

3. Oral Questions

3.1 Deputy J.H. Young of St. Brelade of the Attorney General regarding the review of appeals made against decisions of the Minister for Planning and Environment by the Court of Appeal:

Will the Attorney General inform the Assembly whether Royal Court judgments in appeals made against decisions made by the Minister under the Planning and Building Law are subject to review by the Court of Appeal, and if so whether the appeal procedure is available to litigants in person under the modified planning appeals procedure which protects appellants from costs being awarded against them?

Mr. T.J. Le Cocq Q.C., H.M. Attorney General:

Yes, the Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of the Royal Court when exercising jurisdiction in any civil cause or matter. The modified planning appeals procedure was introduced under the Royal Court Rules 2004 for certain planning appeals. The award of costs, even for appeals under the modified procedure, is at the discretion of the court, however the Practice Direction of the Royal Court for such appeals indicates the Royal Court will only make an award of costs in exceptional circumstances. The modified procedure does not apply in the Court of Appeal. The costs of and incidental to all proceedings in that court are at the discretion of the court. The court has full power to determine by whom and to what extent the costs are to be paid. I think it likely that the Court of Appeal would pay regard to the fact that an appeal arose out of the modified procedure in the Royal Court.

3.1.1 Deputy M.R. Higgins of St. Helier:

Could the Attorney General please explain to me the difference between the appeal that Deputy Young was referring to on the Planning and Building Law; is that a case of the court looking at the procedures adopted by the Planning Department or is it a full hearing? Can he just clarify the situation between the 2 courts? Is the overall Appeal Court looking at all matters to do with the case?

The Attorney General:

There is a right of appeal to the Royal Court from any decision made by the Minister under the Planning and Building Law. The court will apply the normal judgment in determining whether or not the appeal should be allowed. The appeal is, I recall, on the basis of whether or not the decision was unreasonable in all the circumstances of the case. The court will examine the decision and will determine whether on accepted principles it could be characterised as unreasonable or not.

3.1.2 Deputy M.R. Higgins:

In that case the court when it is looking at it will not review, for example, the Island Planning Law and whether, for example, the building should or should not be built, whereas the ultimate Court of Appeal, in this sense, would review everything; is that correct?

The Attorney General:

No, that is not correct. The Royal Court would indeed have regard to the statutory environment in which the decision was made. It would have regard to the policies and procedures under the Island Plan and it would use those factors in determining whether or not the decision was a reasonable one. It would be an unreasonable decision if it was not done in accordance with the law.

3.1.3 Deputy R.G. Le Hérissier of St. Saviour:

Building on what Deputy Higgins has mentioned. Would the Attorney General say that recent cases and indeed public disquiet suggests that if we had a merits-based planning appeal system it

would open up the appeal system in a way that would be much more useful to people who are seriously aggrieved about some of these issues?

The Attorney General:

I am not entirely certain what the Deputy means by “a merits-based planning appeal system”. The court will determine whether or not in its view the decision of the Minister for Planning and Environment was reasonable in all of the circumstances of the case. It cannot avoid, in doing so, forming a view as to whether or not it was a reasonable decision. That seems to me to go without saying. I am not sure what improvement there could be on such a process.

3.1.4 Deputy R.G. Le Hérisssier:

If I could give a little explanation? Would the, for example, Attorney General feel that the appeal system would be much strengthened were people within perhaps constraints, so that every decision was not open and taken to appeal so that the court could, in the end, substitute its decision for the decision, for example, of the Minister or a Planning panel.

The Attorney General:

The court can do that.

The Bailiff:

Do you wish a final question, Deputy Young?

Deputy J.H. Young:

No, Sir, just to thank the Attorney General for his answers.