planning and Building (Jersey) Law 2002.

5.8 Public hearings were held between June and September 2006. Those invited to attend and give evidence included: the Minister for Planning & Environment; existing and former States members; the President of the Association of Jersey Architects; an independent planning consultant, and several members of the public. Transcripts of hearings held in public were published on the Scrutiny Web site. Additional hearings were conducted in private on occasions where the Panel considered that there was justification to comply with a request from the witness.

5.9 A series of additional requests for information were submitted to various parties during the course of the review. These included provision of additional statistics held by the Planning Department and advice from the Law Officers' Department regarding planning legislation.

5.10 The working group analysed evidence collated at regular intervals.

6. Background Research

6.1 In conducting its background research the Panel was mindful of the fact that legislative changes, staffing levels and fluctuating workloads were material factors that affected, or which were due to affect, the planning process.

6.2 At the commencement of the review the legal framework for the planning process was set out in the Island Planning (Jersey) Law 1964. The new Planning and Building (Jersey) Law 2002 was subsequently brought into force on 1st July 2006, after an extended delay. Although there were several reasons for that delay, it was the principle of having a commission to handle planning appeals, and the provision of ongoing funding for it, that remained somewhat controversial. In fact the funding for the proposed commission was never found and it was subsequently replaced with a modified, 4 tiered version of the existing Royal Court system. Mediation, arguably a much less costly method of resolving less complex disputes, was available as one of those 4 options.

6.3 The Panel acknowledged that the new Planning and Building Law brought with it a series of material changes to the process, several of which stood to impact on areas within the Scrutiny Panel's terms of reference. These included –

- a mandatory requirement to prepare an Island Plan and to review it within 10 years;
- more effective advertising of applications (by way of site notices, which were recently increased to A3 size);
- open Planning Applications Panel meetings;
- statutory status for outline (formerly in principle) planning applications;
- more effective enforcement procedures, and
- limited third party appeals.

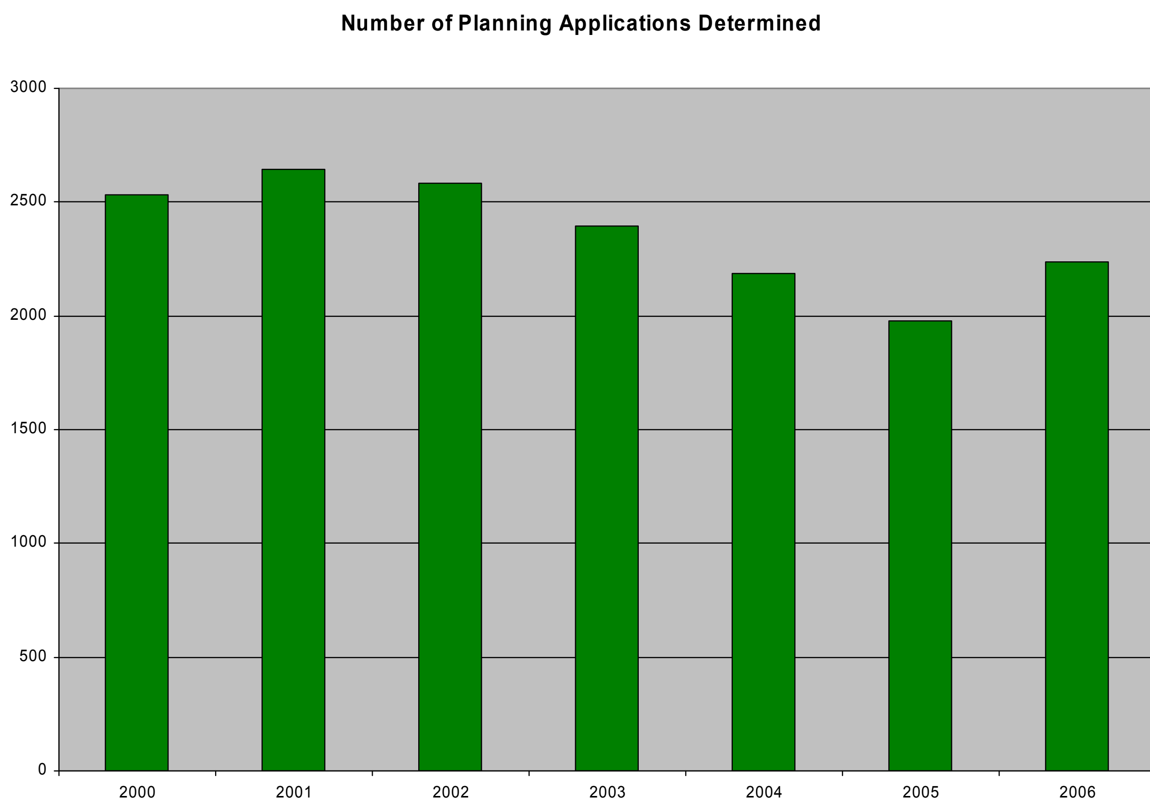
6.4 Staffing levels in the Department had been a matter of political concern in previous years. In 2002 a report produced by Environmental Resource Management for the then Planning and Environment Committee declared that Planners in Jersey had caseloads approximately 50% higher than their equivalents in comparable United Kingdom authorities, while the workloads of Building Control Surveyors and of administration staff were even more onerous in percentage terms[6].

6.5 Later that same year a strategy for future resourcing of Planning and Building Services was approved by the States[7]. This 'user pays' strategy required up to 10 additional posts, all of which were to be created on a contract basis, in order to deliver service improvements; however, budget cuts made following the Fundamental Spending Reviews carried out in subsequent years

meant that no more than 7 additional officers were ever recruited. In any event, the strategy only resulted in applicant fees covering approximately 50 per cent of the true costs of providing the planning application service.

6.6 Budget cuts made since 2002 had occurred at a time when the number of applications being processed by the Department was falling; this was arguably a symptom of the economic slowdown occurring at the time. In 2006 there were signs that this trend was reversing as the local economy began to improve.

6.7 Figures received from the Department are included in the table below.



6.8 In 2006 the Department operated with a complement of staff equal to 117.2 full time posts.[8] The Development Control section, which was directly responsible for regulating development and use of land, had 20.36 officer posts allocated to it. The Policy and Projects section contained a further 7 posts. Both sections reported to the Director of Planning.

6.9 During the course of the review a new Chief Executive Officer of Planning was appointed. This appointment restored a post which had been lost during the latter part of 2004 when the previous incumbent took voluntary early retirement. For the remainder of 2004 through to 2006 the Director of Planning had reported to a combined Chief Officer of Environment and Public Services.

6.10 Service reductions arising from decisions taken during the Resource Allocation Process for the period 2006 – 2008 had prevented the Department from replacing a retiring Enforcement Officer. Cumulative budget cuts had reportedly resulted in a further senior planning officer vacancy remaining unfilled.

6.11 Turning to the Panel's 4th term of reference, members noted the delegation of powers made by the Minister for Planning and Environment and presented to the States.[9]

6.12 The Shepley Report proved to be particularly useful in setting the scene for the review. Shepley's recommendations, and the subsequent responses of the Minister for Planning and Environment, were considered at various stages of the review. While considering the aforementioned report the Panel was reminded of Shepley's observation that 'when things go wrong, they go very wrong'. As the Trinity landfill application of 2003-04 was cited as one of the cases that caused Shepley to make this observation the Panel reviewed the findings and recommendations made by Mrs. C.E. Canavan in her report.

7. Written Submissions

7.1 Submissions were received from over 30 individuals and organizations as a result of the call for written evidence. Several submissions were made in confidence. An extensive and informative submission was received from the Planning Department.

7.2 A number of correspondents used the call for written evidence as a mechanism to air their concerns regarding planned, current or recently completed developments in their locality. More than 5 submissions were received regarding an application to construct 3 new homes on the site previously occupied by a bungalow in La Route du Petit Clos, St. Helier. Residents in the vicinity of the planned first time buyer and social rented housing site at Fields Nos. 190 – 192, St. Brelade also forwarded a collective (and very detailed) submission regarding the nature of development proposed and the manner in which the initial stages of the process had been managed.

7.3 Other submissions received included comments and observations from a firm of landscape architects, from the Société Jersiaise and from others with personal and / or professional experience of the process.

7.4 Analysis of the submissions revealed a number of common assertions. Several of these fell at the margins of the Panel's terms of reference. They were nevertheless considered to be of material significance to the review. The Panel summarized these assertions as follows –

i. The application process is geared towards the needs of developers
ii. Applications are not publicised sufficiently
iii. The consultation process is flawed
iv. Applying for planning permission is too expensive
v. It is difficult or even impossible to obtain pre-application advice
vi. The system of granting in principle approval is problematic
vii. Application of policy is failing to prevent (and may even be encouraging) over-development of sites in the Built Up Area
viii. Developers are able to increase their chances of obtaining permission either by submitting inaccurate information or by submitting extreme initial applications and negotiating
ix. Third parties are given insufficient rights of objection and / or appeal
x. The supremacy of the States should be clarified

7.5 A number of submissions tended to suggest that the application process was geared towards

the needs of professional developers rather than independent property owners. One correspondent accused the Department of making 'very complicated demands for even minor works'[10], while another described the process of applying for planning permission as 'daunting, expensive and finally depressing'[11]. Nevertheless there was also some positive feedback. One respondent described the process as 'exemplary'. [12]

7.6 The system of publishing applications drew widespread criticism. Numerous respondents referred to the need for a system of site notices. This issue was resolved during the course of the review when the new Planning and Building (Jersey) Law was finally brought into force. Early indications were that the new system was regarded by the public as a welcome improvement.

7.7 Applying for planning permission was considered by some to be rather expensive. References were made to the 'large cost to the applicant' arising from payment of application fees and engagement of architects[13], while another respondent questioned whether the public should in fact be required to meet the cost of all applications.[14] This contention was offered on the basis that the Planning and Building Law served to place restrictions, in the name of public interest, on the way in which a landowner could make use of his or her own land. It was considered unfair to make the landowner pay to service a law that restricted his or her property rights.

7.8 One of the strongest concerns raised was the degree to which respondents believed that Island Plan policies were failing to prevent (and might even be encouraging) over-development of sites in the Built Up Area. It featured prominently in correspondence concerning the replacement of a single bungalow with 3 houses at La Route du Petit Clos, St. Helier. It was at the forefront of neighbouring residents' minds as they considered the impact of a draft development brief for Fields Nos. 190 – 192, St. Brelade on nearby single storey homes. One correspondent, who was particularly damning in his condemnation of what would subsequently become known as 'garden grabbing', stated –

> *'They have blocked the outlook from our house by cramming an old Jersey house garden with dwellings, and this is happening all over the Island.'*[15]

7.9 Developers were occasionally suspected of having used questionable tactics to increase their chances of obtaining permission. Several items of correspondence concerning La Route du Petit Clos, St. Helier implied that neighbouring residents held such a view.

7.10 The rights of 3rd parties to object or to appeal against applications was raised. Deputy C.J. Scott Warren forwarded a comprehensive submission, primarily on the advantages of the appeals process contained within the new Planning and Building Law, while others commented that 'no help is given to objectors in any way comparable to that given to applicants'. [16]

7.11 Turning to the matter of the supremacy of the States, both Deputy C.J. Scott Warren and the Societe Jersiaise expressed the view that the Minister should not be entitled to block a decision of the States regarding a particular planning matter.

7.12 Finally, a significant number of correspondents provided evidence that the Department might be failing to communicate effectively on a number of levels. Items of correspondence received concerning the draft development brief for Fields Nos. 190 – 192, St. Brelade and the development of 3 homes in La Route du Petit Clos, St. Helier alleged that letters of objection or concern had been ignored or, in the latter case, that material changes to an approved application had been made without previous objectors having been notified. Other letters indicated that the Department might wish to do more to improve levels of understanding of the planning process generally. These themes would be repeated often as the review progressed.

8. Fact Finding Visits

8.1 On 6th April 2006 Deputy G.C.L. Baudains observed a meeting of the Planning Applications Panel. Issues identified at that meeting included: the suitability of the venue for such meetings; the quality of information made available to both the Department and the Applications Panel, and the time taken up on Panel agendas by matters which were arguably minor in nature. Consistency of advice received from external departments was also raised.

8.2 The 6th April meeting was held in the Committee Room at the Transport and Technical Services Department, South Hill, St. Helier. Deputy Baudains observed that the room was narrow with limited space available to accommodate meetings in public, should significant numbers of people choose to exercise their right under the new Planning and Building Law to attend. This subsequently proved to be a relevant observation. Public attendances at Applications Panel meetings had increased markedly by October / November 2006 and the Department had sought to use alternative venues where possible.

8.3 Plans relating to individual applications were regularly swapped on a board located approximately 12 feet away from States members as the Applications Panel reached relevant stages in its agenda. This gave limited opportunities for the members to study the full size plans in any detail. Neither were the tables in front of members deep enough to cope with plans unless they had been significantly reduced in size. Space in which to conveniently display an appropriately sized model of a development proposal was practically non existent. While these points might have appeared minor in isolation, the Panel considered that they were symptomatic of a wider issue regarding the quality of information made available to States members prior to the determination of an application. Indeed, adequate provision of information lay at the heart of the case study of the Lezardrieux application referred to in subsequent Chapters.

8.4 Several of the open Planning Applications Panel meetings held following the introduction of the new Planning and Building Law had taken place in either Maritime House, St. Helier or in the premises of the Société Jersiaise. These locations offered more space for the displaying of plans and room for observers. Unfortunately their use would also cause disadvantages. As the Department's operations still generated significant volumes of paper, officers were required to move numerous case files and other relevant background material to and from these locations. This was arguably an inefficient use of officer time.

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

8.5 Availability of relevant information from applicants was also highlighted at the 6th April meeting. One Planning Officer advised the Applications Panel that up until the date of the meeting he had only been provided with plans for a site which was the subject of an application. Amended drawings of revised houses on that site were supplied to the Department on the day of the Applications Panel meeting. Having looked at the drawings that morning, the Planner had formed some concerns. Although the Department had from time to time been accused of taking an excessive amount of time to process an application, this disclosure indicated that fault did not always lie with officers.

8.6 An application for a change of use from a retail unit to a dry cleaning outlet provoked comment. Deputy Baudains invited views from the Applications Panel on whether the requirement to submit an application in such circumstances was excessive. Officers clarified that existing legislation required an application for a change of use to be submitted for such an operation, although a dry cleaning shop operating as a drop off and collection point only would not. In turn this led onto consideration of the quality of advice received from other Departments. Processing the dry cleaning application had involved obtaining comments from the Highways Section of the Transport and Technical Services Department. The response had apparently been that the application should be rejected on the grounds that it was likely to result in increased illegal parking on the street outside. Although not directly relevant to the application before the Panel, it was not clear that the Section had commented in similar terms when the original development, of which the outlet was but one small part, had been considered in its entirety. Members of the Applications Panel commented that the recommendation seemed to conflict with the previous decision to permit retail activity at other larger premises within the development. In fact, the issue of the quality and timeliness of external advice featured at later stages of the Scrutiny Panel's review, most notably in its case study of a proposed Category A housing development at Bel Royal.

8.7 On 7th April 2006 Deputy R.C. Duhamel and Deputy G.C.L. Baudains attended the Hodge 2 housing site in St. Clement. The purpose of that visit was to listen to the experience of a major developer who had recently been through the planning process.

8.8 Members learned that the developer was broadly satisfied with the manner in which the Department had dealt with its application, although some concerns were expressed. For example, a requirement to fit a number of false chimneys and bell towers on new homes at the site at a unit cost of between £2,000 - £3,000, causing the cost of constructing the houses to rise. As the development was to provide social rented housing at a fixed cost per unit, the developer was understandably disappointed when, mid-way through the construction process, a

planning officer allegedly appeared on site, viewed one false bell tower in situ and determined that the remaining towers specified in the scheme should not be attached after all. As the towers had only been specified on advice apparently received from the Department, the developer concluded that he had been forced to incur unnecessary cost.

8.9 Although the planning process in respect of the Hodge 2 site was considered to have worked relatively well, a number of indirectly related issues were raised. The developer suggested that planning obligations required by the States should have been determined in detail at that time of rezoning in order to give developers a greater degree of certainty at the earliest possible stage. This matter was considered in more detail in the case study of the Rue de Jambart application at Chapter 9 and also at Chapter 12.

8.10 Panel representatives were also advised that developers would be more likely to deliver affordable first time buyer and social rented homes quickly if the States would strive to confirm in detail its policies on design and density at the time of rezoning land – an issue considered in more detail in subsequent Chapters. Other matters raised included a comment that the 55% / 45% first time buyer and social rented housing split policy within the Island Plan 2002 was causing first time buyers to pay more for their homes. Although this fell outside the terms of reference of the review, the Panel was particularly concerned by this allegation that it felt obliged to comment further in its report. Accordingly this issue is considered at Chapter 16.

9. Case Studies

9.1 The following case studies were conducted so as to illustrate key issues affecting the planning process.

Field No. 96, St. Martin – Construction of a dwelling to serve as a farmhouse.

9.2 This in principle application was originally submitted in January 2004. It was selected for study because it was a relatively high profile case, involving competing issues and Island Plan policies, that had been the subject of a Board of Administrative Appeal and which had taken approximately 18 months to resolve.

9.3 The applicant had invited the then Committee to make an exception to its normal Green Zone and agricultural policies and allow construction of a new farmhouse dwelling on an isolated hillside above Rozel. Although the Committee accepted that a genuine agricultural need existed in this case the application was initially refused because the Committee considered that the proposed site for the dwelling would breach Policies C5 and C17 of the Island Plan 2002 unnecessarily. The applicant was thought to have within his control other, more suitable sites on which a new dwelling could be constructed.

9.4 The applicant appealed against the Committee decision and subsequently took his case to a Board of Administrative Appeal. On 2nd September 2004 the Board, having considered the appeal, requested that the Committee reconsider the application. Following a further reconsideration, and rejection, of the application on 9th September 2004, the Committee resigned for reasons unconnected with the application. On 14th October 2004 a newly constituted Committee approved the in principle application, having re-evaluated the applicant's agricultural need against the potential for visual impact in the Green Zone.

9.5 Several site visits had been made during the course of the application and those politicians required to determine the application appeared to have considered that the visits were of practical benefit.

9.6 On 25th May 2005 the Committee was advised that the applicant had failed to notify the Committee that he had acquired the adjacent Field No.97, despite being in a position to know that the Committee was keen to establish the extent to which the applicant had options to build on sites other than the one proposed. Accordingly the Committee, in considering a detailed application based on the in-principle permission, rejected the application. Permission for a farmhouse on Field No. 97 was subsequently granted on the basis that it was to be situated in a

more appropriate position next to the existing farm buildings.

Conclusion

9.7 The Panel determined that the planning process had been broadly effective in determining what was undoubtedly a finely balanced application, although the process might have operated more efficiently had the Department been able to access a fully fledged land registry.

Fields Nos. 848, 851, 853 and 854, Bel Royal, St. Lawrence

9.8 This site was the largest of 11 sites areas re-zoned in order to deliver ‘approximately 97’ new first time buyer and social housing (also known as Category A sites) within the first 5 years of the life of the Island Plan 2002. Although various measurements of the site had been made in recent years, the most recent assessment resulted in a figure of approximately 22 vergees (9.7 acres). The Bel Royal case study was of particular interest to the Panel because 4 years had passed since the land had been rezoned and yet an application for permission to build on the site had yet to be approved.

9.9 The Panel learned that on 31st July 2002 (20 days after the States had designated the site for Category A housing), the Department of Health and Social Services wrote to Planning and Building Services advising of its concerns regarding the potential for noise pollution at the site emanating from the neighbouring Jersey Steel Company premises. It was not clear why these materially significant concerns had not been forwarded to the Department prior to the debate on the Island Plan. The Health Department had reportedly been consulted prior to the site being proposed for housing in the draft Island Plan and yet concerns had not been expressed at that time.

9.10 A log of meetings held, and actions taken, to resolve this issue showed that this late comment by Health had taken several years and many officer hours to resolve. During subsequent negotiations the Department of Health reportedly expressed the view that the Bel Royal site was ‘unsuitable for Category A housing’. Documents published by Planning and Building Services in July 2006 clarified that certain noise issues associated with the location of the Jersey Steel premises remained outstanding, through no fault of that company.

9.11 A draft development brief for the site had been published in March 2003 as a basis for consultation. An initial scheme produced by the developer in response to that draft brief included some 150 new homes. This represented an unprecedented 55 per cent increase over the number of homes envisaged in the Island Plan 2002. Several public meetings were held during the course of 2004, the first of which was held in January. Perhaps unsurprisingly, significant

levels of opposition to the development were identified. The suggested number of homes seemed to exacerbate other potential concerns including, but not exclusive to, traffic levels, availability of school places and increased risk of flooding in the locality.

9.12 A development brief for Bel Royal (incorporating several revisions) was approved by the Planning Sub-Committee at a meeting chaired by Deputy J.A. Hilton in May 2004. This approval constituted a deviation from Policy H6 of the Island Plan 2002, which stated –

> *'Development permission will not be granted for sites zoned for Category A housing by the States until a development brief has been approved by the [Environment and Public Services] Committee.'*

9.13 Authority to determine such matters had not been delegated to the Planning Sub-Committee by way of a formal Act and the Panel's enquiries appeared to suggest that other States members may not have been aware that the Committee had decided to deviate from a policy which was arguably designed to ensure that development briefs received effective political consideration by an appropriate number of States members. The Director of Planning was able to confirm that the other 4 members of the full Environment and Public Services Committee had been invited to attend the relevant Planning Sub-Committee meeting but there was no record of those members having been present at the relevant time.

9.14 In November 2004 a revised application for 140 homes was submitted by the developer. This was subsequently reduced to 129 in September 2005 following an informal presentation to the Committee of a revised scheme.

9.15 On 4th July the States approved a proposition entitled ' Island Plan 2002, Policy H2: Fields 848, 851, 853 and 854 by 35 votes to 6, with 9 abstentions.[17] That proposition requested the Minister of Planning and Environment -

> *'to bring forward for approval by the Assembly an amendment to paragraph 8.71 of Island Plan 2002 which relates to the above fields so that the words "The site could accommodate **approximately** 97 homes with 1.5 acres (3.4 vergées) of public open space/landscape area as part of the development" in the said paragraph be amended to read "The site will accommodate **a maximum of** 97 homes (comprising two, three or four bedrooms or any combination thereof) with 1.5 acres (3.4 vergées) of public open space/landscape area as part of the development."'* (emphasis added)

9.16 A variant of the scheme for 129 homes was finally considered by the Minister for Planning and Environment on 17th July 2006, at the first public hearing of a major application held under the

new Planning and Building (Jersey) Law 2002. A number of interested parties made oral representations at that meeting, including Connétable G.W. Fisher of St. Lawrence. The case officer's report concerning the application, published several days previously, was acknowledged as having been almost unprecedented in terms of the level of detail provided. It was nevertheless criticised strongly by several speakers, who regarded its content as being firmly biased in favour of the applicant (a charge which was flatly rejected by the Minister in his subsequent decision). In a frank speech delivered by the developer's legal representative toward the end of the hearing it was made clear that the developer would seriously consider commencing legal proceedings should the current application be rejected. Moreover, the applicant was reportedly very confident indeed that legitimate grounds for refusing the application did not exist.

9.17 On 2nd August 2006 the Minister for Planning and Environment published his decision to reject the application for 129 homes on the Bel Royal site. He cited the level of proposed development, traffic impact, flooding and drainage, noise impact from the adjacent Jersey Steel Co. building, issues with education provision and a number of other material factors.

9.18 With regard to the detail of the development brief approved by the former Planning Sub-Committee, the Panel noted that Part 2 of the document included the following statement–

> *'The density of the new development must be the highest consistent with maintaining standards of design, space about buildings and privacy, appropriate to the type of accommodation provided and the general surroundings.'*

9.19 Part 5 of the brief elaborated –

'…the developer should seek to develop at a generally higher density than the more typical family housing densities (typically 65 – 70 habitable rooms per acre) achieved on peripheral green field sites in recent years.'

9.20 The Panel noted that developing the site at a net residential density generally higher than 65-70 habitable rooms per acre would be likely to result in an application for at least 129 homes at Bel Royal. It therefore considered that the development brief arguably constituted an open invitation to the developer to build 33% more homes on the site than were envisaged at the time the Island Plan 2002 was approved by the States.

9.21 At the time of going to print the Panel noted that a new application for just over 100 homes had been submitted for consideration.

Conclusion

9.22 This case study highlighted to the Panel the major rôle that development briefs, and the practice of consulting effectively with stakeholders on the content of such briefs, played in the planning process for major developments. It also raised the question of whether such briefs were being used to circumvent the intentions of the States regarding the densities at which first time buyer and social rented homes should be built. Lastly, it raised the crucial issue of whether the legal status of the development brief was such that it could restrict the Minister's freedom to determine an application, having regard to all material planning factors affecting a site.

Rue de Jambart, St. Clement

9.23 The purpose of reviewing this application was primarily to establish the extent to which issues affecting the Bel Royal site had affected other Category A sites.

9.24 The St. Clement site had been described in the Island Plan 2002 as being 11.9 vergées (5.4 acres) in size and capable of providing 'approximately 75 homes and 1.1 vergées (0.5 acres) of open space.

9.25 On 11th June 2002, Deputy G. Baudains of St. Clement lodged an amendment to the then draft Island Plan 2002 which, if successful, would have had the effect of deleting three sites in St. Clement proposed for Category A housing. His motivation stemmed from references within a review, conducted in 2001 by Professor McAuslan, MBE, of representations received following publication of the then draft Island Plan. The McAuslan report highlighted concerns that St.

Clement was being asked to take a disproportionate share of proposed development in future years.

Certain alterations to proposed rezoning in St. Clement were subsequently made but Rue de Jambart remained in the final draft of the Plan. The States, having apparently decided that the then Committee had done enough to address the concerns raised by Professor McAuslan, voted to retain the site at Rue de Jambart and it was subsequently designated for Category A housing.

9.26 In July 2003 the then Environment and Public Services Committee produced a draft Development Brief for public consultation. Also exhibited at an exhibition were drawings submitted by the prospective developer's architect showing his interpretation of the Brief. Although the consultation generated some positive comment, it was believed that a significant percentage of the feedback received by the Department was critical.

9.27 On 13th July 2003 the Environment and Public Services Committee modified the draft development brief and invited an application.

9.28 In September 2003 the Department received an application for 79 homes on the site. The Parish of St. Clement was consulted on the application and a delegation made representations at a Planning Sub-Committee in October of that year. Additional consultation included a public

meeting in St. Clement on 7th October 2003 and a meeting with the Parish Roads Committee on 17th

November.

9.29 By November 2003 Deputy G.C.L. Baudains had concluded that the level of development being proposed at Rue de Jambart was excessive and that the public consultation leading to the production of the development brief for the site was flawed. Accordingly he lodged 'au Greffe' a proposition entitled 'Fields 203, 204 (part) and 252, Rue de Jambart, St. Clement: Restriction of Development' (Projet No. P.152/2003 refers). In his proposition, which was adopted by the States on 3rd February 2004, Deputy Baudains cited the rural marshland setting of the site, traffic implications and infrastructure issues as reasons for requesting that the maximum number of homes on the site be limited to the equivalent of 45 three-bedroom homes. This number arguably reflected the number of homes that parishioners had expected would be built on the site when it was first proposed for inclusion within the Island Plan.

9.30 On 11th February 2004 the Environment and Public Services Committee met to consider the application against the development brief. The Committee maintained that it had noted the decision of the States in respect of P.152/2003. It nevertheless approved the construction of 76 homes on the site subject to certain conditions. One of those conditions concerned the provision of a pedestrian link to La Grande Route de la Côte, St. Clement.

9.31 At the time of the additional meeting the Committee was facing a vote of no confidence arising from matters unrelated to the Rue de Jambart application. It elected to resign 6 days later.

9.32 On 26th May 2004 the States debated a proposition entitled 'Committee of Inquiry: construction of 76 houses at Jambart Lane, St. Clement; and public consultation procedures (Projet No. P.33/2004 refers). The purpose of the proposed Committee of Inquiry was to investigate the circumstances surrounding the granting of planning permission for the construction of 76 houses at Jambart Lane on Fields 203, part of 204 and 252, St. Clement and to make recommendations on procedures for public consultation when determining potentially controversial applications.

The proposition was rejected following a comment from the Committee that refusal of the application or limiting the numbers to 45 dwellings could not have been defended successfully in the Royal Court.

9.33 There followed a protracted series of discussions and meetings involving the developer, officers of the Department and ultimately the Committee as the Committee endeavoured to enforce a planning obligation on the developer to provide a pedestrian link across land to the south and east of the site. Ultimately this proved to be unsuccessful as the developer was unable to acquire control of the necessary land. The Committee, in consultation with the Parish of St. Clement, agreed the alternative of traffic calming in Jambart Lane. It was nevertheless arguable that persistence in respect of the obligation caused a significant delay in commencement of construction of new first time buyer homes.

9.34 Construction of homes on the site was well underway when in early 2006 the Panel commenced its review. As work continued, Deputy G.C.L. Baudains began to receive a series of complaints concerning the construction of a 3 storey property to the north of the site and facing onto La Grande Route de St. Clement. The Panel examined the development brief with a view to establishing whether the developer had been required to place the tall building in such a prominent position. It was clarified that the brief had not required the placement of tall buildings at that spot. Decisions on placement of specific homes within the scheme had been taken by the architect following consultation with the Planning Department. Notwithstanding this, the then Committee had been advised of the positioning of larger properties within the scheme and had apparently omitted to address the problem.

9.35 The Panel received anecdotal evidence which indicated that all of the homes on the site had been sold prior to completion.

9.36 During the course of its analysis of the Rue de Jambart application the Panel heard assertions that Policy H1 of the Island Plan 2002 (Provision of Homes), which required that Category A sites delivered first time buyer and social rented houses in proportions of 55 per cent and 45 per cent respectively, was causing first time buyers to subsidize the provision of social rented housing. This issue is outlined in greater detail in Chapter 16.

Conclusion

9.37 Setting aside the matter of whether the decision to rezone more land for housing in St. Clement was the correct one, the Panel concluded that development of the Rue de Jambart site had produced a useful quantity of first time buyer housing. It nevertheless appeared that certain design issues affecting the scheme had not been identified and addressed effectively during the course of the application process. Moreover, the matter of whether the density of development at

that site would affect the quality of life of new residents had yet to be determined. Finally, the case highlighted the potential for questionable planning obligations to cause unnecessary delay and confusion.

Lezardrieux, St. Clement

9.38 On 17th June 2006, shortly after his appointment as President of the Association of Jersey Architects, an interview with Mr. M. Waddington was printed in the Jersey Evening Post newspaper. During the course of that interview Mr. Waddington was asked to cite a poor example of architecture in Jersey. He cited a property under construction on a hilltop in the Le Hocq area of St. Clement. He was quoted as having said –

> *'That building on the top of the hill at St. Clement I would nominate as my outrage. It is a new private house, and totally dominates the landscape and area… Whoever designed it should be struck off. Whoever gave it planning permission should be shot'.*

9.39 The Panel identified the property concerned as Lezardrieux and promptly conducted a review of the history of what was clearly a controversial application on land within the Green Zone. It hoped that the review might serve to highlight exactly where the risk of key failings in the planning system was greatest.

9.40 In February 2000 an application to replace an existing property on the site had been submitted. Although several previous applications concerning the property had been recorded in previous years, the Panel elected to treat the 2000 application as the first of a series of 3 primary applications.

9.41 The first application proposed the demolition of the existing flat roofed dwelling and garage, which was to be replaced with a new home some 20 per cent larger in terms of floor space. Planning Applications Sub-Committee minutes dated 28th June 2000 show that the application was the subject of a formal site visit. It was subsequently rejected on the grounds that the new home would have a detrimental impact on the character of the area and because the application was contrary to Green Zone policy. That refusal followed a personal submission from the then Connétable of St. Clement, who questioned 'whether the house of such substantial dimensions was suitable for such a prominent site'.

9.42 In July 2002 the then Planning Applications Sub-Committee approved a second application for development at the site. This application differed significantly from that submitted in 2000. The officer report presented to the Sub-Committee described the application as a 'much reduced scheme' with a floor area 'less than 3% larger' than that of the existing 'very poor quality'

building.

9.43 One year later, following approval of the new Island Plan 2002 (which brought with it a new Green Zone policy) a new application for development at Lezardrieux was made. The Planning Sub-Committee was informed that the site had been offered for sale and that a prospective purchaser of the site wished to secure permission for an alternative design. That design was described by the case officer (an experienced ‘Principal Planner’) as a ‘Frank Lloyd Wright’ style design with a 39% increase in dwelling size when compared with the existing building.

9.44 A section of the officer report entitled Summary / Conclusion included the following–

> *‘Because of the siting of the building… it is not considered that the increase in size will have any greater impact on the Green Zone than that already approved. The pitch roof will increase the height of the building, but the shallow pitch will make this difficult to perceive from outside the site.’*

9.45 It was understood that a 2 dimensional scaffolding ‘profile’ was erected adjacent to the existing property in order to give an indication of the height of the proposed new dwelling; however, the Panel did not find any evidence that the erection of the profile prompted submissions from third parties.

9.46 The Sub-Committee, which at that time consisted of Connétable P.F. Ozouf of St. Saviour, Deputy T.J. Le Main, Deputy M.A. Taylor and Deputy J.A. Hilton, considered the application on 27th August 2003. The officer report recommended that the application be approved. Plans and drawings of the proposed dwelling were shown to the Sub-Committee, which subsequently elected to approve the application. A site visit was not conducted.

9.47 In March 2005 a revision to the third application was received. It requested permission to construct two first floor extensions along the northern side of the new dwelling and to amend the fenestration to the north-east elevation. Although letters of objection were received, the application was approved by the Department under delegated powers. As redevelopment of the site had already been approved, the Department simply assessed whether the additional works would result in any material impact over and above that anticipated from the original design. It concluded that any additional impact would be insignificant.

9.48 Two further revisions to the scheme were approved more recently. These involved the construction of a tennis court and the formation of a bank, as well as a planting scheme.

9.49 During 2005 and 2006 Deputy G.C.L. Baudains received complaints from a number of constituents living in St. Clement regarding the new property under construction. In April 2006 the Panel received a submission in which the new building was described as being ‘almost 20 feet higher’ than the dwelling it was intended to replace. It was further suggested that the members responsible for approving the application appeared to have been ‘conned by the planning officers’.[18]

9.50 Panel members conducted a detailed review of copies of the plans and drawings presented to the Sub-Committee. Photographs of the previous dwelling, taken prior to demolition, were

compared with a recent photograph of the new property, taken by Deputy Baudains from a similar vantage point. The Department was also requested to confirm that Building Control Officers had carried out appropriate checks at the property.

9.51 Examination of the plans revealed that the new property had been constructed further to south-west, and therefore closer to the coastline, than the now demolished building. This, combined with an overall height increase of over 2 metres, had made the new home appear markedly more prominent on the skyline. A later internal inquiry conducted by the new Chief Executive Officer of Planning and Environment served to reinforce the Panel's conclusions. In particular it clarified that the new house was located some 6 metres closer to the coast.

9.52 Analysis of the minute of the Sub-Committee meeting held in August 2003 showed that the 4 members had been made aware of the 39 per cent increase in the mass that would result from granting approval. It appears that Sub-Committee members had accepted officer assurances that the building would not be any more prominent on the skyline, despite the clear repositioning closer to the coast as indicated on the relevant plan and despite concerns expressed in decisions on the first application regarding the prominence of the site. Panel members were left to speculate on whether the constraints of the committee room at South Hill, referred to in Chapter 8, had frustrated efforts of Sub-Committee members to study the plans in sufficient detail. In any event it was arguable that the case officer's report appeared at best erroneous and at worst highly misleading. Deputy J.A. Hilton, a member of the Sub-Committee that chose to approve the application, made what the Panel regarded as a particularly relevant observation when, on 25th July 2006 she stated-

> *'ultimately I believe the process is only going to be as good as the information or advice given by the officer'.*

9.53 A number of witnesses commented on the Lezardrieux development during public hearings conducted by the Panel as part of its review. On 23rd June 2006 Senator F.E. Cohen told the Panel –

> *'I do not think the issue there is the height. The issue there is it is badly designed.'*

9.54 In contrast, the President of the Association of Jersey Architects told the Panel –

> *'there are some clear planning issues there that are not anything to do with design,… to do with scale [and] prominence'*

Conclusion

9.55 Irrespective of whether planning or design issues were to blame, the fact remained that a significant body of informed opinion suggested permission to redevelop Lezardrieux in its current form should never have been granted. Certainly the Panel concluded that the officer report presented to the Sub-Committee in August 2003 was fundamentally flawed. Moreover, the absence at the site of a full scale profile of the proposed new building meant that awareness amongst members of the public and amongst politicians was limited. The Panel did not consider that Policy C5 (Green Zone) of the Island Plan 2002 differed sufficiently from that of the previous Island Plan as to have opened the door to developments such as Lezardrieux.

Fields Nos. 190 – 192, St. Brelade

9.56 A study of events concerning Fields Nos. 190 – 192, St. Brelade was prompted by a collective submission from residents living adjacent to that Category A housing site.

9.57 The site in question was described as being 4.3 vergées (1.9 acres) in size with a possible yield of 27 homes and 0.2 acres of public open space.

9.58 Early in 2006 a draft development brief for the site was approved. A public presentation was held at Communicare, St. Brelade in February 2006 in order to encourage a public response to the draft brief and to the proposed scheme for 29 homes put forward by the developer as a response to that brief. There were allegedly issues with the way in which information was disclosed at the presentation. Although those attending appeared to have a recollection of visual material displayed at Communicare (including details of the developer's response to the draft brief), awareness and circulation of the draft amongst nearby residents seemed to be very limited. Furthermore it seemed that adjacent residents had been expecting development proposals to have been broadly in keeping with the mass and density of adjacent homes. They were to be disappointed.

9.59 In April 2006 local media organisations reported that a petition highlighting concerns of local residents regarding proposals for development at Fields 190 – 192 had been raised. A copy of the petition, together with related correspondence, was forwarded to the Panel for review. This petition was subsequently presented to the States on 13th June 2006.[19]

9.60 During a public hearing held on 24th July 2006, local residents explained that neighbouring residents felt let down by the planning process, and the consultation process in particular. They contended that, at a meeting held in St. Brelade's Parish Hall prior to the approval of the Island Plan 2002, local residents had been given the impression that any buildings constructed on the site would be in keeping with the existing properties. They had not expected anything higher than dormer bungalows to be built there. Additional concerns were expressed regarding an

alleged lack of, or poor quality, response to letters of concern sent to the Department in recent months.

9.61 The Panel subsequently learned that the Minister for Planning and Environment had demanded that future letters and submissions raising concerns in respect of draft development briefs received a response from the Department in a timely manner.

9.62 Panel members reviewed the content of the draft development brief published earlier in the year. They noted that the brief, if approved, would require the developer to produce a scheme that met 'established objectives of urban design'. Local residents had some difficulty in accepting that the site, which lay adjacent to the Countryside Zone and which was situated only a short distance away from the border of protected land at St. Ouen's Bay, should be developed in accordance with urban design principles of maximizing yields. The inclusion of a requirement for housing construction that would allow for 'easy rearrangement / enlargement of accommodation as family circumstances and space requirements change' suggested to neighbours that the Planning Department was signalling a willingness to accept loft conversions, which might result in 2½ storey homes situated a matter of metres away from existing bungalows. A reference within the draft to the 'potential to secure a higher density of development' than the common average density of 70 habitable rooms per acre used as a basis for the figures in the Island Plan 2002 appeared to have caused further alarm.

9.63 None of the specifications included within the draft development brief were found to flatly contradict the policies of the Island Plan.

9.64 On 25th October 2006 the States debated the petition concerning the site. The debate was informed by a comment presented by the Minister for Planning and Environment, who stated that he intended to 'issue a revised development brief' in response to feedback received on the consultation draft. During the course of the debate, a number of members referred both to the frequency with which planning issues had been debated in the States since the Island Plan 2002 had been approved, and also to the matter of whether the States should refrain from debating specific planning applications or anticipated applications. The petition was eventually adopted with 28 votes in favour and 3 against. A total of 13 members abstained.

9.65 A final development brief for Fields Nos. 190 – 192, St. Brelade had not been approved at the time of going to print.

Conclusion

9.66 This case provided evidence of a need to clarify the policy on acceptable housing density. It further highlighted a variety of communication failures. This failure was demonstrated by the fact that neighbouring residents had formed expectations following consultation on the draft Island

Plan 2002 that were at variance with those of the developer looking to build on the side and with the Environment and Public Services Committee that oversaw the production of the draft development brief during the final weeks of the Committee system of government.

Beau Regard, La Route du Petit Clos, St. Helier

9.67 This case concerned an application to demolish an existing bungalow on land in the Built Up Area and to construct several new homes on the site. It provided a classic example of an alleged failure to prevent excessive development on a small plot in the Built Up Area.

9.68 In April 2004 the Planning Department received an application to demolish an existing dormer bungalow at Beau Regard and to replace it with 4 three-bedroom houses on individual plots only 12 metres wide. Nine letters of objection were received in response to the proposal. Although the application was refused on 3 grounds, it was clear that the principle concern of the Planning Sub-Committee of the day, chaired by Deputy J.A. Hilton, was the sheer over-development of the plot that would result.

9.69 In November 2004 a reconstituted Planning Sub-Committee, chaired by Senator P.F.C. Ozouf, considered a revised application for 3 homes on the same site. A total of 4 new letters of objection were received by the Department following publication of the scheme. That Sub-Committee approved the latter application on condition that an issue of overlooking caused by the design and placement of one proposed dwelling was resolved to the satisfaction of the Department. In approving the application, the Sub-Committee had relied upon Policy G1 (Sustainable Development) of the Island Plan 2002. That policy was referred to as permitting demolition of existing serviceable properties and their replacement with an increased number of new properties on the basis that more efficient use of land in the Built Up Area would be achieved.

9.70 Following approval of the second application, a number of local residents expressed concern that their letters of objection had either been lost or ignored. Residents engaged local politicians and a Jersey advocate in an unsuccessful attempt to reverse the decision.

9.71 During the course of the Panel's call for evidence a significant number of residents in that area forwarded submissions concerning the Beau Regard development. Subsequent analysis of those submissions revealed 2 key themes; whether the application constituted over-development of land in the Built Up Area and whether the process had been affected by poor lines of communication to and from the Department. On the former point there were signs of a consensus amongst residents that two dormer bungalows would have been tolerated. On the communication point there was almost universal agreement that the Department's apparent

failure to take into account the views of local residents was unforgivable.

9.72 In assessing the facts of this particular case, the Panel was mindful of the number of references made, in both written and oral submissions received, to a perceived major increase in the number of similar cases of intensive redevelopment of small plots in the Built Up Area since 2002. Policy G1 of the Island Plan was analysed with a view to confirming whether this was an intended consequence of the current Island Plan. The Panel found a reference to the need for 'efficiency of land-use'; however, that objective was to be assessed as part of a 'balanced and objective decision making process' that also took account of a number of other factors, including the need to 'integrate development with the existing built-up area'.

9.73 A review of the application file established that the approving Sub-Committee had been aware both of the objections submitted in response to the second scheme and also of the objections submitted to the Department in response to the earlier scheme for 4 homes on the site. Therefore some of the residents concerns had in fact been unfounded. Of course, the failure of the States to bring into force the new Planning and Building Law in good time meant that the residents were unable to attend an open meeting of the Planning Sub-Committee and see that their objections had been taken into account. It was nevertheless clear that subsequent incremental changes to the approved scheme, agreed by officers of the Department under delegated powers, had surprised neighbouring residents, particularly as a requirement to post site notices had not yet been brought into force. Changes included addition of roof-lights and changes to access routes. Several neighbours advised that they would have forwarded strong objections to those latter applications had they been aware of them in good time.

9.74 As the Panel's review came to a close the 3 new homes appeared in a feature article within the Jersey Evening Post newspaper, priced from £795,000.

Conclusion

9.75 This case provided clear evidence of a need for clarification of the policy on acceptable housing density and on what constituted successful integration of development with the existing Built Up Area. Although communication failures had also occurred, these were not as severe as residents had initially feared. In fact, every letter of objection submitted to the Department appeared to have been considered at the appropriate juncture. Above all, the case demonstrated that local residents would have been better informed about applications concerning the site, and would have been able to see for themselves whether their objections had been considered, if the new Planning and Building (Jersey) Law 2002 been brought into force more quickly.

10. Public Hearings

10.1 What follows is a brief summary of the evidence obtained by the Panel at each of the public hearings held in the period June – September 2006.

10.2 **23rd June 2006 - Senator F.E. Cohen, Minister for Planning & Environment** -The Panel discussed with the Minister the importance of development briefs as policy documents for specific sites. The legal status of development briefs, and the departmental resources required to deliver them, were also considered. In turn this led to a wider discussion of resource levels. Several questions were asked concerning the relationship between the Department and the Waterfront Enterprise Board. The ability of the Department to communicate effectively featured in several questions, as did the supremacy of the States.

10.3 **23rd June 2006 - Mr. K. Shaw** -Mr. Shaw was asked to elaborate on a number of topic areas raised in his written submission, including the cost and accessibility of the application process to persons other than professionals and developers.

10.4 **23rd June 2006 - Mr. H. Baudains** - Mr. Baudains gave the Panel an insight into the way that planning applications had been managed at the end of the 20th Century. He commented on the pre-application process and the extent to which litigation appeared, in his view, to be playing a greater part in proceedings. Density of housing development was discussed, as were perceived failures in the way the Island Plan 2002 was finalized and approved by the States.

10.5 **7th July 2006 - Mr. M. Waddington, President – Association of Jersey Architects** - Mr. Waddington explained the different roles of architects and planners and the difficulties that architects had with some of the policies governing development. He acknowledged the pressure on Category A sites to deliver high housing yields in order to protect the Green Zone and he raised questions regarding both the value of some pre-application advice received from the Department and the quality of some of the advice given by less experienced planners. Mr. Waddington stressed the importance of requiring design statements as part of certain applications and he recognised the potential for incremental changes to approved schemes to cause upset among neighbouring residents. The supremacy of the States was again discussed.

10.6 **7th July 2006 - Mr. V. Roberts** - Mr Roberts was invited to expand on his written submission made concerning an application for several homes on the site known as Beau Regard, La Route du Petit Clos, St. Helier.

10.7 **24th July 2006 - Deputy C.H. Egré of St. Peter -** Deputy Egré highlighted a series of issues

with the planning process using case studies within his Parish and that of St. Lawrence. In particular he referred to failings in procedures for policing planning permissions and he highlighted the perception that officers were making key decisions early in the planning process which subsequently curtailed the options available to the politicians responsible for determining an application. He also raised the issue of the supremacy of the States.

10.8 **24th July 2006 - Mrs. D. Canavan, Mrs. J. Huelin and Mr. D. Carne -**These residents of St. Brelade were invited to expand upon their collective written submission concerning the proposed development of Fields 190 – 192, St. Brelade.

10.9 **25th July 2006 - Deputy J.A. Hilton of St. Helier -**Deputy Hilton recalled her experiences as Chairman of the Planning Sub-Committee in 2003 – 04. Those experiences included the handling of the 2003 application for Lezardrieux, St. Clement and the production of development briefs for Category A housing sites. During the course of the hearing she repeatedly stressed the importance of good quality officer advice.

10.10 **25th July 2006 - Mr. P. Grainger, Planning Consultant -** Mr. Grainger explained his concerns regarding the format and content of the Island Plan 2002 and the manner in which some applications were being assessed by politicians. Costs to applicants arising from the planning process were also discussed. He expressed a number of reservations regarding the new appeal mechanism and he questioned whether the quality of staff within the Department had fallen in recent years.

10.11 **20th and 25th September 2006 - Senator F.E. Cohen, Minister for Planning & Environment -** Senator Cohen was invited to answer a series of questions regarding the various issues raised by various witnesses at previous public hearings.

11. Term of Reference No.1 – The Pre-application Process

11.1 The Panel established that the rôle of officers in the pre-application process was to provide an informal view, without prejudice, on the likelihood that a prospective application would receive approval. Officers encouraged requests for advice to be made in writing and they usually responded the same way, so as to limit the potential for any future misunderstandings. The service was provided in response to a clear demand from the public.

11.2 Comments on the process of obtaining pre-application advice featured regularly in written submissions. Some believed that such advice was generally not available[20]. Indeed, the Environment Section of the Société Jersiaise observed –

'…we believe that the general public are probably unaware that they are able to request advice. The formal position should be publicised.'

11.3 In contrast, others questioned whether the pendulum had swung too far the other way and that potential applicants were being 'swamped with too much information'[21].

11.4 Individuals and organisations that had more regular contact with the Planning Department were clearly more aware of the facility to request pre-application advice and were able to comment on the quality of the service. Michael Felton Landscape Architects considered that the quality of pre-application advice received by that firm was in fact 'very good'. Nevertheless the Panel was advised that this was not always the case. Mr. M. Waddington, President of the Association of Jersey Architects, questioned the value of the current process to his clients. In his view the Department sometimes erred too far on the side of caution when giving advice. He contended–

'[in principle] planning, frankly, is no different to detailed planning, except that the client has to pay twice, because there is such a hesitancy to agree anything through the outline process.'

11.5 Resourcing of the service was also a matter of concern to architects. Mr Waddington submitted that pre-application advice from more senior officers was often '*very constructive',* whereas that given by a junior officer was often -

> *'just telling you what policies constrain what you are trying to do'.*

11.6 The latter point concerning the effectiveness of more junior officers is discussed in more detail at Chapter 16.

11.7 Interestingly, former Deputy H.H. Baudains, a longstanding member of the former Island Development Committee, considered that limiting themselves to pointing out relevant policies was precisely what planning officers should be doing. He warned that the process of granting in principle approvals was problematic and that there was an inherent risk of undermining the position of the Minister or the Applications Panel charged with determining a subsequent application. The Société Jersiaise, commenting in similar terms, contended that in principle approvals made it 'difficult to halt the progress' of a project that might, in its final stages, appear significantly different to that which was originally envisaged.

FINDING
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.

11.8 The point made by former Deputy H. Baudains was developed substantially by several other witnesses. On numerous occasions the Panel heard or read that planning officers had taken decisions, either directly or by way of more informal undertakings given during the course of negotiations, that had subsequently restricted the ability of the Minister or his Applications Panel, or the former Committee, to determine an application in the way they would have wished. Deputy C.H. Egré summarized this deep rooted suspicion when he attended a public hearing held on 24th July 2006. He referred to it in the following terms –

> *'The fact that a Planning Officer can make a statement or write a letter, very early on, can be the defining moment as to whether that planning development is allowed to go ahead and that precedes public consultation. It precedes that planning application being put forward to the Planning Sub-Committee (now the Planning Applications Panel).'*

11.9 The Panel was only too well aware of reports and rumours alleging that officers had compromised the position of Committees in previous years. Moreover, the Minister for Planning

and Environment advised the Panel that he had been constrained during his initial period in office by a series of decisions made by previous Committees, by former Planning Sub-Committees or by officers. He stated –

> *'It is my biggest problem… I am going through a transition period where I am not able to impose my principles entirely and I am having to negotiate. There are many situations where there have been previous consents in principle or where there are revisions to existing approved schemes or where there have been development briefs approved… and I am told that I am not looking at a clean sheet of paper.'*

11.10 In light of the frequency, and the strength, of the allegations made, the Panel was somewhat surprised to find a marked shortage of evidence that actions of officers at the pre-application stage had actually caused problems within the last 3 years. Several controversial officer decisions were identified but these concerned limited changes to a scheme which had already received primary approval at a political level. It was also clear that the Department operated a policy of including a written disclaimer as part of any pre-application advice given to a prospective applicant in writing. On the apparently rare occasions when officers advised prospective applicants orally, the officer concerned was required to qualify his or her remarks by stating that the advice was being given without prejudice to the Minister or to the Applications Panel. It therefore seemed that the Minister's lack of a 'clean sheet' resulted from a series of precedents or initial decisions taken mainly at a political level.

FINDING

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.

11.11 Notwithstanding the above, the Panel found it interesting that a significant number of witnesses either believed that officer actions prior to formal determination of an application were a problem or had acknowledged the existence of the perception. Further analysis revealed that officer actions did indeed cause problems on occasion, but that such problems primarily involved lapses in the quality of information being presented to politicians who subsequently made a decision. This issue is explored more fully in subsequent Chapters.

11.12 On the matter of neighbour / public involvement, the Panel learned that requests for pre-application advice concerning specific sites were not normally made public. In cases where the issuing of written advice had led to the submission of a formal application, and that application required a decision from either the Planning Applications Panel or from the Minister, a copy of

that advice would be forwarded to the Applications Panel / Minister if it was considered relevant to the reason for referral. Former Deputy H.H. Baudains contended that this practice was unsatisfactory. He suggested that any pre-application advice given to an applicant should be published in all cases where a formal application had subsequently been submitted for a Ministerial or Applications Panel decision. The Panel considered that this suggestion had some merit, particularly as it would alleviate concerns that officers were exceeding their brief; however, it ultimately concluded that such a requirement would add more to the size of Ministerial and Applications Panel agendas than to the integrity of the planning process as a whole.

FINDING

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

11.13 The Panel's consideration of controversial decisions in principle led to a detailed analysis of part of the pre-application process undertaken on Category A housing developments; the formulation and approval of development briefs.

11.14 The Panel recalled that development briefs had been of considerable importance in determining exactly what, and how much, would be built on the first time buyer and social rented housing sites identified in the Island Plan 2002. Worryingly, the Panel found that the process of finalizing development briefs had been particularly resource intensive and time consuming for the Department. It appeared to have caused senior planners to be distracted from other duties in that the production of supplementary planning guidance on a number of topics listed at Policy H7 of the Plan was delayed significantly. Neither did the significant number of senior officer hours devoted to production of those development briefs seem to have made the end product any less controversial. In fact, several briefs were cited during States debates as being symptomatic of a Committee that ignored the will of the Assembly.

11.15 There were numerous signs that the consultation process for Category A sites had often failed to deliver meaningful benefits. During the past few years several Connétables and Deputies had reported that they, and the members of the public who chose to make their views known at the 'Parish Roadshow' meetings on the then draft Island Plan, had thought they were being consulted on specific numbers of proposed homes to be built on the new Category A sites. Deputy C.H. Egré reminded Panel members that a series of consultations with parishioners regarding the Category A housing site at Fields 181 – 183 had left the Parish of St. Peter with the firm impression that the views of local residents had been ignored. Deputy J.A. Hilton, a former Chairman of the Planning Sub-Committee, acknowledged that all had not gone well when she told the Panel –

'I think that certainly on the H2 sites that the process has probably left a lot to be desired and that there has not been that public consultation'.

11.16 The Director of Planning contended that the problem was not so much a lack of consultation as the 'nature' of it. He recalled that the original housing numbers quoted had been estimates based on inaccurate site measurements taken by the Committee's consultants. Amended (and higher) numbers of homes had subsequently been included in the final draft Plan debated by the States in 2002. The Director of Planning also recalled that a commitment had been given to consult regularly as development briefs were formulated. He explained –

'There were too many stages. We were going to the public basically asking them the same thing on 3, 4 or 5 times… we were just upsetting the public'.

11.17 The fact that the numbers of homes on many sites had increased significantly was disappointing enough for those residents already concerned at the possible traffic, schooling, infrastructure and other environmental implications. When development briefs appeared to have opened the door to even higher densities of development, that disappointment had turned to anger.

11.18 The Panel's case studies (outlined in Chapter 9) were telling. It learned that the draft development brief for the Category A site known as Fields Nos. 190 – 192, St. Brelade had caused significant alarm among neighbouring residents when public consultation on the draft began in the first quarter of 2006. Those neighbours realized, apparently for the first time, that the homes built on the site might well be 2 - 2½ storey properties, as opposed to bungalows similar in height to adjacent homes. The development brief for the site at Fields Nos. 181 – 183, St. Peter had preceded planning approval for a greater number of homes than had been envisaged in the finalized Island Plan. When an application concerning the Category A site at Fields Nos. 848, 851, 853 and 854, St. Lawrence fell to be determined during the course of the Scrutiny review, the Panel heard at a public hearing that both the developer and the case officer believed the application for 129 homes – some 33 per cent more than had been anticipated at the time the site had been re-designated – complied fully with the brief. In Projet No. P.48/2006, which was put before the States with the express intention of limiting the extent of development at the Bel Royal site to no more than the 97 homes suggested in the Island Plan, Connétable G.W. Fisher of St. Lawrence wrote –

'various aspects in respect of the H2 sites appear to have been disregarded (by the Planning Department) since the Island Plan was approved by the States Assembly. Essentially residents feel entirely let down by the whole situation, and do question the integrity of the consultation process.'

11.19 Although the Bel Royal application was subsequently rejected (thereby providing evidence that conclusions reached by officers in respect of applications were far less binding on politicians than some had feared) the suspicion was that development briefs produced at the pre-application stage had all too often fulfilled developers' aspirations at the expense of the public at large.

11.20 To find out whether there was any substance to this allegation the Panel referred back to Policy H6 of the Island Plan 2002 (Preparation of Development Briefs). Nothing in the wording of the policy indicated to the Panel that development briefs were expected to give a high priority to the aspirations of developers. Indeed, members noted with interest the beginning of paragraph 8.117, which read –

> *'A development brief will be prepared for each site to establish the important factors to be taken into account. This will ensure that the needs of existing residents are met and [that] the site has a positive impact on the locality.'*

11.21 Residents living near to Fields 190 – 192, St. Brelade may at first glance have been forgiven for assuming this paragraph, combined with references in Policies H6 and H8 to the need for a satisfactory relationship with the surrounding area, would mean that the impact of any development would be minimal and in keeping with the prevailing style of development in the locality; however, this was not necessarily the case. A somewhat vague declaration, found in Policy H7 (Housing Density and Standards), indicated that housing density standards were due to be 'updated' as part of a drive to use Jersey's scarce land resources more efficiently. As the possibility of a higher maximum density standard was not ruled out, and as permitted housing densities had tended to increase over time, it therefore followed that any measures to meet the needs of existing residents were unlikely to include preserving views or ensuring that new buildings would not exceed the height of existing homes in the vicinity. Put simply, it was always going to be difficult to reconcile building bungalows or 1½ storey homes with a policy of making best use of re-zoned land through maximized densities.

11.22 Case studies of the Bel Royal and Rue de Jambart Category A housing sites (see Chapter 9) shed even more light on the matter. Development briefs for both sites had encouraged the developer to build homes at densities greater than 65 – 70 habitable rooms per acre. In some respects this was hardly surprising. House price data and housing surveys carried out shortly before the briefs were drafted provided plenty of evidence that demand for housing far exceeded supply. The pressure was clearly on to deliver as many new homes as possible while at the same time preserving the state of Countryside and Green Zone land. It was therefore arguable that the process of finalizing development briefs was a useful and timely mechanism for gauging just how far the public were prepared to tolerate higher densities of development. Of course,

such a mechanism would only prove useful if the feedback generated was reacted on by the Minister (or previous Committees). Prior to Senator Cohen's arrival late in 2005 the number of occasions on which such briefs were raised in the States constituted evidence of a failure to listen to, and act on, that feedback.

11.23 For existing residents living near Fields 190 – 192, higher densities of development were as unexpected as they were unwelcome. Having reviewed Policy H7 of the Island Plan, the Panel considered why those residents, several of whom had previously taken part in consultation on the draft Island Plan, appeared to have been taken by surprise. It found evidence that marketing of the Plan had left some parishes, including St. Brelade and St. Peter, with a markedly different view of key housing policy than that which was held by the Committees given responsibility for implementing them. Almost invariably it was density of development that lay at the heart of these differences.

11.24 In its efforts to understand why confusion over development briefs, and the policies underpinning those briefs, had arisen, the Panel began to notice just how few phrases and terms within the Island Plan were tightly defined. For example, paragraph 8.69 outlined the methodology used to calculate the projected yields on Category A sites. The equation factored in a set percentage of open space and set an average density of 70 habitable rooms per acre – a figure achieved on comparable developments completed in previous years. It also took account of statistical data on housing requirements to arrive at an average split of housing types needed Paragraph 8.70 added–

> *'The figures are only an indication of yield per site, because the mix of size and type of homes will be determined through the development brief process for each site.'*

11.25 Taken together, these paragraphs gave few clues as to why development briefs resulted in major variations in the number of homes proposed. The estimated yield of homes was merely to be a product of entering the total number of people a site could take into the formula contained in paragraph 8.69. Moreover, the development briefs that would follow were only expected to alter those figures using 2 variables – ***size*** and ***type*** of home. Yet Policy H6 added a further variable to the equation – ***tenancy***. As tenancy was another word for occupancy its inclusion arguably opened the door to a variation in the total number of people to be housed on the site as well as the size and type of homes they would occupy. This small matter of detail served to demonstrate the potential for confusion as to exactly what the limitations of a development brief were.

11.26 Events took a new turn in September 2006, after the application for 129 Category A homes at Bel Royal had been rejected. Senator F.E. Cohen advised the Panel that he had recently

adopted a ‘policy of not signing off development briefs’ on the grounds that the briefs were not protecting the Department. Although the Panel acknowledged the difficulties that the Minister was facing in trying to resolve the issue, it considered this to be a worrying development. Policy H6 of the Island Plan required that development briefs were produced and, further, that they should contain a specified amount of detail. Although he subsequently indicated that he would sign off development briefs in future, the Minister for Planning and Environment explained that he would limit the level of detail they contained and that he would ensure every brief contained a new ‘standard clause’ limiting the extent to which future briefs could be used to constrain the Minister’s powers to determine a Category A application. The Panel questioned whether such measures would create additional uncertainties for developers and whether more explicit policies on matters such as tolerable housing densities would in fact be a more productive solution.

FINDING

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

11.27 The Panel was nevertheless pleased to note the determination of the current Minister of Planning and Environment to regain effective control of the application process for Category A sites.

12. Term of Reference No.2 – The Planning Application Process

12.1 When Senator F.E. Cohen was first interviewed by the Panel in June 2006, he contended –

> *'The planning process is a complicated process and there will always be areas of slip ups… All I can say is that the number is relatively small'.*

12.2 As stated in Chapter 6, the Panel established that 2,000 or more applications passed through the process each year. A majority of those appeared to have been managed effectively. Since 2002 between 85 and 90 per cent had been determined by officers under delegated powers. The remaining 10 to 15 per cent of cases were classified as less than straightforward and had been forwarded to either the Minister (formerly the Committee) or to the Planning Applications Panel (formerly the Planning Sub-Committee) for consideration. The statistics for 2006 were understood to be broadly similar to those of previous years.

12.3 Encouragingly, the Panel found evidence that public confidence in the Department had increased since the appointment of Senator F.E. Cohen as Minister for Planning and Environment. Several witnesses, including Deputy C.H. Egré of St. Peter, planning consultant Mr. P. Grainger and Mr. M. Waddington, President of the Association of Jersey Architects all made positive remarks regarding the beginning of Senator Cohen's tenure of office and his impact upon the administration of the planning process. Perhaps the most telling remark was made by Senator Cohen's predecessor, Senator P.F.C. Ozouf who, during a States debate on a petition concerning Fields Nos. 190 – 192, St. Brelade (P.75/2006 refers) admitted -

> *'I have certainly learned a thing or two with the way in which the Planning Minister and his new team have been doing things. They seem to be doing a better job at interpreting the wishes of this Assembly and policies'.*

12.4 Despite this positive feedback a review of the evidence collated revealed several areas of concern.

12.5 Some issues were resolved during the course of the review by the coming into force of the Planning and Building (Jersey) Law 2002 on 1st July 2006. The introduction of a requirement to display notices at sites subject to a planning application could clearly not have come soon enough for the significant number of persons who made submissions to the review. Similarly the act of opening up Planning Applications Panel meetings to the public had improved the transparency of the process. Nevertheless the case studies of Fields 190 – 192, St. Brelade and of Beau Regard, La Route du Petit Clos, St. Helier had provided evidence that the new Law should have been brought into force much sooner.

FINDING

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

12.6 Many other matters raised previously by Shepley were being addressed by Senator Cohen as the review progressed. Steps were being taken to alter the way in which Planning Applications Panel meetings were conducted, so as to allow all parties, whether for or against a proposal, to have an equal opportunity to put their views forward. Site visit procedure was being tightened up to ensure that discussions regarding the merits of an application did not occur. A cooling off period was also being introduced. This latter change had originally been recommended by Mrs. C. Canavan in her report on the 'Trinity Infill' case as a way of introducing an additional check on the Applications Panel whenever it was minded to reject the officer recommendation on a particular case. Any such decisions were to trigger a further consideration by the Minister, who would either make the decision or would make a recommendation to the Applications Panel. It therefore seemed that the outlook for the planning application process was brighter.

12.7 Of the issues that arguably remained outstanding, the quality of information presented to the politicians charged with making decisions proved to be one of the more significant. When Shepley had written that 'when things go wrong they go very wrong', he had been referring in part to the notorious Trinity landfill case of 2003 – 04. Having reviewed the contents of the report by Mrs. C.E. Canavan on that particular case, the Panel noted that planning officers had been criticised for an inconsistent approach to provision of background information. Items of correspondence between the applicant and the Department had been omitted from the agenda bundle given to Planning Sub-Committee members. It was suggested that the Sub-Committee might have been more likely to reach the correct decision if members had seen those additional items of correspondence.

12.8 Notwithstanding this observation, Mrs. Canavan had been quite clear that the information the Sub-Committee *had* received was in itself more than sufficient to warrant rejection of the

application. She wrote –

> *'The Sub-Committee does not appear to have taken into account the reasons why Miss. Baxter (the case officer) had recommended refusal, namely that the development was contrary to policy and by virtue of its size, scale and visual intrusion, it would have an unreasonable impact on the area.'*

12.9 In the Lezardrieux case study it was the officer report itself, rather than any supporting documentation, that appeared to have resulted in the disastrous decision to approve that application. References to the anticipated visual impact of the new building were clearly wide of the mark.

12.10 These cases caused the Panel to consider how often the administration and officer assessment of applications was failing the politicians charged with taking decisions. Senator F.E. Cohen reassured the Panel when in September 2006 he reported –

> *'The thing I have been most impressed with, since I started with Planning, is the quality of officer reports.'*

12.11 He nevertheless acknowledged that there had been occasions where rogue decisions had been made and that it would be impossible to eliminate the possibility that similar mistakes might happen again. Senator Cohen explained that he favoured several methods of reducing the likelihood of similar future mistakes. The first involved the setting up of a new design group within the Department. This group, made up of officers with 'design expertise' would be assessing all significant new applications at an early stage in order to root out inappropriate designs. Another involved a possible extension of the '4 eyes' principle operated within the Department. Although there was already a degree of cross-checking and endorsement of officer reports or decisions across the Department, it was confirmed by the Minister that the new Chief Executive Officer had been tasked with 'putting more robust policies in place' which would reduce the likelihood of another Lezardrieux occurring again.

12.12 There were nevertheless indications that limited resources were restricting the number of options available to the Department to improve service delivery standards. Senator Cohen explained –

> *'without additional resources the simple fact is we cannot deliver all the things that I would like to deliver and all the things you would like to deliver… the reality is that there is no more money'.*

12.13 It seemed the Chief Executive Officer was faced with the difficulty that most officers were already operating at or near full capacity. Finding persons with the necessary time available to provide a secondary check of work or of recommendations made might therefore be difficult. In fact the level of resources available to Planning featured in a significant number of submissions made to the Panel. The issue is considered further in Chapter 16.

12.14 Of course, officers were not responsible for the quality of all the information presented to the Minister or the Applications Panel. Senator Cohen advised the Panel on a number of occasions that he felt modelling had a crucial role to play in raising the quality of planning decisions and he would therefore be requiring that models be produced for certain classes of larger scheme. He contended –

> *'It is far easier for a layman to understand a model than to understand a set of plans.'*

12.15 Referring to the Lezardrieux case in particular, the Minister stated –

> *'If [we] had had a proper model of that building in its context, with the surrounding landscape properly modelled, we would all have spotted the problems instantly.'*

12.16 Evidence from other sources suggested the Minister's proposal might have been helpful to politicians charged with assessing the impact on adjacent properties of numerous recent developments. Deputy C.H. Egre of St. Peter had drawn the Panel's attention to the approved scheme for the Category A site in St. Peter. Referring to the inclusion of an area of open space within the scheme, and the potential advantages arising from its inclusion that the developer had claimed would benefit local residents, he said –

'What it fails to address is that by building around the edges of the fields with the open space in the middle, we have forgotten that on the outskirts of this development there are other houses. So where before the people living in Ville de L'Eglise had a view over fields, now they have a close view of the back of other houses.'

12.17 The Panel found no evidence that a model of the proposed scheme in St. Peter, showing adjacent land and properties to scale, had been made available to the Environment and Public Services Committee at the time it considered the scheme for approval.

FINDING
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.

12.18 Communication issues featured repeatedly in submissions and in public hearings. Questions were asked as to whether the views and concerns of stakeholders were communicated properly to those charged with determining applications. Just as important was the matter of whether the persons making their views known could be confident that their concerns would be considered. Early on in the review Senator Cohen admitted –

'A prompt response to communications is, I think, the key. It is something I am concerned about and it is something that the Department can well do with improving.'

12.19 Residents living near to Fields 190 – 192, St. Brelade certainly agreed with the Minister's assessment. They cited several unanswered or poorly answered letters as evidence that the Department seemed more interested in dealing with the developer of the site than with those who stood to be most affected. Another correspondent, unconnected with the St. Brelade site, wrote to the Panel claiming that –

'No help is given to objectors in any way comparable to that given to applicants, and this is an aspect that causes feelings of frustration and injustice'. [22]

12.20 Former Deputy H.H. Baudains considered that public consultation on major applications had often failed in recent years because too little meaningful information had been put in the public domain prior to the Island Plan being debated in 2002. Referring to the current Plan as a cause of 'development by stealth', Mr. Baudains contended–

'…there should have been a map showing where [the Built Up Area] was changed so that the people living next to those sites would have had a chance to see what was happening'.

12.21 This point was not lost on the Director of Planning, who told the Panel –

> *'the trawl around the parish halls is not the best way to get a measured public view on what is being put forward.'*

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

12.22 Neither was it the case that communication issues were solely a problem for those wishing to lodge objections to development. Others, including the President of the Association of Jersey Architects, suggested that the Department could do more to explain to the public exactly how the planning process worked and the responsibilities that the Department held. Mr. K. Shaw suggested that, as persons buying a house were likely to be considering home improvements, Planning might wish to produce a leaflet for distribution to new homebuyers explaining how the planning process operated. Several others suggested that information contained on the Department's own Web site could be made far more accessible than it presently was.

12.23 Senator Cohen was quick to acknowledge the comparatively poor quality of the departmental Web site. He told the Panel –

> *'I find it quite difficult to find my way around our Web site, I am sorry to say.'*

12.24 A cluttered appearance was only part of the problem. For much of 2006 the Web site included only a minimal number of Planning Applications Panel minutes. By August 2006 over 50 Ministerial Decisions concerning requests for reconsideration of a planning application had not been published. These issues seemed to the Panel to be particularly serious. Without access to minutes and up to date records of ministerial decisions, the Department would always be vulnerable to criticism that it was less than accountable and transparent.

12.25 Although the Panel was advised in September 2006 that the Department was due to take on an additional temporary member of staff to clear the backlog of Ministerial Decisions, no significant improvement in the quantity of information was noticed until the latter part of November.

FINDING
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.

12.26 One other issue of note concerned the matter of whether the current policy on planning obligations was affecting the integrity of the process. Policy G10 of the Island Plan clarified that the purpose of planning obligations was to ensure, where necessary –

> *‘that development proposals provide the necessary infrastructure and facilities, such as education, recreation and transport facilities, which are required as a direct consequence of the development, or will meet or contribute towards the costs of providing such facilities in the near future. Planning obligations may also be used to ensure that new development makes a contribution to the public realm by, for example, providing new pedestrian routes, new public spaces and in improving the streetscape through pavement widening and tree planting.’*

12.27 In his capacity as President of the Association of Jersey Architects, Mr. M. Waddington was invited to comment on whether planning obligations were being operated as a tax on development. He stated -

> *‘I do not fully understand the parameters within which planning obligations work and I am not sure many applicants do, to be honest.’*

12.28 Other enquiries made by the Panel tended to corroborate this view. Developers found planning obligations too vague. The principle complaint was that obligations, for example a requirement to construct a bus stop or to construct a community centre, were often insufficiently well specified at the beginning of the planning process. Other obligations were regarded as impractical. Protracted attempts made in 2004 by the Environment and Public Services Committee to secure a public footpath across land not within the relevant developer’s control provided a classic example. Even in cases where developers were in a position to deliver, insufficient provision of detail at an early stage was allegedly leaving applicants unable to estimate the cost of those obligations. Some felt that planning obligations were indeed a tax, and a rather arbitrary one at that.[23]

12.29 Senator Cohen expressed surprise at the aforementioned claims. The Director of Planning added that a guidance note on planning obligations had been published by the then Committee some two years previously. In fact Senator Cohen announced during the course of the review that he was intending to introduce a supplementary obligation scheme known as ‘percentage for art’, in order to ensure that developers producing larger schemes contributed a limited sum which would be used in schemes to create an ‘aesthetically pleasing environment’.

FINDING

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.

13. Term of Reference No.3 – The Decision Making Process

13.1 During the Panel's background research members were reminded of paragraph 8.6 of the Island Plan 2002, which contained the following statement –

> *'Few issues arouse fiercer passions among local communities than the prospect of new housing development. It has been the subject of intense, contested debates in Jersey over the last 15 years.'*

13.2 As several members of the Panel had been present in the States during controversial debates on prospective development issues following the introduction of the Island Plan 2002, there was an expectation that some evidence of controversial interpretation of Island Plan policies would be found. That expectation proved well founded.

13.3 The first issue identified was an allegation that applicants, motivated by profit, were sometimes submitting applications for excessive numbers of homes on sites falling within land designated as Built Up Area in the hope that subjective evaluation or poor quality advice / decision making would result in the granting of a planning permit.

13.4 As stated in previous Chapters, the Panel received a number of written submissions regarding alleged cramming of homes on a site previously occupied by one bungalow in La Route du Petit Clos, St. Helier. It also received a copy of a petition formulated in response to a draft proposal to shoehorn 29 homes on a site measuring 4.3 vergées (1.9 acres) at Fields Nos. 190 – 192, St. Brelade. This latter proposal, which admittedly did not constitute a formal planning application, equated to a density of development of some 76 habitable rooms per acre.

13.5 Of the witnesses who gave evidence at public hearings, former Deputy H.H. Baudains recalled how Committees of which he was a member had fought against excessive building on a number of small plots, including the open spaces within St. Peter's Village; however, he believed that a softer line had been taken from the late 1990's onward. The former Greenwood Nursing Home in St. Saviour was cited as an example of housing being squeezed in 'too tight'. This led Mr. Baudains to consider whether the developer's drive for profit was being allowed to dictate the planning process.

13.6 During a further public hearing Mr. M. Waddington, President of the Association of Jersey Architects, acknowledged –

> *'applicants do construct unrealistic schemes in the knowledge that they may get more than*

they originally hoped for through a process that is not perfect and they exploit that imperfection. I think that probably does happen.'

13.7 He nevertheless distanced his own profession from the alleged practice by stating -

'land in Jersey is a very rare resource and I think it would almost be verging on negligent not to try and maximise its use, but [architects] would also feel we could judge what we thought were… acceptable limit[s].'

13.8 This particularly candid admission from a knowledgeable professional was corroborated by residents living near to the Beau Regard development in St. Helier. One told the Panel –

'It was a massive scheme that was first submitted and we all thought that that was just the sprat to catch the eventual mackerel. We think they got probably more by using that tactic than they would have normally anticipated'. [24]

13.9 Indeed, respondents aggrieved at the Beau Regard decision went further and suggested that the applicant had submitted misleading descriptions regarding the height and the density of housing surrounding Beau Regard – an alleged tactic that residents thought might have been less effective had the then Planning Sub-Committee visited the site.

13.10 A number of questions flowed from the 'excessive development' allegation. First, was demand in the local market exceeding supply to the extent that prospective purchasers were faced with little choice but to accept compromised properties crammed onto small plots? The Panel acknowledged that this question was difficult to answer in the short term with the resources available to it. Notwithstanding this, the Panel informed itself using house price data published by the Statistics Unit, 'Planning for Homes' documents published by the former Housing and Environment and Public Services Committees and up to date housing completion figures provided by the Department of Planning and Building Services.

13.11 Although demand for homes had been particularly strong immediately before the turn of the century, there was evidence that the supply of homes had been rather constrained until 2002. Supply had more closely matched demand since the adoption of the current Island Plan and this appeared to have contributed to the slow the rate of growth in house prices since that time; however, house prices (as opposed to prices for 1 and 2 bedroom flats) had still been rising and local estate agents had, from time to time, indicated that demand for certain categories of family home, including good quality three-bedroom houses, remained comparatively strong.

13.12 The Panel also noted that although the local economy had been comparatively weak from 2002 onward, first time buyer homes constructed on Category A sites had tended to sell either from the plans or during the construction phase, despite concerns expressed from time to time as to the density of development on those sites. With the foregoing in mind, it seemed that family homes built to a high density were still selling very well. In the event that a significant economic upturn occurred during the second half of the current decade, perhaps sucking in new workers from outside the Island, the Panel considered it reasonable to assume that demand for family homes would rise and that developers would find it easier to offload homes packed onto smaller plots. As the Panel's report went to press it was announced that the price of an average family home in Jersey had finally reached a rather staggering £400,000 and that the local economy was indeed showing clear signs of an upturn.

13.13 The Panel therefore concluded that a more detailed analysis of this question should be conducted as part of its 'Design of Homes' review, which was due to report in the first quarter of 2007; however, it was reasonably clear that current housing market conditions favoured sellers rather than buyers.

13.14 The second question was whether those persons levelling the accusation at developers had interpreted planning policies correctly.

13.15 Analysis of the policies within the Island Plan 2002 was revealing. Paragraph 8.38 of the Island Plan showed that by the beginning of the 21st Century the Department had already become sensitive to the issue of 'town cramming' in St. Helier, while paragraph 8.40 clarified that in-filling of open space and amenity areas within the town of St. Helier was not on the agenda.

13.16 It was nevertheless clear that the housing policies within the 2002 Plan were designed to concentrate development in the revised Built Up Area, thereby minimising development elsewhere. Paragraph 8.40 clearly stated that the re-designated (and larger) Built Up Area was anticipated to lead to increased opportunities for 'infilling and conversion'. It also implied that the prevailing policy trend of securing 'increasing densities and greater yields' would continue. On the basis of those anticipated yields the revised Built Up Area was considered sufficient to provide all the Category B (demand led) housing required during the life of the 2002 Plan. Therefore no land had been rezoned to provide Category B housing.

13.17 It was therefore arguable that the prospect of a more densely developed Built Up Area should not have come as a surprise; however, the fact remained that a maximum level of density to be tolerated in Jersey had not been defined. Instead, recent development briefs for Category A homes tended to state that maximum levels would be determined by a 'design-led approach'. To the Panel, this criteria seemed somewhat ambiguous, particularly as the original States debate on the then draft Island Plan 2002 had left many members with the genuine belief that the Department would be working to a maximum density broadly equivalent to 70 habitable rooms per acre. Subsequent debates in the States, public comment on planning issues and the evidence received by the Panel directly reinforced the view that, with the exception of the most urban areas of the Island, 70 habitable rooms per acre represented the upper limit of housing density that the resident population was prepared to accept for family homes.

13.18 The Panel concluded that while complainants might not necessarily have interpreted the policies of the Island Plan correctly, the lack of an up to date policy on housing density left significant scope for interpretation of the position. In any event, there was evidence of a widely held view that the 'design led approach' on density should be constrained in some way.

FINDING

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

13.19 The third question arising concerned the specific nature of any imperfections in the decision making process and at what stage they occurred.

13.20 In its search for anomalies the Panel considered both policies and the departmental and political structures involved with their implementation. Panel members had already found little evidence that officer actions at the pre-application stage had recently caused problems; however, it had uncovered examples of issues with provision, or accuracy of, information.

13.21 Public hearings attended by Mr. P.D. Grainger, planning consultant, and former Deputy H.H. Baudains led the Panel to consider whether the Island Plan was too complex a policy document. Mr. Grainger advised members –

> *'the Island Plan document itself, to my mind, is far too complicated and it creates a rod for your own back...I can reject any application on this document'*

13.22 Mr. Baudains' view was similar, albeit from a more positive perspective. He stated –

> *'If you look at all the different policies in the Island Plan I think you could find policies there to cut down the numbers.'*

13.23 The implication made by Mr. Baudains was that the Island Plan contained sufficient tools to reject any application where necessary but that there was either a reluctance or a failure to make adequate use of those policies.

13.24 The Panel recalled that the policies of the Island Plan 2002 was a voluminous work that filled a large A4 ring binder. Shepley had commented favourably upon the layout and content of the Plan but some States members, reflecting on their experience of dealing with or making representations on behalf of constituents concerning particular applications, noted that policies within the Plan often tended to act against each other. Indeed, the Panel considered that the sheer volume of policy material also allowed for the reverse of Mr. P. Grainger's and Mr. Baudains' observations to occur – that a 'pro-development' Minister or Applications Panel might exploit that complexity in order to sanction many more applications than expected. Put simply, the sheer number of words in the Plan, combined with a limited number of precise definitions, increased the opportunity for subjective interpretation. This was a worrying observation. Shepley had commented in his report that planning policy 'cannot be infinitely flexible', and yet the Panel was receiving evidence that the Plan as a whole was a very flexible document indeed.

13.25 In an attempt to ensure that the Island Plan was widely embraced, it seemed that strenuous efforts had been made to produce an accessible document for both professionals and for the wider public. Although the text was easy to read, that text had been required to cover a raft of policy areas . The trade off had been the sheer number of words. Professionals, including the President of the Association of Jersey Architects, claimed that the Plan was a good and broadly well understood document that had given all involved a 'breathing space'. Other professionals were clear that there was still plenty of scope to argue about what all those words actually meant for specific applications. Moreover, non-experts, including local residents, tended to read the Plan at a rather different level and to give certain policies more weight than professionals. As there was no immediately obvious mechanism within the Plan for ranking particular policies, this

practice was understandable and it often caused lay persons to reach markedly different, yet reasoned, opinions as to whether a particular application should be permitted.

13.26 An alternative view was that the policies of the Island Plan 2002 were sufficiently well defined but that some States members had failed to comprehend the implications of proposed changes in policy. Deputy J.A. Hilton commented –

> *'The question I have asked myself since is why did not enough States members realise the full implications of the Island Plan? Why, why, why?... Maybe States members just did not do enough work at the time.'*

13.27 Whether or not some States members had failed to engage sufficiently with the process of drafting the Plan, it was clear that others, including Deputy G.C.L. Baudains and former Deputy H.H. Baudains, both of St. Clement, had been particularly vocal in raising concerns about potential problems, including the 'secret sites' within the new Built Up Area. That issue caused the then Deputy A. Layzell of St. Brelade to make a hurried statement late in the day reassuring States members that passing the Island Plan 2002 would not bring with it an automatic presumption in favour of development in the Built Up Area. Yet even the meaning of this explanatory statement had since been the subject of debate and formal questions in the States.

13.28 Neither were politicians the only ones having difficulty in comprehending the full Island Plan. From time to time officers within the Department had also suffered. On page 15 of his 2005 report on the functioning of the Department, Shepley commented in the following terms –

> *'I am aware of at least a couple of cases where policies in the [Island] Plan were only picked up very late in the process. Whilst some policies are regularly cited in reports, not all policy considerations may be taken into account and there are cases where the Policy Division is not consulted on cases which do raise policy issues.'*

13.29 Ultimately the Panel determined that there was a real need to limit the scope for interpretation in the Island Plan.

13.30 During the course of its review the Panel formed the impression that the Minister for Planning and Environment was already thinking of simplifying policy. He had indicated on several occasions, including during meetings held as part of the Panel's ongoing 'Design of Homes' review, that he favoured policy documents that ran to only one or two sides of A4 paper.

FINDING

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.

13.31 The Panel also explored the question of whether litigation, or the threat of litigation, influenced the determination of planning applications to any significant degree.

13.32 In the Panel's first public hearing, the Director of Planning advised that none of the development briefs produced under the Island Plan 2002 had 'come up in any legal proceedings'. He added that developers were rarely accompanied by legal representatives at meetings held at the Department. Senator Cohen nevertheless disclosed that a 'lengthy letter from a firm of lawyers' had been received recently setting out their clients expectations regarding a contentious application for housing.

13.33 The assertion that the planning process was relatively free of litigious activity contrasted with the perceptions held by several other witnesses. Deputy C.H. Egré was invited to comment on whether the process of publishing development briefs for Category A housing sites was being seized on by lawyers representing developers as a mechanism for securing planning permission for high density (and therefore more profitable) development. The Deputy responded –

'That is exactly how I perceive it'.

13.34 He was not alone. Former Deputy H.H. Baudains told the Panel that during his time on the former Planning and Environment Committee –

'there was litigation but not as much, I think, as there is now.'

13.35 In response to a question from Deputy G.C.L. Baudains, Mr. H. Baudains suggested that larger development firms operating in the Island might be retaining lawyers on a full time basis in order to increase their chances of securing development permissions.

13.36 For Mr. P. Grainger, planning consultant, it was the matter of appeals against decisions taken by the Minister or his Applications Panel was of concern. He believed that it was particularly important to 'keep lawyers out' of the planning process as much as possible, primarily on the grounds that the costs arising from the engagement of lawyers were allegedly disproportionate. Referring to the original appeal mechanism contained within the Planning and Building (Jersey) Law 2002, that of an independent Planning and Building Appeals Commission, Mr. Grainger said –

'Shepley made this point in his comments that there must be an alternative to the Royal

Court route. The one that was advocated, an independent inspector, in my opinion, was the correct one. This is to say it is keeping it within the professional playing field. Keeping the lawyers out of it. But because the States would not come up with £600,000 in order to set the system up, the previous Committee reverted back to the Royal Court way.'

13.37 The Panel was particularly concerned to learn of the difficulties experienced by Mr. Grainger, an experienced planning consultant and former officer of the Planning Department, in registering an appeal under the newly revised Royal Court based system against a planning decision. It nevertheless acknowledged that the new system was in its infancy and that the introduction of limited third party appeals in 2007 would add a new dimension to the appeals system. Further monitoring of the system would be required in the coming months.

FINDING

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.

14. Term of Reference No.4 – Delegation of Powers

14.1 The Panel's review of powers delegated to officers was informed by R.5/2006 and R.68/2006, the two reports presented to the States during 2006 by the Minister for Planning and Environment.

14.2 A clear majority of the powers delegated to officers appeared to the Panel to be both sensible and proportionate; however, one issue was identified regarding the ability of officers to approve incremental changes to a development previously approved by the Minister (formerly the Committee) or the Planning Applications Panel (formerly the Planning Sub-Committee).

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

14.3 The Panel noted that the most recent delegation of authority empowered authorised officers to take decisions on 'requests to vary permissions, including conditions'.

14.4 It was clear from submissions received concerning a number of cases, including that of 'Beau Regard' in St. Helier, the Category A development at Rue de Jambart, St. Clement and the new dwelling at Lezardrieux, St. Clement that officers were sanctioning incremental changes to schemes previously approved at a political level. Moreover the officers making such decisions were not required to advise the Minister or the Applications Panel of the detail of such variations.

14.5 Having noted the impact upon neighbouring residents of changes made at such developments, the Panel formed the view that this particular delegation of authority was eroding public confidence in the planning process. It was therefore pleased to learn during the closing stages of its review that the Minister for Planning and Environment had introduced a new policy. Officers inclined to determine a particular variation to an application would be required to seek an endorsement of their decision from a senior officer. On 25th September 2006 Senator Cohen advised the Panel –

'It is an area I am very uncomfortable with. That is why I have implemented this new policy that we need 2 pairs of eyes for all variations. You have to have some flexibility in a system. You cannot throw everything back to stage 1 if there is a minor variation but I am troubled at the moment that, on too many occasions we seem to find situations where there have been significant variations, post consent, that probably should have had greater consideration and more people involved in the decision making.'

FINDING
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.

15. Term of Reference No.5 – Supremacy of the States

15.1 A common theme of planning related debates in the States since 2002 had been the extent to which the States retained the right both to amend planning policy and to exercise a degree of control over major planning applications. It therefore seemed logical for the Panel to consider whether the States had somehow lost control of the planning process.

15.2 The Panel acknowledged that there were 2 key issues to consider. These were the control of planning policy (the Island Plan) and control of the mechanisms under which that policy was both agreed and applied (planning legislation).

15.3 During the course of the review the Island Planning (Jersey) Law 1964 and several other items of legislation governing the planning process were superseded by the Planning and Building (Jersey) Law 2002. Both Laws, which effectively ceded operational control of the planning process to the Minister for Planning and Environment (formerly to the relevant Committee of the day), had been approved by the States of Jersey. The States retained the right either to amend the Law or to replace it with a new piece of legislation.

15.4 Both the new Law and, to some extent, its predecessor charged the then Committee (subsequently the Minister) with preparation of an Island Plan. Article 3 of the Planning and Building (Jersey) Law 2002 required that the Island Plan be presented to the States for approval. Shepley had noted that by considering and by electing to approve the Island Plan back in 2002, members of the States Assembly had exercised their right to determine planning policy.

15.5 While it was clear that the States theoretically retained full control of policy and the mechanisms for agreeing and applying that policy, practical limitations had been applied. Shepley had commented that once planning policy was agreed, it was important to ensure stability and consistency, over a reasonable period of time, for those interacting with the process. This had been achieved by limiting the rights of individual States members to bring forward unilaterally a new draft Island Plan of their own, or to bring forward amendments to an existing plan for States approval. In fact, Shepley's preferred method of ensuring consistency was to prevent States members from lodging a proposition requesting that the Minister / Committee make incremental changes to the Plan unless the circumstances were exceptional. He explained –

> *'changes can be proposed without any rigorous process (perhaps without any process) of public involvement. Property rights can be, and are, affected by these changes… This principle seems to me to be potentially unfair.'*

15.6 States members had recently been surprised at the extent to which their authority to influence planning policy was restricted. On 20th April 2005 a proposition lodged by Deputy J.A. Hilton entitled ‘Land in St. Lawrence near Tesson Mill and Field 621, St. Brelade: rezoning’[25] was debated by the States Assembly. The proposition asked the States to re-designate 2 specific sites as Green Zone. During the course of the debate it became clear that the proposition was fatally flawed because it had not been brought to the States by the then Environment and Public Services Committee (now the Minister for Planning and Environment). A similar proposition brought by Deputy G.C.L. Baudains concerning land in St. Clement was also affected.[26] Those matters were subsequently brought back to the Assembly by the Committee in a new proposition [27], which was adopted with certain amendments.

15.7 It was suggested to the Panel that public understanding of this restrictive mechanism was limited. The Environment Section of the Société Jersiaise thought that the public had a comparatively poor understanding both of the ability of the States to direct the Minister of Planning and Environment and of the powers of individual Ministers generally. A public debate on these matters was considered necessary. In contrast the President of the Association of Jersey Architects considered that the issue was symptomatic of the ability of the States to make decisions. He referred to a need for the States to consider, set and then stick to its policies over a reasonable period of time, thereby functioning ‘more like business’.

15.8 In his report, Shepley appeared to suggest that those who questioned whether the States remained supreme had perhaps misunderstood how the planning process operated. Referring to the need for a ‘culture change’, he suggested that all States members should receive training, perhaps from an independent person or organisation, supplemented by a code of conduct that would highlight appropriate stages at which private members should make representations. In the event that States members wished to pursue amendments to the Island Plan, Shepley suggested that members should submit their ideas to the Department, in order that a professional assessment of the implications arising from the proposal could be made. These measures were apparently designed to ensure that members intervene in a more ‘efficient and effective way’.

15.9 While the Panel acknowledged the considerable experience of Shepley in planning process matters it was mindful that Departments took an active rôle in policy development and that they continued to perform this rôle for Ministers. Having regard for the realities of human nature it was therefore entirely plausible that a politician submitting a proposed alternative policy to the Minister for assessment might perceive that there would be some resistance to that proposal. In making this observation, the Panel appreciated that a majority of public employees working for Ministers within departments performed their duties effectively and objectively; however, the fact remained that references to ‘armies of civil servants working for the Minister’ were made from

time to time by both States members and by members of the public. No such claims were made for 'backbenchers'.

15.10 The Panel also remained to be convinced that the Minister for Planning and Environment should be the only member entitled to bring forward to the States any proposed changes to the Island Plan.

FINDING

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.

15.11 The matter of supremacy of the States at a more operational level was also considered. Propositions brought by States members with the express intention of limiting the extent of development on Category A sites listed within the Island Plan were not uncommon and they provided real food for thought. Members had only been able to propose that the Assembly 'request' that such developments be limited. In 2003 Deputy G.C.L. Baudains had sought to limit the density of development on the site at Rue de Jambart, St. Clement.[28] Although the proposition had been carried with 28 votes in favour and only 13 against, the decision appeared not to have been given any significant weight by the then Committee, which promptly granted planning permission. A subsequent proposition brought in July 2004 by Deputy C.H. Egré of St. Peter to restrict the density of development on Fields Nos. 181 – 183, St. Peter was also carried with 25 votes in favour and 18 against[29]. Again the decision of the States appeared to have been all but set aside by the Committee of the day when it elected to approve an application for development.

15.12 It was clear to the Panel that a significant number of members of the Assembly were uncomfortable with just how much power had been delegated to the Minister. Moreover, the number of occasions on which the States had debated requests to reduce density levels on Category A sites, the relatively heated nature of those debates and the resulting votes cast indicated a need for the States Assembly to regain a greater degree of direct control over the planning process. The Assembly had considered and subsequently adopted the Island Plan. Surely it was also right that the Assembly could direct the Minister as to how the policies within the Plan should be interpreted?

15.13 The matter of directing the Minister was considered to be particularly important following the move to ministerial government. Panel members had become aware that there might be excessive scope for interpretation of policies within the current Island Plan[30]. Prior to 2006 decisions were made by a committee or sub-committee of between 3 and 7 members. This 'consensus' approach provided a moderating environment; however, the onset of ministerial government concentrated that delegated power in the hands of just one Minister and his Applications Panel. Accordingly there was now greater potential for marked changes in policy whenever a new Minister was appointed.

15.14 The current Minister for Planning and Environment, Senator F.E. Cohen, experienced the supremacy issue at first hand on 4th July 2006 when he took part in the States debate on a proposition, lodged 'au Greffe' by Connétable G.W. Fisher of St. Lawrence, concerning the Category A housing site at Bel Royal.[31] This proposition requested the Minister to bring to the States for approval an amended paragraph 8.71 of the Island Plan designed to limit the number of homes built there. Prior to that debate the Minister had already told Scrutiny –

> *'You cannot say to the Planning Minister: "You run it unless we decide as a States body we want to interfere" because that will not work. So I am afraid the decision has already been made that the Planning Minister will make the planning decisions and the States' right of censure is to get rid of him. That is the system. I do not think you can really improve it.'*

15.15 In a public hearing held in September 2006, after the Bel Royal debate, the Minister clarified that he respected the right of States members to raise planning issues in the States Assembly. He nevertheless maintained –

> *'I think it would be a mistake to end up in a position where the Planning Minister cannot make any decisions and effectively every controversial decision is made on the floor of the States. We would never get anything done.'*

15.16 The Minister added –

> *'You really just need to make sure that you have [a Planning Minister] who respects the authority of the States… I agree you have a problem if you get somebody who does not respect the authority of the States and goes off as a maverick and makes decisions – but he will only make one.'*

15.17 The Panel had some difficulty in accepting the Minister's suggestion that a revised system limiting the autonomy of the Minister would bring the process grinding to a halt. Furthermore, it was concerned that members of the public were unable to understand why a Minister should be able to ignore the will of the States Assembly. Such a situation was likely to encourage voter apathy. If an elected representative was perceived to be powerless, what would be the point of voting for him or her?

15.18 During the period 2003 – 2005 former Presidents and their respective Committees had taken several highly controversial decisions on planning applications, with potential for major impact on the Island, in the face of strong opposition within the States. Moreover, the only mechanism through which those Committees (and subsequently the Minister) could be held to account, namely a vote of no confidence, was regarded as something of a 'nuclear' option. The unique environment in which the Planning Department operated meant that the traditional threat of such a vote was unlikely to keep the Minister broadly in line with the wishes of the Assembly. Once a planning permit had been issued, revoking it could mean compensation running into £ millions – meaning a vote of no confidence was always too late. Also, the role of Minister for Planning and Environment was seen as a poisoned chalice, so few members were willing to replace an incumbent.

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

15.19 In terms of addressing the supremacy issue at both levels, the Panel concluded that a balance needed to be struck. On the one hand stable planning policies were necessary in order that applicants could assess prospective schemes, some of which took many years to plan and complete. On the other hand the balance of social, economic and / or environmental factors had a habit of changing at short notice and individual States members, briefed by their constituents, were often amongst the first to appreciate the scope for impact of those changes. The Panel was pleased to note that the current Minister of Planning and Environment enjoyed the confidence of the Assembly but the current Minister would not stay in the post forever and there was a real need to ensure that future Ministers acted in accordance with the prevailing views of the States.

15.20 Options for refining the delegation of power to the Minister were considered. In doing so, the Panel was mindful that a majority of cases in which problems had arisen concerned housing developments and acceptable densities of housing development in particular.

15.21 One option considered involved the formulation of a revised Policy H7 of the Island Plan, complete with an upper limit on housing density set between 65 and 70 habitable rooms per acre. Although the Panel was conscious that setting an upper limit might encourage applicants to work up to such densities, the Panel had found evidence that comparatively dense developments were already commonplace within both the Category A and Category B housing markets. Furthermore, the public seemed less than keen to tolerate anything higher. In the event that the Minister had received an application for development at a higher density, and was minded to approve the application for any reason, the Panel considered that it might be appropriate for the Minister to be required to bring a specific proposition to the States inviting endorsement of that particular application.

15.22 After careful consideration the above option was rejected. Members were mindful of the fact that there were a number of different (and complex) ways of calculating housing density and that such a mechanism would not be sufficient to deal with planning issues beyond that of housing.

15.23 As interpretation of the Island Plan was arguably the overarching issue that caused States members to take an active interest in particular applications, the Panel concluded that in addition to familiarising States members with the underlying philosophy and details of the Plan, there should be a mechanism where members concerns could be expressed and, where necessary, a debate initiated on the Plan itself. Both the Minister and other States members needed a structured opportunity to make changes without directly interfering with day to day decisions.

15.24 The Panel considered that every eighteen months or two years, at a fixed time (the period dependant upon whether the Assembly stretches to four years or three), the Minister should be

required to present to the States a Report detailing his or her assessment of how the Island Plan had functioned. A Scrutiny Report with similar terms of reference would also be presented, following which an In Committee debate would be held, during which States members could fully discuss the whole workings of the Plan. Any States member would then be entitled to bring forward a proposition to change the Island Plan.

FINDING

States members required –

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.

16. Other Issues

16.1 The Panel's review of the planning process was necessarily broad. It was therefore perhaps inevitable that members would be invited to consider a number of issues either at the margins of the Panel's terms of reference or which tended to have a material bearing on more than one of those terms of reference.

16.2 One issue fell outside of its terms of reference but was considered to be of real significance. It concerned the mechanism employed to deliver first time buyer and social rented housing.

16.3 During a site visit to the Hodge 2 social rented housing site the developer contended that the 55 per cent / 45 per cent first time buyer and social rented split policy – as specified in Policy H1 of the Island Plan – coupled with the manner in which the States had conducted negotiations on those sites, had resulted in a situation whereby first time buyers were subsidizing social rented housing to a significant extent. It was clarified that the developer had been negotiating to provide the necessary quantities of both types of housing across both the Hodge 2 and the Rue de Jambart site in St. Clement. Contractual arrangements with various parties, including landowners, had been proceeding according to plan on the basis that the developer was to receive a certain price for each unit of social rented housing provided. Relevant figures had been forwarded to the developer in 2002 by the States Property Services Department and the developer considered that he was entitled to rely on the accuracy of those figures. At a later stage in proceedings it subsequently transpired that the States intended the developer to receive some £20,000 less per unit of social housing than the figure initially quoted. As the developer was by that time heavily committed to building houses on both the Hodge 2 social housing site and the Rue de Jambart first time buyer site, he felt that the only option open to him to ensure that he made a profit from the schemes was to load the price of the first time buyer homes on the Rue de Jambart site.

16.4 The Panel acknowledged that it was not currently in a position to conduct a thorough investigation of this allegation. Moreover, it received evidence from both the Property Holdings Department and from the Director of Planning which tended to suggest that such an occurrence would not happen again, if indeed it ever had. Nevertheless, the Panel considered the allegation to be of such significance that it agreed to consider conducting a review of the subject in 2007, perhaps in cooperation with the Economic Affairs Scrutiny Panel.

16.5 The second issue was that of resourcing. As referred to in previous Chapters, the Panel collated a significant body of evidence on resourcing of the Planning function. It recalled the ERM report of 2002, which had painted a bleak picture of too few officers handling too many cases and of recruitment issues. Although the 'user pays' strategy approved in 2003 was

intended to provide for some, but not all, the additional resources suggested in the ERM report, the Department had since lost 3 Building Control Officers, one Enforcement Officer and one Planning Technican through the Fundamental Spending Review process. Although workloads had fallen since 2002, the planning process was cyclical and there was evidence that numbers of planning applications were once again on the rise.

16.6 Shepley's report again provided useful background information. He had heard from persons outside the Planning Department that resourcing was 'inadequate' or even 'dire'. Some witnesses had told him that staff were demotivated and suffering from a collective 'lack of confidence'. Having completed his review, Shepley concluded that resourcing levels were 'not excessive' and that he had not found evidence of unnecessary administration. He nevertheless qualified his assessment in a number of ways. Having commented that there was scope to improve the pre-application service (a point which the Panel accepted) and to produce planning advice notes (some of which were clearly overdue), Shepley suggested that officer hours to allocate to such tasks should be found by way of raising the bar on exempt development and increasing delegation. There was no sign of any excess capacity which might allow these improvements to be made. Moreover, he sounded a warning that any failure on the part of the States to endorse such changes would be counter-productive in that more complaints would be forthcoming, thereby generating even more work. The prospect of work arising from third party appeals was also flagged as an unknown quantity.

16.7 Senator F.E. Cohen made his position on resourcing abundantly clear. In June 2006 he told the Panel –

> *'The Planning Department is, I am totally convinced, fundamentally significantly under-resourced.'*

16.8 Although the Minister was realistic enough to acknowledge that resourcing pressures within Planning were a symptom of recent demands to cut costs in the public sector, he outlined several ways in which cost cutting had materially affected service delivery.

16.9 There had been a failure to record ministerial decisions and to publish them on the Internet. In fact, by the time this matter was discussed the Panel had already viewed correspondence indicating that the officer responsible for processing decisions was under significant pressure. Nevertheless, timely publication of Ministerial Decisions was a fundamental obligation of ministerial government and the Department was failing to deliver. Senator Cohen explained –

> *'The problem with having instant communication is that somebody has to instantly communicate and that is a resource issue'.*

16.10 It was also a new resource issue. Prior to ministerial government the recording function had been carried out by the States Greffe. Now the burden fell on the already reduced Department, with the States Greffe carrying out only a quality assurance check on the decisions recorded.

16.11 Other examples included the extent to which the Minister was struggling to resource the Historic Buildings Section. He commented –

> *'it has been under resourced fundamentally and things have been piling up all over the place.'*

16.12 There was limited scope for cross-checking of work in order to reduce the likelihood of errors. This was a particularly interesting discovery as the Panel had questioned whether the officer report on Lezardrieux submitted to the Planning Sub-Committee in 2003 had ever received anything more than a cursory check. Although the new Chief Executive Officer had been instructed to find some way of freeing up officer hours to enable greater quality control of reports, the Minister did not seem particularly hopeful that much spare capacity would be found.

16.13 Against this backcloth the Business Plan 2007 had been approved by the States. As part of that plan the Minister for Planning and Environment had been one of only two Ministers to agree to a cut in his annual budget for the coming year. When asked to clarify the position, Senator Cohen was far from upbeat. He said –

‘ We are saddled with the largest percentage cut of all the departments, 3 per cent. We have been dumped with things like having to pay the costs of avian flu, which is a significant sum. We have taken on the costs of trying to improve design and all within a shrinking budget.’

16.14 One specific consequence of this 3 per cent reduction was a reduction in the number of Enforcement Officers in the Development Control section. At the same time the Panel was hearing evidence, including a compelling submission from Deputy C.H. Egré, that much greater vigilance was in fact required in this area. On 24th July Deputy Egré told the Panel–

‘I have had 2 experiences with 2 specific developments in my own Parish where I, in effect, have had to do the policing on quite serious issues where conditions have been laid and they have not been met and some of them still have not been met today’.

16.15 The public tended to view States departments with suspicion whenever claims were made that civil servants were operating at or beyond maximum capacity. On that basis the Panel was somewhat surprised to find that the Minister’s concerns were echoed not only by professionals working with the Department but also by private individuals who had cause to feel aggrieved by the quality of service they had experienced. The President of the Association of Jersey Architects claimed –

‘It is quite obvious that there are pressures within the Department in terms of resources’

16.16 A resident of La Route du Petit Clos, recalling his experience of objecting to the extent of development on the Beau Regard site, said –

‘I know that these guys are so busy anyway. Have they got time within their normal schedule to be able to deal with appeals or objections?’[32]

16.17 Some of the evidence gathered indicated that quality of available resources was also an issue. Planning consultant Mr. P. Grainger suspected that the quality of staff within the Department had deteriorated in recent years. The President of the Association of Jersey Architects suggested that pre-application advice from junior officers was sometimes of limited value. He added –

‘senior officers, who are capable of having very constructive… discussions that I believe save a lot of time in the Department and help efficiency, are being distracted by other areas’.

16.18 The Panel was told by the new Chief Executive Officer that the Department was currently quite

well off in terms of the quality of staff it employed. There were 'good levels of professional skill' amongst officers at various levels. Furthermore, the Minister advised that he was ensuring that training was offered to his staff with a view to increasing 'understanding of good architecture'. Nevertheless Shepley had found evidence of a skills gap. He suggested that there was a 'particular need' to provide junior staff with 'opportunities for training and development'. Of course, delivering such opportunities in a department with minimal excess capacity would always present a challenge for senior management.

16.19 The Panel recognized that all States departments were under pressure to cut costs and increase efficiency; however, business plans over recent years showed that the Planning Department had consistently been required to do more with less, despite evidence in the media and in the form of representations made to States members that planning issues were of very significant importance to a large number of Island residents. Despite the efforts of staff within the Department, the Panel found clear evidence that the resources allocated to Planning had fallen short of that which was required to deliver an appropriate standard of service. In noting this position, the Panel was also aware that certain of its own recommendations might have resourcing implications for the Department.

FINDING

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

17. Recommendations

17.1 The forthcoming review of the Island Plan 2002 should aim to reduce scope for ambiguity in the interpretation of policy. In particular the Minister should bring a revised Policy H7 (Housing Density and Standards) to the States for approval following conclusion of the Panel's ongoing 'Design of Homes' review.

17.2 Consideration should be given to the concept of weighting Island Plan policies in order to improve the consistency of decision making by Ministers and Applications Panels.

17.3 Consultation on proposed future changes to the land use zones within the Island Plan should involve publication and widespread circulation of a large scale map identifying the extent of the proposed changes.

17.4 Options for providing the Department with an on-site meeting room suitable for hosting public meetings should be considered.

17.5 The Minister should take positive steps to ensure that the availability of the pre-application advice service is more widely advertised and that the purpose and limitations of the service are understood.

17.6 Development briefs for future Category A housing sites should be constructed in such a way as to prevent applicants from securing permission to build a significantly larger number of homes than envisaged in Policy H2 of the Island Plan 2002.

17.7 The Minister's proposal to require applicants to submit scale models in support of significant applications should be formalized and implemented in early course.

17.8 Revised proposals for consulting on changes to the Island Plan – including clarification as to how any procedure for public examination of such changes would be managed - should be published as a matter of urgency.

17.9 The Minister should ensure that his Department publishes Ministerial Decisions in a timely manner.

17.10 Particular care should be taken in future to ensure that any planning obligations required of applicants are clearly specified at the earliest possible stage and that such obligations address an issue or issues directly affecting the specific site in question. Planning obligations designed to address more general issues affecting the wider locality should not be pursued.

17.11 Funding for the Planning and Environment Department should at least be maintained at the existing level, allowing for inflation, until such time as a thorough and independent review is carried out to demonstrate where any further efficiency savings can be made without compromising the quality of service offered.

17.12 The Minister for Planning and Environment should investigate options for providing all States members with a thorough overview of the planning process.

Appendix – Constitution of Successive Planning Committees

The Island Plan 2002 was approved by the States on 11th July 2002. Members of the then Planning and Environment Committee at that time were –

Senator	N.L. Quérée - **President**
Connétable	P.F. Ozouf of St. Saviour
Deputies	A.J. Layzell of St. Brelade A.S. Crowcroft of St. Helier J.B. Fox of St. Helier J-A. Bridge of St. Helier T.J. Le Main of St. Helier

Members of the Environment and Public Services Committee as appointed by Act of the States, dated 12th December 2002 –

Deputy	M.F. Dubras of St. Lawrence - **President**
Connétables	P.F. Ozouf of St. Saviour A.S. Crowcroft of St. Helier
Deputies	R.C. Duhamel of St. Saviour J.B. Fox of St. Helier M.A. Taylor of St. Clement J.A. Hilton of St. Helier

Nominations

Deputy T.J. Le Main on 29th April 2003
The Connétable of Grouville on 7th October 2003

Resignations

Deputy J.B. Fox of St. Helier resigned on 19th April 2003
A.S. Crowcroft of St. Helier resigned on 9th September 2003

Members of the Environment and Public Services Committee as appointed by Act of the States, dated 2nd March 2004 –

Senators	P.F.C. Ozouf – **President** E.P. Vibert
Connétables	P.F.C. Ozouf of St. Saviour
Deputies	J.A. Hilton of St. Helier – **Vice-President** M.A. Taylor of St. Clement J.J. Huet of St. Helier G.W.J. de Faye of St. Helier

Members of the Environment and Public Services Committee as appointed by Act of the States, dated 28th September 2004 –

Senators	P.F.C. Ozouf – President
Connétables	R.E.N. Dupré of St. John
Deputies	J.A. Hilton of St. Helier J.L. Dorey of St Helier **– Vice President** M.A. Taylor of St. Clement J.J. Huet of St. Helier G.W.J. de Faye of St. Helier

Resignations

Deputy J.A. Hilton of St. Helier resigned on 12th October 2004

The Committee was reconstituted as a Committee of six on 23rd November 2004.

The Committee fell at the introduction of Ministerial Government on 5th December 2005.

---

[1] Available online at http://www.gov.je/infoassetregister/reports/ShepleyReview.pdf

[2] Available online at http://www.gov.je/PlanningEnvironment/Planning

[3] Available at States Bookshop or online at www.jerseylegalinfo.je

[4] R.5/2006 – available at States Bookshop or online at www.statesassembly.gov.je under ‘Reports’

[5] R.C. 43/2004 - available at States Bookshop or online at www.statesassembly.gov.je under ‘Reports’

[6] See R.C.13/2002 – Available from the States Bookshop or online at www.statesassembly.gov.je under ‘Reports’.

[7] Projet No. P.203/2002 – Available from the States Bookshop or online at www.statesassembly.gov.je under

‘Propositions’.

[8] Planning and Environment Business Plan 2006

[9] See R.5/2006 and R.64/2006 (the latter being a relatively minor redraft of the former following the introduction of the new Planning and Building Law 2002).

[10] See submission made by Mr. H. Carter

[11] See submission made by D. Gouveia

[12] See submission made by S.J. Hill

[13] See submission made by Mr. W. Staite

[14] Confidential submission

[15] See submission made by Mr. H. Carter

[16] See submission made by F. Gray

[17] Projet No. P.48/2006 – available at the States Bookshop or online at www.statesassembly.gov.je

[18] See submission made by Mr. A. Rumbold

[19] Projet No. P.75/2006 – available at the States Bookshop or online at www.statesassembly.gov.je

[20] e.g. submission from W. Staite Ltd.

[21] e.g. submission from Mr. K. Shaw.

[22] See submission made by Mrs. F. Gray.

[23] Much of this evidence was obtained on a confidential basis as developers were reluctant to discuss this issue in a public forum.

[24] See transcript of public hearing attended by Mr. V. Roberts.

[25] Projet No. P.33/2005 - available at the States Bookshop or online at www.statesassembly.gov.je

[26] Projet No. P.69/2005 - “ “ “

[27] Projet No. P.77/2005 - “ “ “

[28] Projet No. P.152/2003 - “ “ “

[29] Projet No. P.133/2004 - “ “ “

[30] See Chapter 13

[31] Projet No. P.48/2006 - “ “ “

[32] See transcript of public hearing attended by Mr. V. Roberts.