1240/5(6379)

WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT BY SENATOR F. du H. LE GRESLEY ANSWER TO BE TABLED ON MONDAY 20th JUNE 2011

Question

Why did the Minister advise the Assembly, during questions without notice on 7th June 2011, that a notice served under Article 84 of the Planning and Building (Jersey) Law 2002 only applied where dilapidated or ruinous buildings were no longer 'wind and water tight'?

Could he advise if legal advice has been obtained by his Department on the use of Article 84 and in particular in respect of the demolition of and removal of any resulting rubbish from the buildings on the Plémont headland?

Does the existence of a current planning application for the site of the former Plémont Holiday Village prevent a notice under Article 84 being served on the owner of the land?

Answer

In answering Senator Le Gresley's question on 7th June the Minister for Planning and Environment was responding without the comfort of detailed information to hand and this question provides an opportunity to clarify and expand upon the response.

Article 84 of the Planning and Building (Jersey) Law states;

"ARTICLE 84
Minister may require repair or removal of ruinous or dilapidated buildings.

(1) If it appears to the Minister that a building is in a ruinous or dilapidated condition it may serve a notice requiring that the building or a specified part of it be demolished, repaired, decorated or otherwise improved and that any resulting rubbish be removed."

Article 91 of the Law requires the Minister to specify in sufficient detail the works to be carried out, and a reasonable time to complete them depending on what is required. Articles 93 and 94 state that it is an offence not to comply with a notice, and that in default, the Minister may undertake the works and recover his reasonably incurred costs from the person failing to undertake the work. There is no right for the owner to claim compensation under these provisions, but there is an appeal to the Royal Court on the grounds that the action taken by or on behalf of the Minister is unreasonable with regard to all the circumstances.

The Law does not define what constitutes a "ruinous or dilapidated building". They are ordinary words, and the Royal Court is likely to apply the ordinary meanings to them. In order for a building to be ruined or ruinous I feel that the property would effectively have to be wreck incapable of occupation or the possibility of occupation. A dilapidated building is likely to be a building in an extreme state of disrepair. Each case is be different, and will depend on the evidence of and the degree of ruination or dilapidation. In this context it might be reasonable to state that if a building is wind and watertight it is unlikely to be in such a state of ruination or dilapidation as to trigger action by way of Article 84.

It would not be appropriate for the Minister to comment on specific applications or the exercise of his discretion in a specific case. The Minister understands that, as a matter of law, the existence of a planning application does not prevent the exercise by the Minster of his powers under Article 84 of the Law. It may be relevant, however, to the exercise of such a power if, were an application under consideration to be granted, the exercise would be unnecessary or pointless. As a public authority the Minster must exercise his powers in a Human Rights compatible way and accordingly not unnecessarily or disproportionately. Accordingly, the existence of such an application may be a relevant consideration to the exercise of the power in Article 84.

It is accepted practice that Ministers do not reveal whether or not they have taken legal advice on a matter. Accordingly, the Minster will not answer the second paragraph of the question save to say, in general terms, the Minister normally seeks all appropriate advice, which might sometimes include legal advice, on points relevant to the exercise by him of any statutory powers and discretions.