

**STATEMENT OF THE PRESIDENT OF THE ENVIRONMENT AND PUBLIC SERVICES COMMITTEE
ON TUESDAY 12th OCTOBER 2004**

The Environment and Public Services Committee believes the Planning and Building (Jersey) Law 2002 which was introduced in this Assembly in June 2001, is long overdue for implementation.

Its introduction has been delayed primarily because of the costs of establishing the Planning and Building Commission, which provided for third parties to have the same rights of appeal as applicants.

The Committee believes, at some **stage in the future**, a more accessible appeals system should be introduced.

The Committee recognises that the chances of bringing in a new system with the attendant costs to the States, is unattractive in the short-term.

Moreover, it accepts that the current appeal to the Royal Court under the existing Law is a disincentive to prospective appellants, primarily on the basis of costs. They are deterred by the costs of appointing advocates (very few litigate in person in an adversarial process) with no guarantee of success. Equally, they are deterred by the risk of having the Committee's costs awarded against them should they lose the appeal. The costs of appeal can exceed the costs of the proposed development in many cases.

The Committee believes that it does not make good sense to forego the wider benefits of the new Law by withholding resources to be made available to introduce the new Appeals Commission. These benefits include -

- better publicity for applications

- Committee/Sub-Committee consideration of applications in public

- simpler and more effective procedures for the designation of Sites of Special Interest and the protection of trees

- more effective enforcement procedures

- a legal requirement to maintain an up-to-date Island Plan

- new provisions to deal with demolitions and dangerous structures.

Appeals

In the interests of bringing the new Law into being as early as Spring 2005, the Committee wishes to announce that it proposes to bring an amendment to the Law to re-instate the Royal Court as the appellate body - that is, to maintain the current appeals system. This will enable the new Law to be introduced with a human rights compliant appeal procedure.

The Committee has entered discussions with the Bailiff and Court Officers with a view to achieving the benefits of the Appeals Commission but under the aegis of the Royal Court. First, the Committee is investigating the possibility of mediation to filter-out those appeals which are capable of resolution by negotiation. Secondly, it has requested the Royal Court to introduce a system which would enable appeals based solely on planning merits and which do not raise issues to be dealt with more informally.

We are pleased to report that the Bailiff has agreed that rules of court could be made which would allow such appeals to be progressed with more simplicity and less formality. There would be a measure of flexibility and, in general, lawyers would not be involved. We shall be consulting with the Law Society in this regard. Cases raising legal points, and other complex cases, would continue to be dealt with under the current rules for planning appeals.

The Committee envisages a tribunal system under the aegis of the Royal Court which would be non-adversarial, less expensive and would not involve awards of costs against the parties. These provisions would be implemented as resources become available to deal with the additional number of appeals that would arise.

The Committee strongly believes that such a system of appeals has a number of benefits over the provisions of the proposed new Law -

first, it avoids the proliferation of separately established tribunals in this small jurisdiction;

second, it affords the opportunity for appeals to be heard in an appropriate manner, depending on their complexity, by mediation, by written submissions, by informal or by formal court hearings;

following a brief consultation period, the Committee plans to lodge an amendment to the Law in the next few weeks. In effect these changes, which will, should the States agree it, clear the way for the introduction of the new Law, and its other benefits, in the early part of next year.

Third Party Appeals

The current position is that the Law which was approved by the States confers third party appeal rights on any person who makes written representations on the application.

There is no doubt that there will be considerable bureaucracy which would significantly lengthen the appeals process and increase the costs even with the appeal route re-instated to the Royal Court.

As members will be aware, the successor of the original Planning and Environment Committee has considered the third party appeals on a number of occasions. They did not favour any third party right of appeal.

The new Committee has considered the matter afresh and wishes it to be known that it does potentially support a limited form, third party appeal.

The Committee wishes to carry out public consultation on a further amendment to limit the scope of third party appeals. The Committee proposes to commence this consultation within the next few weeks with an intention to bring this to a successful conclusion, with an amendment to the Law early next year with any right being made available in early 2011, subject to the resolution of any budgetary issues.

Details of the draft amendment to re-instate the Royal Court as the appellate body, as well as the proposals for a limited form third party appeal will be on the www.gov.je later this week.

The Committee hopes that members will agree that these two proposals will be regarded as a helpful and positive step forward so that the many benefits of the new law can be brought into effect in the earliest possible course.