

4.7 The Deputy of Grouville of the Minister for Infrastructure regarding the pursuit of payments for encroachments on the foreshore: [1(484)]

In the absence of a policy on pursuing payments for encroachments on the foreshore, will the Minister explain why encroachments which predate public ownership of the foreshore are pursued, and whether encroachments by quangos will also be pursued; and will he confirm the date of the map being used to show the areas of the foreshore, and that detailed drawings of the dimensions of walled boundaries are being used?

Deputy E.J. Noel of St. Lawrence (The Minister for Infrastructure):

There are 3 questions here and I will do the best to answer them within the allotted time. In response to the first part of the question: why encroachments which predate public ownership of the foreshore are pursued? There are 2 main factors. Firstly, the public has held a succession of contract leases of the foreshore prior to the freehold ownership transferring in 2015. These leases placed all land management responsibilities on to the lessee, i.e. the public, and therefore numerous foreshore encroachment cases were therefore dealt with by the public in conjunction with the Crown prior to 2015 with either the encroachments being removed or financial compensation being received. Secondly, in acquiring the freehold of the foreshore in 2015 and being aware that properties have extended on to the land not in their ownership, it would be a questionable decision to simply allow those properties to benefit from the encroached land without further challenge, i.e. turning a blind eye is not an option. In response to the second part of the question: whether encroachments by quangos will also be pursued, the answer is a definite yes. If it is discovered that quangos have encroached on the foreshore then the same action will be taken as with any other property owner. In response to the third part of the question: will I confirm the date of the map being used to show the areas of the foreshore, and that detailed drawings of the dimensions of walled boundaries are being used? Unfortunately this is not quite that simple. When an encroachment is suspected the first step is to seek advice from the Law Officers' Department as to the extent of the public land and confirmation whether or not that an encroachment has taken place. In some cases this is relatively clear, i.e. where the parties built up to or over a sea defence. With other encroachments the case can rest on historic sea defence construction drawings showing a line of the high water mark prior to the sea defence being built. In all cases - I repeat - in all cases a fair approach is taken. For encroachments which have existed for many years the negotiated settlement - and it is negotiated - is reduced on a sliding scale up to 50 per cent to reflect that. Of course if a property owner can provide evidence that they own the land upon which they have extended then that would likely end the matter. However, as I understand it, such a case is yet to happen.

4.7.1 The Deputy of Grouville:

I was looking for a date that the Minister is basing all these finds - for want of a better word - from. Because original maps will show that the foreshore started at a very different place to where it is today. I mean we have places like Pier Road and Sand Street, as the name suggests. From what date and where is the line of the foreshore that he is using and using to pursue these charges?

Deputy E.J. Noel:

As I have already explained, it is not... it is quite a complex matter from which we take advice from the Law Officers' Department to establish whether or not any encroachment in the first place has taken place. There is no specific date and no specific map or plan that can be used.

4.7.2 The Deputy of Grouville:

I really do not understand that. I do not understand how he can be pursuing people for encroachment if he has not got a map which show where the encroachments occur and from when. I do not understand how he can pursue this.

The Bailiff:

I think that is a question, can you explain further, Minister?

Deputy E.J. Noel:

I have sympathy with the good Deputy of Grouville and perhaps she would like to come in and meet with my officers and the Law Officers' Department to go through the process, quite a complicated process that we have to go through to establish whether or not encroachments have taken place. But I am sure she will agree with me that where encroachments have taken place, turning a blind eye is not an option, which leaves us 2 further options; to remove the encroachment or to seek a negotiated settlement for that encroachment.

4.7.3 Deputy S.M. Brée of St. Clement:

The Minister has admitted there is no policy. The Minister has admitted there is no map, so one has to fall back on precedent that has been set in similar cases before. I would remind the Minister of a Ministerial Decision that he signed as Assistant Minister on 8th July 2009 where the report goes into the question of moral issues. It quite clearly states in this it would be morally wrong to seek profit and, yet, that is exactly what he is encouraging his department to do. I would just ask the one simple question, has the Minister's morals changed?

Deputy E.J. Noel:

Absolutely not and the Deputy is referring to a particular case where certain particulars apply to that incident. The right thing to do was to agree and negotiate a settlement with that party. My department, nor I, do seek to profit from this; we are merely seeking the appropriate compensation to the public by those who have encroached on public land. We have a sliding scale for a discount to that, depending on how long that encroachment has been there. But we have an obligation to the public at large to get the appropriate value for the encroachments on public land.

4.7.4 Deputy S.M. Brée:

It was not a negotiated settlement, it was a very clear stance by the department in 2009 relating to the sea wall that runs from Pontac to La Rocque, where it quite clearly stated that ownership would be ceded to, I believe, 62 properties, their ownership would extend to the rear of the sea wall. Once again, I would ask the Minister, when will he be bringing a policy that goes against the precedent set in 2009 to the States for debate to ensure that the interests of the public are looked after and debated by elected representatives of the public?

Deputy E.J. Noel:

I cannot give a precise date of when the policy will be available. I have it in a draft form of the policy. I have asked for the Law Officers' Department to assist my officers in drafting the final version of that policy. I can confirm that the transaction in July 2009 would be compliant under that policy, as all of the transactions that we have done prior to that and since that date.

4.7.5 Connétable J.E. Le Maistre of Grouville:

Can the Minister confirm that the contracts that property owners, in reality, have no real prospect of rejecting are only temporary and that when properties are sold on that the States could demand further payments?

Deputy E.J. Noel:

I am not sighted on that, I would have to take advice on that. But I was under the impression that the settlement is attached to the property and not to the owner but I will take advice on that.

4.7.6 Deputy S.M. Wickenden of St. Helier:

The Minister has explained that it is quite a complex case-by-case scenario that includes officer time and Law Officers' time. What is the cost of the complex working out for each case? Is this going to end up being charging an encroachment that is just going to be costs for the work that is done to identify the encroachment?

Deputy E.J. Noel:

Yes, the Deputy is right. It is quite a substantial cost and resource hungry, which is why we are doing it in the first instance on the reactionary basis as and when we are made aware that an encroachment has taken place. The assessments always include the party having to cover the legal costs involved, as well as providing a suitable negotiated settlement to the public for the encroachment.

4.7.7 Deputy R.J. Renouf of St. Ouen:

May I ask the Minister where the funds are paid that his department recovers as compensation and under what authority are they paid to that source?

Deputy E.J. Noel:

As with everything that Property Holdings receives in terms of property transactions, the money goes to the Treasury.

4.7.8 The Connétable of Grouville:

Now that the foreshore is in the ownership of the States, in other words owned by the people of Jersey, does that term "foreshore" mean the perimeter of the whole Island? In other words, could other bays be treated similarly to St. Clement and Grouville, for example, St. Brelade's Bay?

Deputy E.J. Noel:

I do not believe so. I think the particular elements that are of ... although the whole of the foreshore was transferred to the public, the encroachments tend to be, unfortunately, in the Constable's Parish and in the Constable of St. Clement's Parish in the majority where people have encroached on to the foreshore but I will get the clarification for him in due course.

4.7.9 The Deputy of Grouville:

The States Treasury can look forward to some hefty monies coming in if we are going to be charging ports and States of Jersey Development Company for all the buildings that have built from Sand Street from Pier Road. I think it is a great shame that the space along the foreshore has been built upon and access along the coast has not previously been honoured. But does the Minister believe this stand and deliver approach that he is going out to get members of the public who are, in most cases, extremely innocent in this? If anyone wanted to point the finger, surely it is down to the legal profession and conveyancers that have not done their work properly. But does he really feel this is the right approach to go out, and do members of the public?

Deputy E.J. Noel:

I agree with the Deputy in terms of that in some instances it may be the conveyancing that needs to be addressed in some of these instances but is this the right thing to do? Doing nothing,

turning a blind eye, is not the right thing to do. You will not find any social housing on the foreshore. The housing that is on the foreshore tends to be at the upper end of our market. Is it right that the general taxpayer and the Island, as a whole, turns a blind eye to people encroaching on public land? I do not think so. Then you have 2 options; you reinstate the land back to the public where it is not necessarily practical to do so or where it would be a significant inconvenience to those landowners to do so, do you reach a negotiated - I repeat - a negotiated settlement based on a sliding scale, depending on how long that encroachment has been there? I believe that what my department are doing is in the best interest of the public, as a whole, but I am being very conscious of the fact of the individuals that are affected.