

20.10.20

5 Deputy M.R. Higgins of St. Helier of the Attorney General regarding enforcement notice referrals to the Law Officers' Department from the Department of Infrastructure, Housing and Environment (OQ.281/2020):

Will Her Majesty's Attorney General advise Members of the number of enforcement notice referrals his department has received from the Department of the Environment and Planning each year over the last 4 years and the number of prosecutions that have resulted from any such referrals?

Mr. M. Jowitt, H.M. Solicitor General (Rapporteur):

Sorry, it is the Solicitor General. In answer to the Deputy's question, and just by way of explanation, enforcement notices are issued under Article 40 of the Planning and Building Law where someone breaches planning conditions or breaches building controls. The purpose of an enforcement notice is to require that person to come back into compliance within a stipulated time, failing which they commit an offence under Article 44 of the law. It is in those circumstances that the enforcement notice is referred to the Attorney General for him to decide whether to prosecute. Specifically to answer the Deputy's question, the Planning Department made 2 such referrals in 2016, one in 2017 and one in 2019. Of those matters, one of the 2 in 2016, led to a prosecution and a conviction. Building Control referred 3 enforcement notices in 2019, one of which led to a prosecution and a conviction.

Deputy M.R. Higgins:

Sorry, a point of clarification?

The Bailiff:

No, you can have a supplementary question, Deputy.

Deputy M.R. Higgins:

Yes, I misheard what he said, I was trying to get the figures. If he could repeat what he said about 2019 first.

The Solicitor General:

Yes, of course. In 2019, Building Control referred 3 enforcement notices to the Attorney General, one of which resulted in a prosecution and a conviction. The Planning Department made 2 referrals in 2016, one of which led to prosecution and conviction, one in 2017 and one in 2019.

4.5.1 Deputy M.R. Higgins:

Could I ask the Solicitor General how long it takes to process one of these notifications from the department if they are wanting to recommend for prosecution? How long a period of time does it take for your department to process them?

The Solicitor General:

I do not think there is any simple answer to that. It is something of a "how long is a piece of string?" question. It depends on the complexity of the matter, it depends on the extent of evidence which is already available or any further evidence which might need to be obtained. It depends upon the time it takes to analyse the case, advise on it, the time it then takes to consider, first of all, whether there is sufficiency of evidence and thereafter whether a prosecution is in the public interest. So there is no simple answer, I am afraid.

Deputy M.R. Higgins:

Okay, I thank the Solicitor General for his answer.

4.5.2 Deputy J.H. Young:

In thanking the Solicitor General for his answer, could he just confirm whether I am correct in believing that once a notice is served by either the Planning or the Building Control teams with a period of time to bring the matter into compliance, there is a right of an appeal on that notice and could he advise the Assembly to whom that appeal is, please, under the law?

The Solicitor General:

It is correct that there is a right of appeal. I do not immediately know to whom that right of appeal lies but I will look into that, if I may, and answer it when I have the answer.

4.5.3 Deputy J.H. Young:

Could I ask the Solicitor General to confirm whether my understanding is correct that it is the Minister that has that responsibility under the law to deal with the appeal after due process? Would he further confirm that it would therefore be inappropriate for a Minister to become involved in these enforcement actions given that situation?

The Bailiff:

Well, the Solicitor General has already said that he does not know the answer to that particular question. **[Interruption]** Someone appears to have been pushed over the edge. I am wondering if there is any possibility of stopping the ... Please bear with me for just a moment. Very well, I will continue. No, I cannot, there is a huge echo and feedback. Very well, I am afraid there is still far too much feedback, I am suspending the sitting for 5 minutes to see if we can cure this technical difficulty.

ADJOURNMENT

[10:30]

The Bailiff:

Can everybody now hear me? Excellent, then we can continue. We will add obviously 10 minutes of injury time to the timing for finishing these questions. Deputy Higgins, I think I cut you short, probably unfairly. Did you wish to have a final supplementary in the question to the Attorney General?

4.5.4 Deputy M.R. Higgins:

Yes, thank you. Could I just ask the Attorney General, he referred to one case being received by the department in 2017, he did not state whether it was under Planning law or under Building Control, can he be a bit more specific on that particular question, please?

The Bailiff:

Mr. Solicitor General, are you able to assist?

The Solicitor General:

Yes, my understanding is the 2017 matter was a Planning matter, not a Building Control matter. I think that answers the Deputy's supplementary. I am also in addition able to deal with the earlier supplementary question from the Minister for the Environment. My understanding, looking at the

Planning and Building Law, first of all, there is a right to appeal the issuing of an enforcement notice under Article 109. In fact, the procedure under Article 113, as I have understood it, is that it is an inspector who is appointed by the Judicial Greffier to consider that appeal. In answer to the second part of the question, it would never be appropriate for a Minister to seek to interfere with or influence in any way a decision on whether or not to prosecute an infraction under the Planning and Building Law, which I think may have been the thrust of the Deputy's question but I hope that answer is helpful.