

## **5. Questions to Ministers without notice - The Minister for Planning and Environment**

### **The Bailiff:**

Does any other Member wish to ask any questions? Very well. Well, then we will call questions to this Minister to an end and move on to questions to the Minister for Planning and Environment.

### **5.1 Deputy M.R. Higgins:**

For the benefit of Members, I did communicate this or the gist of the question I was going to be asking the Minister today because I missed the time for questions as noted. Will the Minister advise the Assembly what mechanisms exist within his department to safeguard all written and electronic data, communications and documents relating to planning applications and enforcement and explain how long this material is kept?

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

At the moment, along with other departments, the files are kept in paper form, although we are moving towards an electronic application system which inevitably means that all records as far as possible will be kept in an electronic form. Again, in common with other departments, as we move from one system to another system there are going to be issues which will need to be dealt with by the Freedom of Information Laws that are not dealt with by my department but are dealt across departments by other parties to determine which information is held specifically in relation to emails and other comments that are a normal course of events when dealing with planning issues. At the moment some of those documents are kept in written form and appended to the file but in other instances they may well not be deemed to be relevant to the decision-making processes for a particular case. How long are files kept for? I think the normal process is for a minimum of 5 years. We do have files that extend in paper form going back further than that. The department is actively encouraging or being encouraged to prune files on the basis that keeping huge reams of information which might not be relevant to particular applications is deemed to be an unworthwhile process. I think I have covered the points.

### **5.1.1 Deputy M.R. Higgins:**

Supplementary on that. Under the Electronic Communications Law obviously all electronic data is valuable for court cases and so on. Is the department keeping all its emails and any information kept electronically and does it back them up and if so where does it back them up?

### **Deputy R.C. Duhamel:**

Indeed, I am given to understand that departmental emails come under the name of the person that they are sent to and there needs to be a revision of practice in line with the Data Protection Services to ensure that relevant emails are filed accordingly, as indeed letters sent to applicants and replies were in paper form and appended to the file so that we not only have a streamlined system but we have a system that does cover anything of material relevance to the decision making that will take place for a particular case.

### **5.2 Deputy T.A. Vallois St. Saviour:**

In response to Deputy Pitman's written question number 10, I have managed to find the report because it is not M.D.-0119; it is M.D.-0116 with regards to the Energy Efficiency Scheme. But could the Minister explain; he states in that report that: "In the long term even greater progress can be made if the service could be extended into the able to pay sector." Could he explain whether that is currently the case or when that is determined to be?

### **Deputy R.C. Duhamel:**

That is not currently the case and that may or may not come to be, dependent upon requests that are made by my department to myself, to the Minister for Treasury and Resources as part of the

Medium-Term Finance Plan or the next one, to find adequate funding to deal with that particular item in that particular fashion.

### **5.3 Deputy T.M. Pitman:**

Back to the efficiency scheme again. Can the Minister confirm that as part of the £3.7 million already spent within the taxpayer-funded provision of the Energy Efficient Scheme, that neither he nor his directors would have any reason to believe that the department's tendering, procurement and implementation processes of the scheme between 2009 to 2012 resulted in making this department liable for any physical works and administrative duties within private members of the public's homes? If so, can the Minister confirm that the department had qualified procurement managers, quantity surveyors, project managers and risk assessors' expertise, to take on that role? If they did not, why not?

### **Deputy R.C. Duhamel:**

That is quite a long one and I think I would probably need some legal advice in order to assure the Deputy that I was giving him a correct answer.

#### **5.3.1 Deputy T.M. Pitman:**

Supplementary, Sir. When can I expect that answer, with due respect, from the Minister?

### **Deputy R.C. Duhamel:**

I am sure that my officers are hanging on to my every word at the moment and they are already busying themselves in procuring the information for the Deputy.

[16:30]

### **5.4 Deputy J.P.G. Baker St. Helier:**

Can the Minister advise why he has not yet delivered the new fully independent planning appeals process?

### **Deputy R.C. Duhamel:**

The new fully independent planning appeals process is about to be brought to this Assembly and I am told by my officers to expect a lodging on this coming Wednesday. I think in terms of the timetables that are spoken about, when the issues were discussed in the House, we are pretty well bang on.

#### **5.4.1 Deputy J.P.G. Baker:**

Can I have a supplementary and confirm with the Minister that is the appeals process that was recommended by the recent survey to the industry and his officers?

### **Deputy R.C. Duhamel:**

I am not quite sure what the Deputy is getting at.

### **Deputy J.P.G. Baker:**

Just some clarification that the process will be independent and it is aligned with what was unanimously agreed in the recent survey of the industry.

### **Deputy R.C. Duhamel:**

The process being brought forward as part of the legislative process will certainly be independent. The extent of the independence may well be challengeable in terms of some people's opinions but indeed it cannot be described as anything else.

### **5.5. The Deputy of St. Mary:**

The Minister is aware that I have questioned the remit of the Historic Buildings Department with regard to the restrictions placed on homeowners when attempting to improve their properties for maintenance or energy saving purposes. This relates mainly to replacement windows, some with the property listings being considered, something not wanted by the property owners. Has the Minister considered easing these restrictions, which would greatly assist the property owner, easing unnecessary costs, and would also generate much needed work for the building industry in a lot of these situations?

**Deputy R.C. Duhamel:**

The Minister certainly has considered easing the restrictions but equally and probably more importantly the Minister is further reconsidering the reintroduction of historic grants to those persons who do have windows which Islanders think are important and should be repaired in a fashion that the policies imply.

**5.6 The Connétable of St. Helier:**

I amended the Island Plan successfully to enhance the provision of off-street parking for shoppers and visitors to St. Helier. The St. Helier Roads Committee has also emphasised the importance of providing such parking facilities when sites like the Jersey Gas and current police headquarters site are developed for housing. Why then has the Minister recently in his revised planning guidance for the North of Town Masterplan removed this requirement?

**Deputy R.C. Duhamel:**

The Minister has not removed any requirements as such at the moment. The Minister is considering a report that was commissioned by the Transport and Technical Services Department in terms of parking provision in town, particularly in relation to the North of Town Masterplan area and that document is being reviewed by both Ministers at the moment. When it has been reviewed then perhaps the Constable would like to re-ask his question.

**5.7 Deputy R.G. Le Hérissier:**

I wonder if in relation to the Energy Efficiency Scheme, could the Minister explain to the House why his officers play a much broader role, e.g. working with contractors in this scheme as compared to where these schemes are administered elsewhere simply through grants to householders?

**Deputy R.C. Duhamel:**

That is something I cannot really answer other than to say that it has certainly been my experience over the last 20-odd years that Jersey likes to do things the Jersey way.

**5.7.1 Deputy R.G. Le Hérissier:**

While the Jersey way may indeed be wonderful to behold I wonder could the Minister convince the Assembly that the criteria by which grants are given and the involvement of his officers make for a rigorous system?

**Deputy R.C. Duhamel:**

I think I can try and convince the Assembly but it would probably take more than the minute or so that I have got available to answer the question. All I can say in relation to the question that is being asked is that my department and certainly myself are more than happy for the whole of the workings of the scheme to be audited by the audit authorities that the States have at its fingertips for these purposes.

**5.8 Deputy J.H. Young:**

In the light of the Attorney General's reply to my written question number 23 on the Plémont planning inquiry held a year ago, would he now require the inspector he appointed to produce a

written record of this inquiry and will he make that public record so that the people can see the evidence, the policies and the assumptions on which the recommendation was made, particularly about a neighbouring development?

**Deputy R.C. Duhamel:**

I understand that there was a recording of the hearing and the meeting was held in public, so I think generally there is an expectation that that recording should be available to members of the public. On that basis, I think I would have to take legal advice as to whether or not it is within my powers to direct the inspector to allow that hearing minute, if you like, or recording to be released in the way that the Deputy is referring.

**5.8.1 Deputy J.H. Young:**

Supplementary, Sir. The Attorney General's written reply makes it plain, would the Minister not agree, that the Minister is able to direct the inspector and that it is the Minister's decision as to what he does with that?

**Deputy R.C. Duhamel:**

I do not think my reading of the answers to 23 and the question can be interpreted in the same way as the Attorney General has worded them. I think under "Conduct of Hearings" it says that: "Hearings shall be in public [blah, blah, blah] and the inspector shall cause a record to be made of the hearing." But I think what is being referred to in the answer to the question that Deputy Young has placed, I am not quite sure whether or not there is a specific ability of the Minister to insist that that recording be made public. If indeed I do have those powers then I am more than happy, in the interests of open and fair proceedings to ask for that to happen. But I will have to take advice.

**Deputy J.H. Young**

Sorry, Sir, can I have a second ...

**The Bailiff:**

I think you have made your point and the Minister is going to look into it and if he has got the power he will do it.

**5.9 Connétable J.L.S. Gallichan of Trinity:**

As the Minister is responsible for the Bouley Bay car park, could he inform the Parish or general public who gave permission for trees to be cut and ramps to be placed in the edge of that car park for the cyclists to use?

**Deputy R.C. Duhamel:**

This is not something that I have been briefed about but I will come back to the Constable in due course and other Members of the Assembly with the information he seeks.

**5.9.1 The Connétable of Trinity:**

Also, supplementary, could he get the branchage cut before Thursday because it is National Hill Climb Day? Just to inform you, they have received a £50 fine for that infraction.

**Deputy R.C. Duhamel:**

If there are any particular health and safety issues about reducing the size of the trees or plants to enable other sporting facilities to go on, then, yes, I am more than happy to have the work done.

**5.10 Deputy R.J. Rondel of St. Helier:**

Is the Minister able to provide the Assembly with an update of the urgent proposal for an electricity substation to be positioned at or around Westmount area?

**Deputy R.C. Duhamel:**

I think meetings and discussions are taking place with the Planning Department, the Minister for Planning, the Constable, the Roads Committee and indeed a whole stack of other persons who are involved. These things do inevitably take a little while to sort out although, as current records go by, I think we are ahead of the game. I am due to meet with the representatives from the electricity company at the end of the week and in the meantime permissions are being sought through the Constable by the holding of public assembly hearings to be able to be in a position for him to sign off on an application for the facility that is being spoken about.

**5.11 Senator L.J. Farnham:**

Could the Minister explain the current process for the removal of seaweed from the beaches and what happens reference its disposal? Will he also undertake to ask his department to remove any large amounts of rotting seaweed that is currently sitting on certain of the Islands' popular beaches?

**Deputy R.C. Duhamel:**

This is an area of expertise that is shared with the Transport and Technical Services. It is all done under specific F.E.P.A. (Food and Environment Protection Act) licences. We had the same issues last year. What has happened since last year is that there have been at least 2, to my knowledge, independent companies who have set up in order to offer commercial opportunities by the collecting of the green seaweed and to make some money out of their export. I am told that from E.D.D. (Economic Development Department) and T.T.S. work that both of these negotiations are well ahead and certainly we may see the occurrences of seaweed piling up and rotting and stinking as something that is relegated to the history bin.

**5.12 Deputy J.M. Maçon:**

With the abandonment of or the failure to progress the H3 policy, what alternatives will the Minister be introducing and when, and, if not, why not?

**Deputy R.C. Duhamel:**

As the Deputy will know, the proposals to come forward to replace the H3 and H1 sectors as part of the housing chapter of the previous Island Plan are well underway. There was good news last week. The requirements that this Minister was asking for in terms of the definition of affordable homes have been picked up by my officers and agreed and built into the whole chapter. That was a previous sticking point. But notwithstanding that, I think it is green for go and I am being told that something may well happen towards the end of the week.

**5.13 The Connétable of St. Brelade:**

Does the Minister or his department take into account, when considering a planning application, Royal Court judgments that might have been made through a previous third party appeal on a particular site, and, if so, who decides whether that previous court judgment is irrelevant to the current application?

**Deputy R.C. Duhamel:**

I think what happens is that there is a process within the department whereby the officers, when we have appeals and decisions are made by the courts, which would bring about a reinterpretation or reappraisal of policies, the officers are given the opportunity to take that on board as part of a revision of their interpretation of the Island Plan policies. One would hope, seeing as the decisions are also passed down, not just to the Minister but, indeed, to all the members of the Planning Applications Panel, that again they have the time and take the trouble to read those decisions in order to better inform them of any applicability in any other cases that they are judging.

### **5.13.1 The Connétable of St. Brelade:**

Can I have a supplementary? Would the department take any advice from the Law Officers Department if they thought necessary, in regards to a previous Royal Court judgment?

**Deputy R.C. Duhamel:**

I am sure they would ask for the advice. Whether or not they took it into account is debatable. As with any planning decisions, advice that is given is not necessarily black and white and inevitably things have to end up a particular shade of grey and that means juggling the ball, so to speak.

### **5.14 Connétable P.J. Rondel of St. John:**

The Minister mentioned possibly the reintroduction of grants for historic buildings. Would the Minister please tell us how this may work, when it stopped happening and also how it is going to be financed? Thank you.

**Deputy R.C. Duhamel:**

The Constable is no doubt familiar with the previous scheme whereby sums of monies, and they were not large sums of monies by any means, were expended by the department in paying for the difference between the costs of renovation of particular pieces of historic fabric in modern materials as compared to old fashioned materials. So, inevitably we had things like a proportion, maybe 30, 40 per cent or whatever of the costs of replacing wooden windows or whatever would have been grant aided.

[16:45]

I do not necessarily consider that there was a particularly fair or generous system and I think part and parcel of the general dissatisfaction with historic renovation of properties is perhaps that the monies are not sufficiently high in order to compensate, in loose terms, for the Island's interest in those issues. Perhaps rates higher than 40 per cent might be better contemplated.

### **5.14.1 The Connétable of St. John:**

Supplementary, please, Sir. Would any funding be coming from Percentage for Art, by any chance?

**Deputy R.C. Duhamel:**

The Percentage for Art is an area that is up for reconsideration as part of the discussion of policy areas within the Island Plan. It was mooted by the States just recently. That could be a consideration, albeit when one gets into Percentage for Art we have to be really careful that monies that have been asked for specific items are not spent too wide of the mark and the relevance of the levying of those fees are seen to be out of relation to what we are spending it on. There are further demands from the persons ...

**The Bailiff:**

If you could give a concise answer if you would, Minister.

**Deputy R.C. Duhamel:**

Sorry, Sir. I was just going to add that there are a number of departments who would like to spend these monies and I think if I were allowed to levy them at a higher level that would probably impose some excessive demands on those persons in a position to pay for them.

### **5.15 Senator S.C. Ferguson:**

Will the Minister confirm that no new mobile phone masts still require permission from his department?

**Deputy R.C. Duhamel:**

I think they do, and, indeed, casting my mind back to a particular Scrutiny Panel that was set up to look at their location, I still think that they are nonetheless an environmental health hazard, if you like, considerations, which limit or certainly try to limit the extent to where these mobile phone masts might be positioned. In particular I am thinking of ... there was a suggestion that if they were too close to schools and young brains and young minds then perhaps they should find other places to be relocated.

**The Bailiff:**

Very well. That brings questions to the Minister to an end. Now, just before we go on to the next matter, Members will find an R.87 presented by the Privileges and Procedures Committee meeting of the States in 2014 has been presented.

**Deputy M.R. Higgins:**

Before we move on to the next item, it relates again to a report you mentioned earlier. You told us that the report of the Investigatory Powers Commission and Police Procedures Criminal Evidence Law were now pigeonholed. Subsequently they were, I did check and they were not, but I have now got a copy. I have had a chance to look at it. There were items that I was looking for in relation to information that I had received and I see, there is no reference to it, but there is reference to a confidential annex and also there is reference to the fact that you, Sir, as Bailiff, are the person who decides whether this report can be released. How can we, as Members, in a sense, scrutinise or object to or question the report when you are the Bailiff? Can you please give me some guidance as to how I can raise these issues and properly examine and scrutinise this report?

**The Bailiff:**

That is what the law provides. The law provides that, after consultation with the Commissioner, and it is his report, not mine, he produces it and if he recommends that certain matters are confidential and should not be published, then, if I agree with that, that is the position. This is nothing new; this happens every year. I have received from him a confidential annex and I agree with him that to release that into the public domain would be prejudicial to the various interests described and therefore it will not be released.

**Deputy M.R. Higgins:**

Sir, with obvious respect, you are the Bailiff; you make these rules.

**The Bailiff:**

No, I do not make the rules. The States made the rules.

**Deputy M.R. Higgins:**

Well, maybe the States made the rules in the past but again I do find it rather strange that we have reports that contain confidential information which States Members cannot even question and there is no mechanism for States Members to do this. Now, in other parliaments very often there may be, okay, in the U.K. you have Privy Councils or others that would get access to this information and could probably scrutinise this type of legislation. But we appear to have no mechanism here at all. Can you give me any guidance at all how we can try and challenge this?

**The Bailiff:**

No, I am afraid it is in the law, which this Assembly passed. So that is the thing. We all have to operate within the law, I am afraid.

**Deputy M.R. Higgins:**

I will bring a proposition to the start of the next session, then, Sir. Thank you.

**The Bailiff:**

Very well. So, then we come on to the next matter, which is a personal statement from Senator Bailhache to do with the reading of confidential papers in public view.