

2.11 Deputy J.H. Young of the Minister for Planning and Environment regarding changes to the Planning process:

Will the Minister advise the Assembly of the remedial action he proposes to take and the lessons he draws for future planning decisions from the recent judgment of the Royal Court, which concluded it would not have approved the development in La Rue au Moestre, which it considered would overbear, overlook and seriously affect the privacy of the properties of the objectors in Le Quai Bisson?

Deputy R.C. Duhamel (The Minister for Planning and Environment):

The comments I made in the previous question about the preface to the question still apply. Notwithstanding that, the court dismissed the appeal and in doing so directed that an extra condition be imposed regarding the means of enclosure to the external terrace, requiring a solid raised planter wall rather than a balustrade with obscure glazing. With regard to the question of what further remedial action I propose to take on this matter, the honest answer is none. There is none to take. This appeal was a challenge which did not overturn the Minister's decision and while the court may have chosen to make another decision had it been the Minister, it reminded itself that it is the test of reasonableness that is under consideration and not the planning merits. All due process was followed in the consideration and determination of this application and following the lodging of the third party appeal the court has delivered its judgment. Likewise, in the context of the wider issue of the jurisdiction of the court in dealing with planning appeals, with regard to the test of reasonableness as opposed to the planning merits-based appeal system, this is an issue on which States Members and the public will be able to air their views following the proposed publication of the Green Paper on the planning appeal system.

2.11.1 Deputy J.H. Young:

If I may raise 2 points to ask the Minister to clarify. The Minister referred to due process being followed in this application. In terms of lessons learned, is it correct, can he confirm, that prior to the application being determined no visit was made to the appellant's property - which was immediately below the application site - to consider it and that the first time that a visit was made it was by the Royal Court when they visited the appellant's property?

Deputy R.C. Duhamel:

I am not able to do that other than to say that I did visit the vicinity of the neighbourhood to see for myself what the overbearing would be, and indeed if we stray into the legal reasons for the court coming to a particular decision as to the non-overbearing nature of the property, it does particularly state that from the premises that are being asked to be built there is no overlooking of the ground floor windows. There is perhaps a dormer window which would only just be below the level of the terrace and, therefore, be easily seen from the terrace but the provision of a planter wall would minimise those views, as indeed the efforts that the applicant had made in order to reposition the windows so that in the main the overlooking properties were minimised or taken out of the application. I do not think it is right that we should particularly go into the details of a particular court case and ask questions in the House on those details because, as your comments previously referred to, Sir, the court is the court and the politics of the situation is something different.

The Deputy Bailiff:

I thought the question, Minister, was whether or not either the Minister or anyone from the department had paid a visit to the premises.

Deputy R.C. Duhamel:

I answered that. I said I had not paid a visit to the person's premises. I had viewed the site from above and viewed it from below, but I had not viewed it from the woman's bedroom window.
[Laughter]

The Deputy Bailiff:

I am sure she is very relieved.

2.11.2 Deputy J.H. Young:

Thank you for clarifying my question. If I could ask the Minister, the Minister has dealt with his own position and I know it has caused some amusement about standing in the appellant's bedroom, but having stood there myself and seen it yesterday **[Laughter]** at the invitation of the householder and saw the prejudice caused, I think I would ask the Minister ... the Minister has confirmed that he has not seen the prejudice, but could he confirm whether the planning officers did so before they recommended this for approval?

Deputy R.C. Duhamel:

I am not able to do that. I will come back to the Deputy.

2.11.3 Deputy J.H. Young:

If I may, one final supplementary. The Minister said that there was no remedial action to take in this matter. Could I ask him whether he has referred to the building bylaws which deal with the structural safety of developments and whether he is aware that this property is to be constructed on a near vertical rock face and whether he has seen the structural reports that refer to the rubble stone and the history of landslips? Would he be able to look at attaching a condition to the consent that will make it null and void if it cannot be safely constructed?

Deputy R.C. Duhamel:

Indeed, if the Deputy has a chance to read the file, that is indeed part of the decision that I made when I agreed that it was okay in planning terms. There is a further condition on the Minister having to be satisfied of the ability of the company - whichever company undertakes the work - to satisfactorily in structural terms guarantee virtually that there is minimal chance, if not no chance, of landslips that perhaps might come about if this work is undertaken in a substandard fashion.