

22.01.18

12 Connétable A.S. Crowcroft of St. Helier of the Minister for the Environment regarding the planning application in respect of the new hospital (OQ.15/2022)

Will the Minister explain how he will ensure the fairness of the planning application process in respect of the new hospital, given the public and statutory consultees are being asked to comment on the application under the provisions of the existing Island Plan, yet the planning inspector has indicated he will assess the application according to the bridging Island Plan to be debated in March?

Deputy J.H. Young (The Minister for the Environment):

Can I refer the Constable to the Solicitor General's answer to Senator Moore's Oral Question 238 this year? The law is quite clear. The planning application should be determined under the Island Plan that is in place at the time of the decision. Obviously, I have had to plan for the planning inquiry of the hospital and the direction I gave to the inspector is that the inquiry should be held on the basis of the bridging Island Plan, if it is approved by the States. The issue of the change of plan is quite a normal matter in planning decisions. For example, if the States approves the Island Plan, as I hope they do, it will affect all other planning applications in the pipeline that have all been made and the Planning Committee on 7th April will be required to make decisions based on that for equally a very short time after the law, as will all planning officers. These questions have been raised, a letter has been written setting out the legal position to those correspondents who have published their letter, explaining that position. The inspector runs the process and the inspector - I feel confident with the brief he has - ensures the facts of the objections that people have made have a proper hearing and there is plenty of time to do that.

The Bailiff:

Can I remind Members that answers should be one minute and 30 seconds? If they stray too much time over that I will inevitably ask them to be cut shorter.

3.12.1 The Connétable of St. Helier:

While I accept the Minister's argument that there are hundreds of applications that will be affected in a similar way, is it not the case that this is such a major project affecting the lives of all Islanders, but in particular thousands of St. Helier residents whose views are being put forward, both individually and by the Parish Roads Committee? Would it not be fairer in terms of the process to remove reference to the new hospital project from the bridging Island Plan so it can be judged in a way that is fair?

Deputy J.H. Young:

I am hopeful the inspector that is responsible for running that process, using the powers he has under the legislation that gives him the control of the procedure entirely and the brief given, would allow that to be so. The reality of the matter is the application has been published since November. The draft bridging Island Plan has been published since last April, so these documents are long in the public domain. The law requires for all material considerations to be taken into account for determination and that is what people who have made objections will put forward to the inspector. I would expect the process to be as fair as it can be.

3.12.2 Deputy I. Gardiner:

As the Minister is always aware, the likelihood of the bridging Island Plan being adopted 3 days before the public inquiry by the inspector will stop. Does the Minister agree with the view

expressed in the letter that he has received from the Save Jersey's Heritage that the Government of Jersey is proceeding with insufficient regard to due process and the statutory right of Islanders to play a proper part in an independent public inquiry, in opening itself the challenge by the way of judicial review on the ground that it has adopted a procedure, that could be for the reasons listed above, frustrate the efforts of objectors to secure a fair hearing for the view, and if not, why not?

Deputy J.H. Young:

The letter was received and it is a very important letter from Save Jersey's Heritage. It did make reference to a suggestion, a strong one, about a judicial review. That is why the reply has had to have very careful consideration and had been drafted strictly in accordance with the law. That is a reply that has not been sent by myself but by the officers dealing with the matter. In the end, if the reply is challenged, the proper place to determine whether there is the suggestion the Deputy makes is through the courts. I hope that will not be necessary. My job is to try to make the process as fair as it can be, as I know the inspectors will do so. We do not have a perfect situation. It is not a perfect timetable but I think it is the one we need to follow and the best option for us at the moment.

3.12.3 Deputy I. Gardiner:

Will the Minister agree to discuss the timetable for the public inquiry to allow time for members of the public and interested parties to make submissions to the inquiry after the adoption of the bridging Island Plan with the new deadline for the submission of the statement being, say, 2 weeks to one month of the date the new plan is adopted by the States?

Deputy J.H. Young:

I have spoken to the officers about it and I have asked them to talk with the inspector whether there can be any flexibility in the number of days. If there is to be any flexibility it is likely to be no more than a week. In any event, I would maintain the position that the issues people want to bring to the attention of the inspector will not be any different. Any differences will be in the question of policies between the old Island Plan, an adjustment that is made by whoever makes the decision. The inspector has known about the bridging Island Plan right from the start so he knows about those matters. I have asked to be published, which will help the Deputy and everybody else, a summation of the policies that affect the hospital between the old and the new plans and I expect the major difference will be policy C19 in the new Island Plan, which has the States decision to make Overdale the site and also the public interest test that merely consolidates what is already implied in the existing Island Plan. That statement will be published very shortly.

3.12.4 Senator T.A. Vallois:

It is no surprise to anyone that a number of concerns have been raised by members of the public around the hospital build, so I will cut to the chase and ask the Minister: has the bridging Island Plan been manipulated to ensure the Government get the hospital project built as they envisaged?

Deputy J.H. Young:

No. Right early on the question came during the drafting stage and although the officers are doing the work, the Senator will know the drafting stage was well over a year ago and the States made a decision to adopt the development of the hospital at Overdale, I believe it was back in November 2018. That was a decision I took no part in. I absolved myself from any meetings and never had any discussion, any political meeting, including States meetings, when the hospital project was under specific consideration. Therefore, I avoided that but I do have to make a choice whether or not the

States was adopted effectively within the timeframe we published it. The Senator knows there are objections made at the inquiry, and the inspector is due to report on that, and the States will have that report when they decide whether that policy stays or not. That will be the critical matter so I think the processes there can deal with this matter.

3.12.5 Senator T.A. Vallois:

Can I ask the Minister, he referred to a summation being expected between old and new plans; what types of things does he expect to be seen in that summation in terms of the fact that we have seen the rejection of a previous hospital plan on the current site and now a planned new build on the new site that may be higher than we expect? What kind of summation does the Minister expect to see from an independent inspector?

Deputy J.H. Young:

I think I should probably explain my remarks earlier about public interest test a bit better. My expectation would be, and I have not seen the draft statement yet but it will be produced, will set out policies such as green zone policy, the green backdrop zone policy, the skyline policy and so on. Those policies will not be very substantially changed but the policies do include a specific policy that says such considerations can be set aside if they are in the overriding public interest. That is now proposed to be an explicit policy in those new policies in the draft plan. That was never the case an explicit one but it has always been, in all consideration, a test in law, a public interest test. So, please wait for the statement. Senator, and that will be there as soon as I can get it out there.

The Bailiff:

Deputy Morel, you were seeking a point of clarification. I am afraid that is not possible within the context of an answer to a question. You can only seek a point of clarification from a speech if the speaker gives way.

3.12.6 The Deputy of St. Martin:

Is it the Minister's intention to determine this application during the States recess after 10th May?

Deputy J.H. Young:

I will take that decision at the time the inspector's report comes. I do not want to prejudge that. I want to get to the point where the inquiry has happened, it has been dealt fairly, and then the inspector has a chance to properly produce that report for my consideration and I will make that decision at that time. I should tell Members, if it turns out that the bridging Island Plan gets modified it will be open to me to postpone the inquiry. I want to see the thing through the various stages.

3.12.7 The Deputy of St. Martin:

Maybe I should rephrase the question like this. Would it be the Minister's intention to determine this application after 10th May if the inspector's recommendation does not arrive on his desk by that date?

Deputy J.H. Young:

Could you clarify the question? What date is the Deputy referring to?

The Bailiff:

10th May.

Deputy J.H. Young:

I am unable to answer that question at the moment. The answer is it depends on the circumstances. I do not want to be bound on something and committed irretrievably before I have seen the substance of what I am being asked to decide.

3.12.8 Deputy K.F. Morel:

In reference to my point, the Minister said that Overdale was chosen by the States in 2018 but it was in 2020. I wanted to give him the opportunity to correct that on the record.

The Bailiff:

Do you wish to ask a question, Deputy?

Deputy K.F. Morel:

Yes, Sir.

The Bailiff:

If you would ask your question, then.

Deputy K.F. Morel:

As Senator Vallois mentioned, I have also received plenty of communications concerned about the situation with the bridging Island Plan and the existing Island Plan and the new hospital planning inquiry. In reference to my previous supplementary questions, is the Minister at all concerned that Islanders could lose faith in the integrity of the planning system if they are not satisfied that this is a very fair planning inquiry for the hospital?

[15:15]

Deputy J.H. Young:

Yes, I would have failed, and I apologise for that error. My recollection was, and I am sorry I had the sequence wrong, there was a proposition to rescind previous decisions on the hospital and I may have not got the timing right about Overdale but it was certainly before the draft plan was published. Yes, it would be my concern and my preferred way of dealing with this is to let the inquiry happen and listen to what takes place. It will be screened live and we will all hear how successful it is and how much confidence people have, and if there are problems they will come to light. That is why I do not want to prejudge what actions I would take until I know that is the case. But it would be my concern. It is my duty to maintain public confidence in the planning system as best I can.

3.12.9 Deputy K.F. Morel:

Waiting for the inquiry to conclude is fine for maintaining faith in the planning system but to maintain faith in the planning inquiry itself for the hospital, surely the Minister would agree he has to do work before the planning inquiry to ensure that Islanders have faith in it.

Deputy J.H. Young:

Yes, that is why I have asked to produce this statement of the policies and asked the officers to publish their response to the Save Jersey's Heritage letter that they have put into the public domain, and therefore it is right that the response goes into the public domain in the spirit of openness.

Those 2 pieces of correspondence will be made available to the inspector and if he says he does not think this procedure is right I will have to respond to that and take that on board.

3.12.10 Senator K.L. Moore:

Yesterday the Future Hospital Review Panel wrote to the Minister to express concern about the lack of time between the closing of the debate on the bridging Island Plan and the beginning of the inquiry into the hospital planning application. How will the Minister respond to the Future Hospital Review Panel?

Deputy J.H. Young:

I have asked the officers to see whether there is any latitude in the timetable and discuss this with the inspector. I received that letter yesterday afternoon so I would like a bit more time to respond to it than a couple of hours, if I may.

3.12.11 Senator K.L. Moore:

Does the Minister accept it is likely that there will be amendments in the bridging Island Plan debate that might have a material impact upon the ability of the inspector to consider the hospital application?

Deputy J.H. Young:

Yes, absolutely. As the Senator knows, as soon as I am able to have received the inspector's report on the bridging Island Plan it will be published. It is probably imminent, within the next 7 to 10 days. Members then have the ability to bring in amendments to matters referred to in the report and there is the opportunity for Members to bring amendments on policies affecting the hospital. If those amendments are carried, it is possible that will impact on the inquiry and that could result in the inquiry being put off to a later date according to how the States decides to treat those amendments. Yes, I accept that is procedurally possible but at the moment we have to deal with what is.

3.12.12 The Connétable of St. Helier:

Last week the St. Helier Roads Committee met in open session and spent 2½ hours formulating the strongest possible objections to the application, particularly in respect of environmental collateral damage but also heritage concerns. Is there a real danger that these concerns will be swept aside if a new policy is approved by the States that gives the inspector carte blanche overall and override these kinds of concerns?

Deputy J.H. Young:

All planning decisions are a balance of consideration between different policies. It is not a case of all policy directions always point one way. Pretty well every planning application has to be made and the relative balance or weight being given to different policies in those decisions. That is the job of the decision-maker, in this case, the best qualified person, which is the planning inspector, will make those judgments. At the end of the day there is the political call on that. I probably summarised what the policy differences are between the old and new plans. I do not have the wording to hand. If the Constable can reserve judgment until he has seen that statement that will set that out a little more clearly than I have been able to do.