

**WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT  
BY DEPUTY J.H.YOUNG OF ST BRELADE  
ANSWER TO BE TABLED ON TUESDAY 9th SEPTEMBER 2014**

**Question**

Will the Minister inform the Assembly whether any progress has been made by the Planning Department in implementing the essential improvements required to current planning enforcement procedures as identified in the reports of the Reg's Skips Inquiry, the States Complaints Board and most recently the Planning Officers' Society and would he explain why there has been such a long delay in dealing with this matter and ensure that the States receive a full and detailed report outlining the remedial action taken?

**Answer**

In replying to this question I would like to provide additional information to help put my answer in context.

In 2013, POS Enterprises (POSe), the operational arm of the Planning Officers Society, was appointed to provide a team to visit the States of Jersey to do the following:

- take a forward look at how the planning service might develop over the next three years, to assist in focusing resources and efforts;
- consider how plan making for the Island might develop, in the light of relevant experience within the UK planning systems;
- make an independent assessment of how the Island's planning system effectively balances environmental protection, heritage and the social needs of the Island against the need to see sustained economic performance and in the light of the Island's long term strategic aims;
- review delivery of the recommendations of past reviews to identify any outstanding recommendations which might be seen as priorities in the context of the ideas for future development of the service.

Three past reviews were identified for examination:

- The Shepley Review of 2005 – which was intended to guide planning and building functions at the advent of Ministerial Government;
- The POS Enterprises Process Improvement Programme (PIP) review of the development control service in 2010 – which was commissioned in response to a Committee of Inquiry held earlier that year focusing on a specific high profile planning enforcement case;
- The Reg's Skips Committee of Inquiry Report 2 of 2011 – which endorsed the improvements proposed by the PIP review and made additional recommendations about elements of the service and its operational relationship with other States departments.

The *POS Enterprises Shaping the Jersey Planning System for the Future* report was published by the department earlier this year and is available on the States website. Annex C, D and E of the report set out the progress made against each of the above previous report recommendations. These Annexes clearly show that most recommendations have been implemented and of those that have not been implemented, some have been overtaken by events and others are being progressed as Department resources allow. The report also recognised the important strides made in improving planning performance, protocols and information technology, and its recommendations are forming a useful basis to develop and evolve our planning practice over the next three years.

In relation to the planning and building enforcement function, the report acknowledged that a separate internal review was being undertaken by the Director of Environment (further details below) and it would be inappropriate for the POS review to comment in any detail on further action to be taken in this area. It did note that the enforcement policy and procedure guidance still didn't incorporate policy priorities and there needed to be strong and clear leadership and management provided to the enforcement team.

One recommendation was made in this report relating specifically to enforcement procedures, as follows:

Recommendation 7.28

Arrangements should be made, at Director level, to complete the work on the following:

Point 3: A set of standard enforcement procedures and user guides, once the current internal review has reported and new arrangements are in place.

This recommendation was identified and captured in the internal review referred to below.

In October 2013, an internal review of how the planning and building enforcement service operates was requested by the Chief Officer of the Department for the Environment. This was prompted by an increase in Freedom of Information requests, requests under data protection processes, and individual cases and court cases highlighting the need to ask whether the administration of complaints through to investigation and possible formal enforcement action needed to be reviewed.

My department published the *Shaping the Jersey Planning and Building Enforcement System for the Future – A Review – February 2014* report earlier this year and it is available on the States of Jersey website. The report includes recommendations and underpins the way the service develops into the future. I reviewed the report and recommendations with the Chief Officer of the department and an implementation plan was drawn up.

Appendix A below provides comment on each of the recommendation. Some recommendations have been completed and all others are being progressed.

With regard to the States Complaints Board findings referred to in the Deputy's question, and as confirmed in my answer to Written Question 1240 (18<sup>th</sup> March 2014), my response to the Complaints Board findings have already been published and heard in public.

I renew my invitation to the Deputy to meet with me and some of my department senior officers to discuss enforcement activities further. I hope that we can clarify matters and answer any specific questions Deputy Young has more easily in a face to face meeting.

**Appendix A: Shaping the Jersey Planning & Building Enforcement System for the Future – A Review – February 2014**

Ref	Recommendation	Commentary
	<b>Policy and Process</b>	
1.1	Policies and procedures should be captured and documented and made into operational reference document which can be published. Significant work was put into the drafting of policies and procedures documents by the team and these would be a useful starting point for this task.	This is a significant piece of work which will lay the foundations for a consistent and professional approach to enforcement. Owing to resource implications, completion is likely to be year-end, 2014.
1.2	Practice Note 4 should be re-published to reflect the policies and procedures. There are already in existence some standard operational documents and templates including letters and notices to parties involved in complaints and notifications of suspected breaches.	This work forms an integral part of 1.1 above
1.3	A suite of standard documents should be established that clearly refer to the policies and procedures as appropriate and should be a reflection of the different stages of the enforcement process.	On-going, as and when documentation is required. Enforcement Notices are now consistently and accurately worded and state policy based reasons for taking the action.
1.4	A protocol for the investigation of complaints should be established that applies to all complaints and generates a “story of investigation”. Part of that process should include that everyone involved in the process is kept informed of the investigation at appropriate points and any actions or decisions made in connection with a complaint would be recorded and explained.	Completed and will form part of 1.1 above
1.5	Prior to a notice being served, a review of the case by the LOD should first ensure that the notice is an appropriate way of pursuing the breach and that the steps up to the point of serving the notice, would be considered reasonable in court.	Completed
1.6	On a further point the LOD suggested that they should be tasked with ensuring that any Notice is served on appropriate persons by first agreeing who those parties are.	Completed
1.7	Appropriately branded Department specific letters / forms and communications including witness statement forms should be drafted and agreed upon by ET and management and used instead of those currently being used. All standard forms and templates should be reviewed not only by the management team but by a third party with a sound understanding of enforcement and planning issues. The documents should be bespoke and appropriate for use in investigations and for presentation to court.	Completion by end September 2014
1.8	The policies should include a scale of prioritisation. Other jurisdictions set these priorities and it should not be too difficult to apply them to the context of Jersey.	Completed, with a bespoke triage system for Jersey Planning and Building.
	<b>Systems and Admin</b>	
2.1	Administrative support should be provided to the team out of current resources. From discussions, this need not be overly onerous a requirement and should not prejudice other workloads.	Completed – however, resource implications mean that full technical support is not always possible.

2.2	A proper understanding of the capabilities of the Merlin system should be explored, discussed, and the findings used to support the creation of the process notes discussed above.	Merlin is not fully adapted to the Compliance function and resource implications mean that Compliance Officers still have to adapt to the IT systems rather than vice versa.
2.3	Along with understanding Merlin, I@W should be integrated into the operation of the team in order to capture and manage all documentation generated in an investigation.	Ongoing
2.4	A set of process notes should be drafted with simple instructions on handling and recording information consistently. This should be based on methods agreed by enforcement officers and their management in conjunction with a Merlin expert.	This work forms an integral part of 1.1 above. A draft is currently undergoing scrutiny with the Law Officers.
2.5	A system for formally notifying applications / decisions would be a big step forward in opening communication. Weekly publication and decision lists should be actively shared with the team and acknowledgement recorded that they have been looked at.	Completed
2.6	A system should be instigated whereby the ET regularly (suggest monthly) report back to the planning and building Directors on workload and cases.	Monthly monitoring reports are now produced and circulated to Directors
	<b>Records Management</b>	
3.1	The management of the ET should work with the officers, and the department officer who has been given the mandate to deal with data protection issues to generate a robust system which works for all parties.	Ongoing. Draft produced.
3.2	There should be included in the process of issuing a Notice a definitive step of including the Notice on the register. There should then be a means to indicate where a Notice has subsequently been withdrawn on that Register. The Register should be made available online.	Completed, other than the on-line Register. The States' Web-Team is currently costing this element of work.
3.3	Letters must be generated to identify key stages of an investigation and to set out the formal position of the department and e-mail should only be used for informal correspondence. In conjunction with the implementation of Recommendation 2.2. – the use of I@W – the ET will ensure the proper storage and retrieval of all documentation in connection with investigations.	With growing customer expectation of email correspondence, the Team still uses email where it is obviously the preferred method of communication with a customer. The Department is still moving towards a paperless office and email as a recognised form of communication forms part of this strategy.
	<b>Enforcement Culture and Officer Behaviour</b>	
4.1	An agreed plan of ongoing training for enforcement officers and those involved in their supervision should be put in place and this should be updated as required.	Compliance Officers have attended National courses / conferences over the last two years. However, owing to budgetary constraints, funding for training is very limited.  The Team is affiliated to the National Association of Planning Enforcement.

4.2	It is recommended that appropriate training be sought by the DoE to give the ET as many tools as are required in order to carry out their function in the manner discussed.	As 4.1 above
4.3	The team should be renamed as the <i>Planning and Building Compliance Team</i> and the respective post descriptions should be amended accordingly	Completed
5	<b>Consistency of P&amp;B Services Enforcement with broader DoE Enforcement</b>	
5.1	The LOD suggested that ET officers among other SoJ Enforcement teams should liaise, with a view to adopting more common processes as good practice.	The Compliance Team regularly works in partnership with agencies such as Police, Population Office, Income Tax, Tourism as well as other sections within the DoE.
5.2	Cases for prosecution must only proceed with the authorisation of the LOD (Cr).	Completed
6	<b>Management, Location and Officer Support</b>	
6.1	The management line from the team to the CEO should be clearly defined and roles and responsibilities established and communicated internally.	Completed  Compliance Officers report to Compliance Manager who, in turn, reports to Director (Planning) on a weekly basis. A Ministerial & Management meeting is held weekly for information flow in either direction.
6.2	Active caseload management should be introduced. The production of reliable weekly caseload lists of outstanding investigations should commence and then the lists used to hold regular caseload discussions with individual officers, within the team and with internal customers of the team.	Completed
6.3	It is recommended that an office facility be found for the ET within the main operating body of Planning and Building Control officers at South Hill and that consideration should also be given to their need for a secure and soundproof room for the carrying out of recorded interviews under caution.	Completed
7	<b>Performance Management Reporting</b>	
7.1	A better understanding and use of the merlin system (as previously recommended) will enable performance information to be extracted. This ability will enable targets to be set and performance against these targets should be published and proactively made available to customers of the department.	Monthly monitoring reports are now produced and circulated to Directors.  Additional targets should be fed into the next Departmental Business Plan. The monitoring reports are not yet publically available as we are still checking the reporting mechanism for accuracy and completeness.
8	<b>Other Issues</b>	
8.1	The suitability of Article 7 of the Planning and Building (Jersey) Law 2002 should be examined. It could prove to be crucial in protecting matters of acknowledged interest and providing a deterrent to unauthorised development but only if it is demonstrated as a successful tool will it carry any credibility.	Completed