

3.4 Deputy J.H. Young of St. Brelade of the Minister for Planning and Environment regarding the prevention of ‘procedural irregularities’ when determining Planning applications:

Would the Minister confirm whether his predecessor’s decision to refuse Planning consent for the redevelopment of the former Zanzibar Restaurant in St. Brelade was recently quashed by a Royal Court of Appeal on the grounds of “procedural irregularities” and, if so, what actions will he be taking to prevent such “irregularities” in the future?

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

Members will be aware of the recent decision by the Royal Court on this planning appeal. I can confirm that the Court has quashed the decision on this case and referred the matter back to me as Minister to reconsider. Prior to this decision I had already signed a new Ministerial Planning Protocol and a new protocol has also been finalised with the Planning Applications Panel and officers. In addition I have also put in place a number of actions to deliver on the Planning Improvement Programme, including process changes, I.T. changes, changes to the delegation levels, changes to the fees order and changes to performance targets. I will also be consulting this year on a new planning merits-based appeal system and increases to the schedule of developments, which do not require planning permission.

[10:00]

3.4.1 Deputy J.H. Young:

Will the new protocol and improvements that the Minister outlined be following the terms of the judgment in future in ensuring that in making future planning decisions that issues of planning policy from the Island Plan take preference over personal design preference of whether for himself or his planning officers thereby ending the ‘Grand Designs’ regime, which has been prevalent under previous administrations?

Deputy R.C. Duhamel:

The Minister for Planning and Environment is only entitled to take into account those things which appear in the Planning Law and it would be wrong for any Minister for Planning and Environment to suggest... or suggest that he would depart from this course of action. The remit of the job is quite clear and I intend to follow that remit.

3.4.2 Deputy J.H. Young:

Could the Minister please clarify whether his new procedure will discourage the holding of individual meetings between either Ministers and Assistant Ministers with applicants without planning officers present to consider designs and give them encouragement on sites, without the presence of third parties?

Deputy R.C. Duhamel:

I am informed that there is a protocol for meeting with applicants. The procedure is outlined quite clearly that any such meetings must necessarily have officers present if they do take place. It is a process that will only be undertaken sparingly and properly recorded so that the full levels of

transparency and openness can be followed. I intend to follow this course of action. The meetings that ostensibly did take place with the previous Minister, although being billed as private meetings did take place with officers present and were recorded.

3.4.3 Deputy M. Tadier:

It is widely believed that in this particular case the reason that the decision had to be reversed was because the former Minister gave too much credence to the fact that there simply were objections from local representatives and did not necessarily pay enough attention to what those objections were and whether they were valid. How will the Minister balance in future those 2 competing objectives, and will he make sure always that objections are based on their validity and not simply on who may be happening to make representations at the time?

Deputy R.C. Duhamel:

As I said earlier, the protocols under which the Minister for Planning and Environment operates in this regard are absolutely clear in my mind. There are certain things that can be taken into account and certain things that cannot. The question in any Minister for Planning and Environment's mind in any decision-making process is that he must only take into account those things which he is entitled to take into account. The Court judgment does suggest that the decision that they came to will form the basis on which a reconsideration can take place. I am happy to go along with the Court. I am happy to go along with the protocols and, indeed, if I fall foul of the rules that I have set up then I fully expect to be chastised for doing so and to perhaps go even further and lose one's position. But in all of these things, the Minister for Planning and Environment's job is one of balance and fairness and to do what it says on the side of the tin, which is to take into account those things which I am entitled to take into account.

3.4.4 Deputy J.A.N. Le Fondré of St. Lawrence:

The Minister referred to the so-called private meetings and that officers were present. Is it not the case that the Courts were critical and did identify that as one of the aspects of their criticism, procedure-wise, on this matter?

Deputy R.C. Duhamel:

It is not right for this House to be used as a further court case in order to go into the decisions of the Court or indeed to make further allegations as to the behaviour of the previous or former Members of this House on the basis that that person is not here to answer those queries. Whatever happened was at meetings that I was not at. However the Court arrived at its decision was down to those Members who formed the decision-making process. I am not really in a position to say what was in their minds what happened on those occasions or indeed whether things happened or did not happen. These things were a matter of judgment by the Court and I think the matter should rest there.

3.4.5 Senator S.C. Ferguson:

The judgment raised the questions of inconsistencies between officers' comments on the first and second applications regarding this site. Will the Minister also take steps to ensure consistency when officers are producing a report?

Deputy R.C. Duhamel:

Absolutely, as far as possible. But sometimes people do change their minds, perhaps on the presentation of further information or indeed after reconsideration of the information that was presented to them in the first place. Planning, as everybody knows, is a matter of judgment and the decisions sometimes are arrived at by different information and different decisions can be taken on the presentation of that information, perhaps on as little as a difference in the order of the items on which the decision has been made. It is not a black and white science. It is a judgmental science and in those terms I will do my best to encourage best practice among the officers to ensure that they do act in a fashion that is open and consistent and one in which the public can have respect and confidence.

3.4.6 Senator S.C. Ferguson:

There is a problem perhaps in a situation with something like planning where you do perhaps sometimes get a Stockholm Syndrome creeping in. How will the Minister deal with that?

Deputy R.C. Duhamel:

If I knew what a Stockholm Syndrome was I probably would be able to deal with it.

3.4.7 Deputy S. Power:

How would the Minister define for Members the difference between normal political representation in an electoral district on a planning application and political interference in the planning process, as has been referred to in this case?

Deputy R.C. Duhamel:

The Court in its judgment did indicate that there were perhaps comments that had been made by the Parish and other Deputies or political Members, and perhaps those comments should not have been relied upon in making a decision. As I said, the key thing in the decision is the suggestion, which I take on board fully, that the Minister will take into account the outcome of this decision and indeed anything else of merit or note when I come to reconsider the application.

3.4.8 Deputy J.H. Young:

Could the Minister confirm that in the new procedures in taking this forward, will he ensure that the rights of Members of this House that represent their constituents on *bona fide* planning policy matters are protected and that where members of the public invite Members of the House to bring forward those matters, that that is facilitated and not regarded as interference and equally it would mean that those representations go to the panel and not delegated to officers?

Deputy R.C. Duhamel:

We have a new process that determines whether or not applications are taken by officers, whether they are taken by my Applications Panel or indeed whether they are material items in which the Minister can substitute his judgment. Those protocols have been agreed by the relevant parties and lay down clearer guidelines as to who can do what when. Notwithstanding that, there is a section within the protocols, which indicate what can be taken into account and what should not be taken into account. I will continue to allow on my watch the raising of any material planning considerations from any parties who have a right and a duty to put those forward, and the protocol has been designed to allow that to happen