

3.13 The Deputy of St. Mary of the Minister for Planning and Environment regarding the management of the expectations of planning applicants.

Can the Minister advise how many times over the last 10 years a developer, large or small, has been given a “reasonable” or “justifiable” expectation by officers or politicians that a planning permission will be given in the future, even as the application under consideration was being turned down?

Senator F.E. Cohen (The Minister for Planning and Environment):

It is impossible to advise on the number of times that a reasonable expectation has arisen in the last 10 years. Well over 20,000 applications have been determined in that time and many more requests for advice have been processed. Furthermore, our computer system is not designed to retrieve this kind of information, however, I can say we do not usually offer commitment at officer level. Any advice now given by officers is on the clear understanding that it does not bind the Minister. Indeed, I introduced a requirement that all officers below Assistant Director level must append a footnote to this effect on all correspondence. Often when a proposal is refused, advice will be given on alternatives that may potentially be appropriate. This advice is always on the basis that it cannot compromise the application process and thus may fail at the consultation or determination phase. Procedures have been further tightened since the new Planning Law came into force and since I introduced third party appeals. Clearly, the possibility of a third party appeal prevents any certainty being offered on applications against which certain objections have been submitted.

3.13.1 The Deputy of St. Mary:

I thank the Minister for the clarification about officers and the advice they give to prospective applicants and the rider that now goes on all letters; that is good to know. But my question was really aimed at teasing out the issues around when the Minister - because it does seem to be the Minister - gives an applicant, gives a developer this reasonable and justifiable expectation and the balloon goes up. There are 2 examples in very recent times: one is Field 530A and the other is Mr. Shepherd on Field 621; it was not him but a previous Minister. I just wonder whether the Minister has any comments on how the public feel about this and whether he is going to do anything about it.

Senator F.E. Cohen:

All I can say is, as the Deputy has clarified, I did not have anything to do with the original decision on Field 621 and as far as 530A is concerned, this comment was made at the time of an open public hearing. Since that time, I understand the developers are now revising the scheme to contain the development within the built-up area anyway.

3.13.2 Senator B.E. Shenton:

The Minister’s concession on Field 621 is surprising. The Royal Court specifically decided in 2007 in the case of *McCarthy v Planning and Environment Minister* that the Minister was not bound by a favourable indication given without due process and that is to say without formal application or consulting with relevant persons. Indeed, the Royal Court said: “... in a crowded Island, it is now recognised that there are a number of stakeholders in the planning process. Unless there has been due process and the Minister has reached a considered decision, he should not be held to indications by officials or other informal promises or hints that planning permission will be granted.” The Planning and Building (Jersey) Law 2006 marks a watershed in

the development of this Island. Is the Minister aware of the case of *McCarthy v Planning and Environment Minister* and would he be willing to publish the advice given to him by law officers to the relevant scrutiny panel given that he has conceded, even though the advice looks strongly the other way?

[11:15]

Senator F.E. Cohen:

The Senator continues his efforts to undermine everything I try to deliver at the Planning Department. I find his question quite extraordinary. He purposely manipulates the McCarthy decision. The reality in the case of Field 621 was that the Planning Committee of the day considered the matter as part of open and proper process and decided that one house would be appropriate on the site. That has never been in question. All that I have done in conceding the appeal is confirm the decision of the committee in 2004. Thank you.

3.13.3 Deputy J.M. Maçon:

Could the Minister please advise who the President of the Committee was on the day?

Senator F.E. Cohen:

I am not entirely sure. I think it may have been Senator Ozouf or it could have been his predecessor.

3.13.4 The Deputy of St. Mary:

To clarify, I think it was Senator Ozouf. I seem to remember reading that. Yes, I just want to ask the Minister again, I suppose, whether he understands the public concern in this area about what I would call in shorthand the “nods and winks” system and what constraints he puts on himself giving nods and winks?

The Deputy Bailiff:

You have the nod, Minister.

Senator F.E. Cohen:

Nods and winks are not given. What are given is indications of what may be appropriate but we now have a system where third party appeals apply and therefore it is a matter of course that no absolute commitment can be given. The whole objective of improving the process of planning and improving the buildings, which, of course, is what I have set out to do, is that we do have to encourage developers and applicants to produce the best quality buildings for our Island. Part of that process is naturally going to be giving them an indication of what may be appropriate, albeit the caveat is that the normal process has to be gone through before determination is got to.