

STATES OF JERSEY

Planning and Environment Scrutiny Panel Quarterly Hearing

FRIDAY, 15th JUNE 2012

Panel:

Deputy J.H. Young of St. Brelade (Chairman)
Deputy S.G. Luce of St. Martin

Witnesses:

Deputy R.C. Duhamel of St. Saviour (The Minister for Planning and Environment)
Chief Executive Officer
Deputy Chief Officer and Director for Environment
Business Manager

In attendance:

Scrutiny Officer

[10:02]

Deputy J.H. Young of St. Brelade (Chairman):

Right. I think I will commence. Welcome to the Minister and his team; I will ask him to introduce his team in a moment. This is the second quarterly meeting with the Minister for Planning and Environment. The previous one was held on 23rd June. Some of the items today will be following up matters from the previous meeting and some new items. First of all, Connétable Phil Rondel sends his apologies; he is unable to attend today. He is a member of the panel. He has to attend a funeral and, therefore, it is an unavoidable commitment, but he has given us some questions so he is here, as it were, in absentia. Let me also introduce Deputy Stephen Luce, who I think you know; myself, Deputy John Young, I am Chairman of the Panel; and our Scrutiny Officer. Can I ask you, Minister, please, just for the record, if your team could introduce themselves?

The Minister for Planning and Environment:

Certainly. I am Deputy Duhamel, the Minister.

Chief Executive Officer:

Chief Officer for the Department of the Environment.

Deputy Chief Officer and Director for Environment:
Deputy Chief Officer and Director for Environment.

Business Manager:

Business Manager for the Department of the Environment.

Deputy J.H. Young:

Well, thank you very much. Obviously, members of the public, welcome. Please, if you do need to leave early, if you could leave quietly; the proceedings are being recorded and it is sometimes difficult to hear, so we want to make sure that we get all the details on the record. We plan to conclude the meeting at 11.45 a.m. due to other commitments. We have a number of items on the agenda. We have given that agenda to the Minister's team. First, Housing Policy, we want to follow up on Policy H.3, which is the policy for affordable housing on privately owned sites in the Island Plan. We are going to have a brief discussion, Minister, on that. We are going to talk to the Minister about planning aspects and responsibilities under the Island Plan and the planning law for major States projects, and we have listed 4, which we will spend some time on. We want to talk to the Minister about protection of heritage buildings and ecological sites and also hear some information on the planning appeal system which the Minister has already pledged to review. So that is the scope of the meeting and so, if there are no other comments, I will start by introducing the first item: Housing Policy H.3. Minister, we have referred back to the last quarterly meeting and a number of comments were made there which we would like to follow up. It was said that this important policy in the Island Plan, Policy H.3 (which is the only one we have to secure affordable homes from developments on privately owned sites of more than 6 houses) you told us this is currently on hold until 2 things happen: first of all, 1st January 2012 arrives (which, of course, it has) and you also told us that there was a group of 17 States Members, set up by Senator Cohen, who were meeting to produce supplementary planning guidance which would go back to the States, and you anticipated that that would be lodged in early May. Can you tell us what the current state of progress is with that, please?

The Minister for Planning and Environment:

Yes. The current state of progress is that I am expecting to have the final draft of the S.P.G. (supplementary planning guidance) by 18th June, after which a consultation paper will be open to the media and to other parties for consultation. That process is anticipated to close by 31st July, whereupon reports and propositions will be prepared for the States to achieve a States debate, hopefully by 23rd October.

Deputy J.H. Young:

That is good news to hear that, Minister. I wonder if I might refer back. When we last met in March, you did say then that a draft supplementary planning guidance and viability model was already out to consultation with the industry.

The Minister for Planning and Environment:

Yes. That is right, it has been out to the industry, but the wider consultation has not yet taken place and is due to ...

Deputy J.H. Young:

So there is a 2-stage process, is there, Minister?

The Minister for Planning and Environment:

A 2-stage process.

Deputy J.H. Young:

So you have had consultation with the industry. Can I ask who in the industry that you have had that consultation with?

The Minister for Planning and Environment:

Perhaps the officer is better placed to do that.

Chief Executive Officer:

Yes. We have undertaken quite a range of pre-consultation; probably about 6 months' worth, which is why some of the targets here have slipped by a few months or so. But we have worked with the Jersey Construction Council and the Chamber of Commerce Construction Group. We have met on a number of occasions and, frankly, the people around the table have included developers, big, middle and small across the Island, so we have had constructors, developers, we have had also their own affordable housing expert brought into some of those meetings, so I think we have had a really good cross-section of people, like the Jersey construction industry.

Deputy J.H. Young:

Do you feel that those have been successful; you have got to a point where you have got some consensus and agreement with the industry?

Chief Executive Officer:

In parts, but not always, no. I think it is fair to say that the industry is not entirely content with the principle of the policy. That is a point for consultation and that may well be a point that will not be resolved through consultation.

Deputy J.H. Young:

Deputy Luce wants to ...

Deputy S.G. Luce of St. Martin:

No, just a general question ... sorry, I just want to adjust my microphone further to that, if I might. Is it therefore then your understanding that it is the policy that is holding back applications being made under H.3, or were there other determining factors?

The Minister for Planning and Environment:

No, absolutely not. That is something that has been levelled by a number of more vociferous members of the construction industry, but it is certainly without substance.

Chief Executive Officer:

I think the statistics we have seen, certainly from the Planning side, in terms of what is permitted, what has gone through the system and what is under construction, are at very high levels. We have over 1,500 homes permitted that are ready to be built and we have seen quite high levels of completions in recent years as well. Yes, the industry are saying this is causing them some uncertainty. The uncertainty plays both ways. If an application comes in prior to this policy being approved, then this

requirement will not apply; therefore, that should incentivise applications to come forward more quickly, I would have thought, from the development side of things. I think there are far bigger things in play in the construction market in terms of financing, development, demand for development and consumer behaviour in terms of what they are willing to buy at the moment and what they are willing to commit to financially. I think that is a far bigger driver in the market at the moment than the planning system.

Deputy J.H. Young:

Minister, one of the key issues in the discussions was the question of viability: what is affordable housing? Obviously, from what you have said already, you have a model which sets out some parameters of that. Can you give us any guidance? Are you in a position where you have agreement with the industry on what is affordable housing?

The Minister for Planning and Environment:

I cannot say that we have at the moment, but that is going to be part and parcel of the consultation process.

Deputy J.H. Young:

That is the further consultation?

The Minister for Planning and Environment:

Yes. That is further consultation.

Chief Executive Officer:

Affordable housing is classed as category A housing within the Island Plan, so the Island Plan specifies what is category A housing, and there is a range of types of tenure which would be called category A housing. That ranges from social rented housing, life-long home dwellings for sale or for rent, first-time-buy housing. So there is a mixture of category A homes. So when we say “affordable housing” it is potentially a range of products depending on the need at the time. Discussions we have had with the industry, certainly in relation to this policy specifically, this policy is expected to deliver affordable housing for purchase as opposed to for rent. So we are looking at the States as a housing entity providing rental properties through trusts and its own organisation, but we are looking for the development industry to provide houses for sale, but at the lower level. So that is affordable for purchase.

Deputy J.H. Young:

So therefore, just to sum up then, where you are trying to achieve is the H.3 Policy that says if you have a privately owned site with more than 6 houses, you have to provide a number of units in an affordable market, which includes life-long homes, first-time buyer homes and a whole range of things, but not social rented?

Chief Executive Officer:

Yes, not social rented. I think we have agreed with the industry there are 2 markets: social rented properties are being provided by the States, and there is a big programme of potentially more sites coming forward for that. We have said to industry they are best at providing homes for sale and, really, the type of product will depend on the need at the time. This policy will exist for the remainder of the plan period to 2021 and then beyond, so clearly housing needs will change quite

considerably over that time. So whether it be a first-time-buy type house, whether it be a home-buyer type house, whether it be a life-long home type house, it really does depend on what the need is. There is ...

Deputy J.H. Young:

Sorry, Minister.

The Minister for Planning and Environment:

There is early indication that the larger players within the construction market are quite happy with both the definition of affordable units that we are proposing and, indeed, the suggestions in train for the H.3 policy in terms of the initial provision of 12.5 per cent proportion of affordable units within any large development. Early discussions are taking place with a number of very large site owners in order to deliver on that basis.

Deputy J.H. Young:

That is 12.5 per cent for the initial one to 2 years, was it, or ... because it is phased, is it not?

Chief Executive Officer:

Yes. It is. The plan expects that that percentage will increase to 20 per cent by the end of the plan period. But some of these details about how the mechanism will work will be subject to the planning guidance which will come back to the States Assembly.

Deputy J.H. Young:

Minister, I am sure you are very familiar with the *Housing Affordability Report* that was published by the States Statistics Unit, indicating that now for many, many, or most families in the Island, houses are not affordable. Have you now reached the point where you are clear in your mind what you regard as affordable in terms of a figure, a purchase price?

The Minister for Planning and Environment:

Absolutely. In fact, I thought the report from the Statistics Department was an endorsement of the direction that I was moving in in terms of my definition of affordability. One of the key results from that report was an indication that the majority of persons within that medium kind of earnings bracket would be quite able to afford units for accommodation at around about the £200,000 mark. Quite clearly, there is not a lot of property on the market at that level, and that is really where I am seeking to provide greater clarity in terms of the policies that I am hoping to bring forward.

Deputy J.H. Young:

So you are hoping to achieve affordable homes for buying for £200,000?

The Minister for Planning and Environment:

Yes. Absolutely.

Deputy J.H. Young:

That will be in the draft policy that you are bringing forward?

The Minister for Planning and Environment:

It certainly will be, yes.

Deputy J.H. Young:

Thank you for that. Just to conclude then, so there is a policy that is well advanced. If I understood you correctly, it is ready to go to wider consultation, we have done the consultation with the industry and then it is en route to the States. Can I ask, have the group of 17 States Members that were formed been party to that process?

The Minister for Planning and Environment:

They have been party to that process at an early stage and then there was a bit of a hiatus in terms of the meetings while meetings were undertaken with industry players. There is another meeting scheduled for I think next week, to bring that up to date.

[10:15]

Deputy J.H. Young:

Right. So there was involvement of States Members, you went to the industry, you are now coming back to another meeting of States Members and then it will go to the public?

The Minister for Planning and Environment:

It will not only go to the public, but it will also go to the Council of Ministers.

Deputy J.H. Young:

It has to go to the Council of Ministers first, does it?

The Minister for Planning and Environment:

I do not think it has to but I think under the protocols that most ministries work under, there is a protocol which suggests that it is at least polite, if not the right way to proceed, to try to seek to achieve the buy-in, if you like, of other Ministers through the Council of Ministers before seeking the approval of the States Assembly.

Deputy J.H. Young:

Minister, thank you for that. But would I be right in thinking that under the Island Plan you would have the power to do that? There is a policy there; we are talking about supplementary planning guidance and not a policy, because it is already a policy.

Chief Executive Officer:

Yes, the Minister does have power under the law to approve supplementary planning guidance without recourse to the States Assembly, unless we have specified otherwise. So what we did specify in the Island Plan debate last year was that this policy would specifically come back to the States. So this is one of 2 areas where during the debate it was promised that that would come back to the States, so Homebuy being one of them and H.3 Policy being the other.

Deputy J.H. Young:

Is Homebuy one of the types of housing that would go under H.3, then?

Chief Executive Officer:

Yes, it would be.

Deputy J.H. Young:

But can you clarify where we were on Homebuy? I thought that Homebuy was a legally defective scheme?

The Minister for Planning and Environment:

It is. But there is destined to be a replacement mechanism which achieves similar aims.

Deputy J.H. Young:

Is that going to be ready in time to allow this H.3 Policy that you have been explaining to us to be approved?

The Minister for Planning and Environment:

I think so.

Chief Executive Officer:

Invariably, if it is or it is not, the mechanism under H.3 does not require all of the products to be available now, it is the mechanism in which to secure the different types of housing product; what those housing products are eventually, will be subject to further debate and need at that time.

Deputy J.H. Young:

Just to be clear, what you have said is there will be some first-time buyer homes, there will be some over-55 homes, life-long homes, there will be some replacement Jersey Homebuyer homes under this policy?

Chief Executive Officer:

Potentially, depending on what the need is. When we secure planning gain, we take advice on what housing need exists at the time as to what is appropriate to be delivered through the planning system, so that would depend on the need. If there is a big need for first-time buyer homes, for instance, then we would expect that to be shown on the sites. If there was more of a need for life-long homes, if you like, we would expect those to be more replicated on site. So it will move, because this policy will be in existence for a decade and more; therefore, we cannot be completely specific as to what type of affordable homes will be delivered, it will depend on that need.

The Deputy of St. Martin:

Just leading on from that, who is going to identify the needs? Is that your department who is going to do that? Are the developers then coming up with a plan and saying: "We have identified a need" or is it somewhere in between?

Chief Executive Officer:

It is a bit of everything, if I am being honest. The developer will apply for what they feel the market is requiring at the time. We also take, obviously, advice from the Housing Department as to what the *Housing Needs Survey* is saying, and that is

something that we undertake in conjunction with the Housing Department, so the latest *Housing Needs Survey* will be updated. That very much indicates where we feel the needs of the population lie. We also have obviously the Statistics Unit reports which come out again with housing needs. So it is probably a cocktail of measures, really, in terms of where we take advice from. But ultimately, yes, the applicant will apply for what they feel is appropriate on a site, we then have a discussion with them as to whether that is the appropriate mix or not but, yes, we take advice from others as well.

Deputy J.H. Young:

The H.3 will then be applied as a planning obligation agreement, will it? Is that the ...?

Chief Executive Officer:

Yes, it will, yes.

Deputy J.H. Young:

Is there likely to be delays on that? Are the Law Officers able to deal with that?

Chief Executive Officer:

We are going down an approach of a standard planning obligation agreement because this will be a standard requirement for schemes, so that we will have a skeleton agreement ready ahead. Clearly, it will need topping and tailing depending on the application. There is potential for delay, without a doubt, you know, but we feel that we can mitigate that by having agreements ready off the shelf to be used.

Deputy J.H. Young:

So you are hopeful that there will not be any more legal snags such as there were through Jersey Homebuy?

Chief Executive Officer:

We are confident, yes.

Deputy J.H. Young:

Do you want to follow up on that?

The Deputy of St. Martin:

There was just one thing I would like to clarify with the Minister, if I could. H.3 is in development and you said that some of our larger developing companies were on board with that and happy. Are they also happy with the affordable level at £200,000? Is that a figure that you have been in discussion with them on?

The Minister for Planning and Environment:

I think it is. The key to the argument is the definition of “affordability.”

The Deputy of St. Martin:

Absolutely.

Chief Executive Officer:

I think the other point on values, many times the value is driven by what the borrowing requirements are and what the average salaries are, so it is normal to see 4.5 to 5 times joint salaries, for instance, for a couple to be applied. That really does provide the affordability level. If an average joint salary is £40,000 to £50,000 then they will not be able to secure a mortgage above £200,000 to £250,000 in any case. So the function of affordability is also dependent on borrowing and lending practices as well as public policy.

Deputy J.H. Young:

Has your consultation included the lenders? Are you satisfied that the proposals at an advanced stage are going to be acceptable to lenders in terms of lending to first-time buyers and others?

Chief Executive Officer:

Yes. The products we are looking to deliver through H.3 are not novel products, they have already been delivered in the market, so the lending practice would be the same as we would currently use.

Deputy J.H. Young:

Thank you very much. I think before I close that item, could you just remind us what your target date for lodging these is, please? That is obviously very important to us.

Chief Executive Officer:

We are aiming to lodge the report and proposition in early September, with a States debate 6 weeks later in late October.

Deputy J.H. Young:

Does this allow time for the Council of Ministers to consider it and so on?

The Minister for Planning and Environment:

It certainly does.

Deputy J.H. Young:

Okay. Thank you very much, Minister, and your team, for covering that item. I would like to now move on to the second item, which is we want to talk with you about the planning aspect, planning policy aspect, particularly in relation to the Island Plan, and your statutory responsibilities under the law to ensure that land is developed in the best interests of the community concerning a number of major projects where there has been a fair amount of general discussion. The first one is the proposal to relocate the Police Headquarters to the site of the open area of Green Street Car Park, and I would like to invite my colleague, Deputy Luce, to open up on that, please.

The Deputy of St. Martin:

Minister, along with Senator Routier, you are 2 of our longest-serving States Members, so I will take you back, if I may, to January 1999 when we had a report looking at the need or otherwise to replace the police station. In 2000 we had an approval for a temporary move to Summerland, 2001 we had another report from a local company that considered 24 sites and identified the Island(?) sites as most appropriate. In 2003, we again looked at 6 options and the preference there was a waterfront option. In 2004, we returned to Summerland and looked at that again

seriously, in 2005 we are still discussing the costs of Summerland, in 2006 the Minister for Home Affairs and others approved the decision to move to Summerland. In 2009, we start looking at Lime Grove, and here we are in 2012 looking at Green Street Car Park. I know that has taken a bit of time to go through that, but you have been involved in those ... not involved inasmuch as you have been in the Assembly. Can you give us your views on which of those preferences you would have gone for over the years? Have you changed your mind? Did you have an idea right at the beginning where you thought the best site would be?

The Minister for Planning and Environment:

As Minister, it is not at the moment under the current protocols for the Minister to have any particular idea as to what he considers to be the best site for any particular project. At the moment, a lot of the work is undertaken by Jersey Property Holdings underneath the Treasury, and this is symptomatic of the overall length of time that it has taken in order to achieve a resolution to an issue. I think, from my own personal point of view, the long-term strategic planning elements of the Minister for Environment should be strengthened to the point where the Minister is able to perhaps voice a stronger opinion as to the suitability of particular sites. Certainly, under the processes we have at the moment that is not the case.

The Deputy of St. Martin:

You do not feel you have enough power at the moment to influence where we go with these particular types of project?

The Minister for Planning and Environment:

Probably not, no. But that said, that is not to say that the whole process works in a vacuum and that Planning and Environment are not included. From the strategic point of view, Property Holdings did ask my officers to come on board in order to help assess the strategic planning issues in terms of the spatial location problems for particular sites before the suggestion of the current site was put forward.

Deputy J.H. Young:

So your officers are involved with the project, then?

The Minister for Planning and Environment:

I think they have been involved but I personally would have preferred them to have been involved at a much earlier stage.

Deputy J.H. Young:

You said, Minister, that under the current protocols ... can I ask where do these protocols that prevent you fulfilling those statutory responsibilities come from?

The Minister for Planning and Environment:

At the moment, I think the Minister for Planning and Environment is entitled under the law to come forward with master plans and development briefs for particular areas of the Island.

Deputy J.H. Young:

Can I put it to you: not just entitled, the Island Plan says you will?

The Minister for Planning and Environment:

Yes.

Deputy J.H. Young:

So I do not quite see, Minister, how that fits with you not having the protocols to be able to bring forward those plans and to ensure that what we end up with is a scheme that has an appropriate relationship to the town of St. Helier.

The Minister for Planning and Environment:

I think you could pass over to my officer for perhaps more detailed comment. I have only been in the job for a short period of time. It is no ... what is the word ... surprise to any Members who have been working with me for a long time that my interests are pretty much focused on master planning and development briefs. That was not necessarily the same kind of interest as my predecessors, who operated the job in the way that they saw fit and perhaps did not put as much emphasis on the master planning process as perhaps I am seeking to do.

Deputy J.H. Young:

Though they did put it in the Island Plan policy, which was, I think, approved before you were the Minister, that there would not only be area-based master plans, development briefs, design frameworks for a number of areas of St. Helier, which, Minister, I am sure you are aware includes the eastern gateway St. Helier regeneration zone which this site is in.

The Minister for Planning and Environment:

Yes, absolutely. Work is under way at the moment to work in some of those areas.

Deputy J.H. Young:

Does the policy go on to say that, where there are significant States-owned assets that are key determinations to those plans, the Minister may refer the master plan to the States? Does that not put you in the driving seat?

The Minister for Planning and Environment:

Potentially it probably does in a written form but, as anybody round the table will know, I move(?) with politicians, and sometimes might is not necessarily right.

Deputy J.H. Young:

I wonder if we can maybe develop some detail on that. One of the points that I think has come out in the question time to the States is about a loss of car parking, and in fact, I think a number of Members have received letters from a member of the public and the Société Jersiaise reflecting concerns about the proposal and the effect on a number of aspects, including car parking. I wanted to turn to the North of Town Master Plan which, though this particular site sits on the fringe, it is quite clear from the North of Town Master Plan (which was approved, I think, by your ministry and the States) of the importance of car parking, and here we see the Green Street site listed as having 608 car parking spaces within it. Can you tell us what the loss of car parking spaces will be as a result, against your document there, by the proposal?

Chief Executive Officer:

Yes. It is probably good for me to jump in now to give you some detail. I think in terms of the powers of the Minister for master planning and site planning, yes, we can go down a line of specifying and highlighting proposals on a proposals map, so to speak, and say: "We want this site for this, that and the other." It does not then necessarily follow that that will be the solution. The Island Plan is not a formal blueprint that says everything will be followed; in many cases it is a proposals map that says: "These are some proposals." There is a right of an applicant and a landowner to apply, frankly, for development anywhere they so choose. I think the starting point for the Island Plan is very much a spatial strategy to say what sort of uses we would expect where. We are saying that the town is an area where we would expect the majority of office space, office uses, those generating the most traffic and transport requirements and those attracting a bigger community element, so we would expect those to be in the town. The reality would be there would be a number of sites potentially suitable for community use, such as a police station, and many other uses.

[10:30]

So there would be a number of sites potentially. So officers have been asked to comment on some of the sites that the applicant, in this case Property Holdings, would be considering potentially to use. So we are at very much a pre-application stage. The ultimate planning application if we received one (we have not received a planning application yet) will demonstrate exactly what those details are: how many spaces will be lost, et cetera, but undoubtedly, by what we have seen so far and what has been in the public domain in terms of public consultation, there will be an element of spaces lost on the Green Street site, I think that has already been trialled in the media and through early public consultation. I do not offhand have the number of that, but if an application does come in on public car parking, then invariably it will mean that some of that is lost.

The Deputy of St. Martin:

Where there are pressures on public car parking, as in St. Helier, do you not have a view on the fact that we are going to build something on an existing car park, something which is going to have, in its own right, a requirement for additional car parking close by, because of the difficulties with public parking and a police station not being able to mix together, and the fact that car parking in that vicinity is not great? Would you not say that the Planning Department ... and to be more generalised, obviously Property Holdings will come forward with an application, but in major schemes and major States projects like this, do you not think the Planning Department should take the lead and say: "We realise there is a requirement for a police station. We have looked at the options. This, from a planning point of view, is where we think it should go"?

Chief Executive Officer:

Yes. There are 2 things in play: when we receive a planning application, we are the planning regulator and we will expect, certainly as part of that planning application, a transport assessment to be made. We will expect that in all major planning applications. That will need to demonstrate how this scheme fits into the transport network and what the transport requirements of that scheme are, and also the transport impacts. Clearly, one of the transport impacts will be the impact on public car parking, and that will need to be covered off in any transport assessment for us to then

take a view on whether we feel that is appropriate or not. So that will certainly come at a planning application stage and we certainly will take a formal view on whether we feel that assessment is correct or not.

Deputy J.H. Young:

Is that not too late on a States-owned site?

Chief Executive Officer:

Well, it is the right stage in any planning application that we would expect ...

Deputy J.H. Young:

Yes. But you also have formal planning responsibilities with setting the policies and the Island Plan, and the law requires you to bring forward development plans and so on for these areas. So does that not imply some leaving of advice and guidance towards what Property Holdings are doing?

The Minister for Planning and Environment:

I think under the way it is organised presently it probably might, in some instances, lead to a more reactive kind of planning authority than a proactive one, and that is right. But one of the anomalies we do have in the system which we are trying to remedy is to establish all of the environmental functions within the Environment Department, and in many other jurisdictions transport planning is a function of Planning rather than a separate operational role for people who build roads or operate car parks. At the moment, most of the transport planning takes place within the Transport and Technical Services Department, and that means that the extent to which the policies have to be relied upon is coming from a third party and has to obviously be considered by Planning at arm's length.

The Deputy of St. Martin:

But in a far more general sense, Minister, in this particular case, would it not have been easier and saved the States in general a lot of money if Planning had come forward and said: "We do not think this is a good idea. You are going to lose a lot of car parking spaces; you need additional car parking spaces. There is nowhere near by, this is just not ... cigarette packet figures would indicate it is not likely to work easily"?

The Minister for Planning and Environment:

Well, (a) we have not necessarily lost any monies as yet because no planning permission has been given for the application. Indeed, we are still waiting for the application; we are still at an early stage. I think questions should be asked equally to the Transport and Technical Services Department who perhaps have changed their point of view in terms of what was being considered within the North of Town Master Plan in terms of traffic management and parking and, indeed, the extent to which those plans have been put to one side when a request for the use of some of that space has been made for a police station.

Deputy J.H. Young:

Minister, I wonder if you would comment. When we met with the Minister for Transport and Technical Services and put this question to him, he expressed the

opinion that he supported the relocation of the Police Headquarters but he would rather it not be in Green Street. Do you agree with that?

The Minister for Planning and Environment:

Can I agree with his agreement?

Deputy J.H. Young:

Well, that was his view when we spoke to him and said: “Were you aware of this?” and he said he would prefer it was not there.

The Minister for Planning and Environment:

Well, if that is the case, then under the protocols that operate at the moment, I would have fully expected before my department could take that into consideration for the Minister for Transport and Technical Services to be formally writing to myself and my officers to indicate his preferences. He has not done that at the moment so we are operating, if you like, under the assumption that he is happy for the loss of any spaces, however many that may be, by this relocation project.

Chief Executive Officer:

I think what would invariably happen through a planning process would be that, clearly, when we get a transport assessment, we would consult the Minister for Transport on that transport assessment, and the views of the Minister for Transport will be very important in the determination of any planning application. So when we are looking at a parking solution for St. Helier as a whole, we would need to look at the whole: what is being offered for either short stay or long stay parking and what is appropriate for the town. The view of that would come from the Minister for Transport, and if the Minister for Transport is taking that line then, clearly, that would flow through in any determination for planning application. We would need to understand that.

The Deputy of St. Martin:

I think what we are possibly driving at here is it is not a criticism of Planning or particularly of T.T.S. (Transport and Technical Services) but what we are saying is Property Holdings must have spent a considerable amount of money on the possibility of Green Street Car Park being used and could they not have saved that money if they had spoken to yourselves and spoken to T.T.S. and considered, very generally, the transport and traffic issues? If they had identified that those issues may be the reason why it does not get passed in the end, they could have just dropped the idea altogether.

Chief Executive Officer:

I think it is a matter for the applicant in this case to take as much pre-application advice as is possible before committing to expenditure on an application, and we do this, whether it be Property Holdings or any other planning applicant and any other developer. Many developers will come to talk to the department and also other consultees, such as Transport, before they embark on schemes, because they want to know how the land lies, in effect, on certain issues. Sadly, transport will be one of the big issues for that scheme; it is on a very busy junction and it has public car parking implications and its own transport movement implications, so that is something we would certainly need to get to grips with as an application comes in. I cannot say at

the moment whether that would be positive or negative because, frankly, we need to see that evidence put before us and see what impacts it will have.

Deputy J.H. Young:

Drawing that to a close, because you have been very open with us, I think, is it likely therefore that unless anything changes, you are going to be in a situation, Minister, whereby you get an application arrive on your table, you are having to deal with it in terms of your regulated powers to either approve it or not in the absence of any master plan and in the absence of any States agreement on the master plan, as required under the Island Plan policy?

Chief Executive Officer:

Yes. We are able to deal with the planning application without a master plan; we do not need the master plan for any area to deal with the planning application. I think the important things we will need to be considering are some of the planning specifics for the sites. So transport is one of them; design is one of them; the impact on the surrounding area; all the usual material considerations would then be in play. So I obviously cannot prejudge what that outcome will be, but we would certainly expect a lot of these issues to be dealt with upfront in any planning statement that is submitted to us, which shows that the applicant has taken these into account.

Deputy J.H. Young:

Thank you for going through it in some detail there. I would like to move on now to asking you some questions on the current position regarding the waterfront where we do have, if I am not mistaken - perhaps you will put me right, Minister - an approved master plan, the Hopkins Master Plan that was approved by the States. Of course, when I look back, I see that there is an outlying consent and I see there was a planning obligation agreement signed with the former Waterfront Enterprise Board and yourself, dated 30th July 2010, and the new issue of guidance dated by your predecessor of April 2006. All of that, of course, very much predates the current recession, current conditions, and a lot of comments have been made publicly about the situation regarding that development. Can you tell us how things stand with developments of the Esplanade site and the main waterfront areas? Is the master plan still viable?

The Minister for Planning and Environment:

I think in terms of an assessment of viability, you are probably asking the wrong person because that is not my job function or remit. Where we are at the moment is that there is a potential live application and there is also a potential court case, there is also the suggestion that perhaps the amenities and the reasons for setting out the waterfront master plan in the form it was set out by my predecessor will not necessarily come to fruition. That obviously raises large question marks in my mind in terms of the usefulness of a master plan which is only potentially built in part. The whole thing was debated by the States and agreed as a complete job lot. It is an holistic plan, and I think one of the fundamental reservations I have at the moment with what is happening is perhaps that we may be in a position of seeing, as I have mentioned earlier, only a partial completion of the long-term intentions. If indeed that is the case - and I have to be careful because I will be making decisions on a number of the applications and I must not pre-judge anything - and if indeed the States is not in a position to deliver on what it agreed should be delivered, then that obviously sets

up a requirement for the Minister for Planning to redetermine the master plan condition.

The Deputy of St. Martin:

So it is your view then, Minister, that the plan as approved, because it is now proceeding piecemeal, falls away; the approval just does not apply any more in general to master planning?

The Minister for Planning and Environment:

How do you mean, “the approval”?

The Deputy of St. Martin:

Well, it was approved by the House, was it not, the master plan for ...?

The Minister for Planning and Environment:

Yes. But decisions undertaken by the House are binding until they are changed, so we cannot just say that because market conditions have changed or whatever, without testing those assumptions, that any approval given by the States as a whole has fallen away. It may well have done, but until that is tested at any point in time I think it is unfair to base any judgments on any statements that have not been tested.

The Deputy of St. Martin:

Would it be fair to say that where you have, in general, a master plan like we have there and then it proceeds in such a way as to be extremely piecemeal and you get the feeling that only one little part is going to be constructed, your feeling then would be that, generally speaking, the approval should fall away?

The Minister for Planning and Environment:

I am not entitled to come to that conclusion at this particular meeting or to give any indication as to whether or not I would be supportive of that point of view or not. All I can say is that the master plan had a set of intentions which should be taken and read as a whole, and indeed it is down to the applicant, whoever they might be, to seek to show at the point of their application how long-term aspirations of the plan would be delivered.

Deputy J.H. Young:

You said, Minister, those “currently live” applications. Could you just tell us what that is for, sum it up, please?

The Minister for Planning and Environment:

Did I say there was an actual live application or about to be a live ...?

Deputy J.H. Young:

You said there was a live application and the court case.

Chief Executive Officer:

I think we are expecting a live application, there is a ...

Deputy J.H. Young:

For which site?

Chief Executive Officer:

For the Esplanade Quarter area. We have an extended outline planning permission, so that is legally binding, that is ...

Deputy J.H. Young:

This is the P.P.(?) 2008, Esplanade Quarter St. Helier, the one that was subject to the planning obligation agreement?

Chief Executive Officer:

That is correct, yes. So that is a legally binding planning permission that has been given for the site as a whole. It is our understanding that we are expecting planning applications to come in pursuant to that outline at some point this year.

Deputy J.H. Young:

But that agreement requires the sinking of a road and a whole infrastructure, does it not? Is that going to be part of the application?

Chief Executive Officer:

We do not know yet, we do not know what those planning applications will be.

Deputy J.H. Young:

But would you agree that if there is an outlying consent that includes all those things and all the obligations upon the Waterfront Enterprise to do all those things, if we get a new application that those things are not there, that then raises the need for you to consider it, whether it complies with the master plan or not?

Chief Executive Officer:

I think in any determination the comment will be we will need to see what the detailed application is. We would expect it to comply with the policies which are approved. So yes, the application will need to demonstrate how it complies with the master plan and how it complies with the Island Plan.

Deputy J.H. Young:

If it does not, you can refuse it?

Chief Executive Officer:

If it does not, then we can refuse it; we can do many things with it, yes, we can ...

Deputy J.H. Young:

Well, the Island Plan policy says you will, it says that the applications that concord with the master plan will be approved.

[10:45]

Chief Executive Officer:

Yes. If we are not happy with the application, then we can refuse it. Yes.

Deputy J.H. Young:

If it does not thereby you do not approve it.

Chief Executive Officer:

Yes. But we need to deal with the applications before we make that call.

Deputy J.H. Young:

I am just trying to be clear on a point of procedure.

Chief Executive Officer:

Yes.

Deputy J.H. Young:

But there are doubts, as you said, Minister, there are issues there, there are live issues.

The Minister for Planning and Environment:

As I say, I think the issues are probably there but, as I said earlier, we cannot respond to anything that is not presented to us. Although there is a live application pending and about to be delivered, I am not really entitled to make any comment as to whether or not it meets any brief request until it is presented.

Deputy J.H. Young:

But you did express, I think, concerns over partial development.

The Minister for Planning and Environment:

My understanding of the master planning process is that, particularly in seeking an endorsement from the whole States Assembly, there should be realistic opportunities in agreeing to a master plan document of the whole of the development being undertaken. Obviously, there are going to be issues that come into play as to the extent to which any deviations are made to that master plan. The master plan is not as rigorous as to say that every "i" must be dotted and every "t" crossed, there is an element of flexibility, but that is the judgment call on behalf of the officers and indeed myself when any particular applications come forward as part of the process.

Deputy J.H. Young:

But, Minister, would it not also be provided not only as part of the master plan, but the former Waterfront Board did enter into a binding planning obligation agreement with those details?

Chief Executive Officer:

It depends on what planning permission is being sought, because we may very well give many planning permissions for the same piece of land, but not all of those planning permissions will be taken up. Clearly only one will be built, so the existence of an outlying planning permission is important, but there may well be planning applications lodged which are different from that outlying permission. We may have dealt with a number of scenarios being applied for. We all need to take a judgment call as to whether we could comply with the guidance, and the master plan is only guidance, it is not a firm 100 per cent blueprint that has to be followed.

Deputy J.H. Young:

Obviously, I do not want to bog people down in too much detail here. You mentioned a court case. What is that? Are you able to tell us?

Chief Executive Officer:

It is not a legal case involving us. We are aware that there are legal proceedings between the former master planner for Harcourt and the States of Jersey Development Company. But that has been publicised.

Deputy J.H. Young:

That is the company that we wholly own?

Chief Executive Officer:

Yes. We are not involved in that so we can only comment on the fact that that has been registered and that is in the public domain and that there is a conversation that is going on at the moment.

Deputy J.H. Young:

Is that for the Esplanade site?

Chief Executive Officer:

I do not know. It is the relationship between the 2 parties, I believe.

The Deputy of St. Martin:

Maybe we should steer away from the Esplanade specifically, but if I could just return to master planning in general. I would not want you, Minister, to get the impression that we are anti master planning from this side of the table, because I think we both feel that master plans are important, especially the way you have just described them, with levels of flexibility but a common theme and a goal to aim for. Can I ask, have you submitted any bids for the medium-term financial plan for master planning?

The Minister for Planning and Environment:

I think we have, yes, I think it was for £100,000 ... in which year?

Chief Executive Officer:

For 2014.

The Deputy of St. Martin:

How do you feel that is going to be received in the view of other bids that are being submitted?

The Minister for Planning and Environment:

We have had early notice that it was going to be rejected.

The Deputy of St. Martin:

This is a rhetorical question, but I assume you are not particularly happy about that?

The Minister for Planning and Environment:

I have made my opinions clear to the Council of Ministers and to the Minister for Treasury and Resources in particular. I think there is a fundamental flaw in this whole process whereby the States Assembly, having agreed to the importance of master planning and development briefing being undertaken by the Planning and Environment Department in order to assist the workings of the States through the

States of Jersey Development Company ... and indeed, one of the buy-ins, if you like, by many Members to the setting up of the States of Jersey Development Company was that these planning functions would be able to be undertaken and they could only be undertaken if there was a funding stream. At the time I made it abundantly clear that any support of the S.o.J.D.C. (States of Jersey Development Company) was on that basis. That is why the officers have put in a request for our monies to be able to be set up as a proper accounting head, and I find it strange that the requests are being put down at the bottom of the priority list even though the States Assembly fundamentally agreed that this was a sensible exercise and the way we were going to proceed.

The Deputy of St. Martin:

Do you see any way that you will be able to fund master planning in-house by moving your resources around, or is it really ...

The Minister for Planning and Environment:

I do not know, Christmas is coming and on the radio at the moment we are hearing that Father Christmas has changed his personality at the moment, and perhaps the Minister for Treasury and Resources is in a more enlightened position to be able to be freer with any requests ...

Deputy J.H. Young:

That is a serious position, is it not, Minister?

Chief Executive Officer:

The question about existing resources, clearly, we do have a planning policy team. It is not a huge team but it is a team of 5 officers whose job is to look at planning policy in the round, the Island Plan and all of the guidance that comes out of that. There are at least 40 guidance notes that we are now scheduled to produce as a result of the Island Plan. So that team is mobilised on producing those guidance notes and we issue fairly regular development briefs and media releases on what we are up to. Yes, we can certainly look at the prioritisation of that team and can focus them on a master planning product. That will necessarily mean other stuff they are doing will have to then slip back. One of the big issues we have is what these master plans look like. We do not have an in-house team of designers in that sense, so if I can use the word ... if we want some pretty well-designed master plans, that is where the money comes in, frankly. I think the ideas as to how land can be used, what sort of land; these master plans are in very much 2D fashion, there is something we can certainly do there in-house. But if we are to produce a product which is akin to previous master plans (we have given the North of Town as an example or the Esplanade Quarter) there is a need for some designing/architectural input into that and that is what costs the money. I think it really comes down to if we want an A3 piece of paper coloured up 2D with some ideas on what the land uses could be around the area, that is certainly something we can do in-house. If the master plan is going to be like that, then I think we can look at resources internally. It may not be as exciting a product as we will want to see, though, so it is about managing that expectation, I think.

Deputy J.H. Young:

Would that mean that with internal resources you can fulfil your statutory responsibilities and we will not be in a position of a quango, as Jersey Property

Holdings - I do not mean that name pejoratively but it is a quango - effectively making development decisions without planning guidance?

The Minister for Planning and Environment:

Personally, I think it is going to be difficult. We have offered up a 19 per cent comprehensive spending review and savings, which is the highest that has been offered by any department. Along with that, we are one of the smallest departments in terms of the monies that we get from the Treasury in order to carry out what appears to me is wider and wider kind of functions which are absolutely vital, not only in value-adding to the property portfolio potentially, but also adding to the quality of the environment. I see the function of the department is one very much bound up with value-adding. In order to do that there has to be a proper realisation that any monies going into the department are sufficient to enable us to continue with the work. If indeed these monies that have been asked for, which are reasonable sums, are not forthcoming, then that means, as the officer said, we have to kind of readjust even further, cut out even more areas than we have already offered up for savings in order to transfer staff across or indeed to put up the cost of applications in order to release monies to pay for those processes.

Deputy J.H. Young:

Could I just check one thing? When we had a briefing ... the medium-term financial planning process is to take place. Are you being permitted the opportunity to put forward user pays options as a means of providing yourself some internal resources?

The Minister for Planning and Environment:

I think we are, but we can only go so far and maybe there is resistance to any department, I feel, that pays its way by asking for fees.

Chief Executive Officer:

I think we certainly have got user-pays options within our Comprehensive Spending Review plans. The philosophy behind many of our services, where we are acting in the private interest it is appropriate we cost-recover that. So certainly the application side of our business, planning applications, building control applications, by the end of next year are likely to be more or less self-funding because the application process does act entirely in the interest of a private individual who is applying for planning permission. The bigger question, I think, for government is that the policy-making side of the business is a role of government, and that should be funded publically rather than privately. So ...

Deputy J.H. Young:

Especially where we have States-owned land, where we are dealing with billions of pounds of assets.

Chief Executive Officer:

Yes. There is, therefore, a balance between what we can ask planning applicants to pay for and what the States as a whole should pay for. I think it is invariably right that we have a limited resource, we are the smallest department, we have a big profile and certainly a big input into people's lives, and I think the Minister is correct: if we are going to do master planning in a way that people would expect us to do it, then I think we would need some more resources to deal with it.

Deputy J.H. Young:

Well, thank you for that. I think we will obviously be coming back to that later on as part of our reviews of the plan. We have on our agenda a couple of other public sites, but what I might try and do if we can is develop on specifics rather than ... because you have given us a very general cover of the points of master planning. The next one, obviously, is your views, if you can give us some information on the relocation or the proposals for either extension changes or relocation of the hospital. Here I am conscious of the fact that the Island Plan does give priority to the development of healthcare facilities, particularly as part of the new Health strategy. I wonder if you could tell us where we are from a planning point of view. Are you involved in looking at alternative sites? Are you giving planning advice? Can you tell us what sites you are currently looking at?

The Minister for Planning and Environment:

Well, we were not until I asked for it a number of months ago. It was an area that was being undertaken predominantly by the Health and Social Services Department, and I raised the issue with the officers and now we do have one of our officers sitting on the group who is making early assessments of potential sites for whatever the policy is going to be/hoping to be put on to the table. The documents that are coming forward from Health, as you know, have not been properly formally agreed as yet and there are a number of alternatives still to be discussed which, in essence, will have the potential to change the quantity of development that might need to take place for hospital replacement. Until those issues are put to bed and there is an overall general assessment of the shape and form of the health service that the Island as a whole is supporting, then the requirements for finding specific sites to accommodate those needs cannot be really properly assessed.

Deputy J.H. Young:

But have they declared the fact they need a replacement hospital or rebuilding? Has that been put on your table, as it were?

The Minister for Planning and Environment:

I think it is being looked at but, as I say, it is the quantum of the development that is important, and that can only be assessed once the Island has decided whether or not the make-up of the service is to go with an existing hospital which is made larger or stays the same size or, indeed, if a smaller hospital might be able to be accommodated, and a number of the health services provided for either in the U.K. (United Kingdom) or in nearby France.

Deputy J.H. Young:

So you are not looking at alternative sites at the moment?

Chief Executive Officer:

No. I think on the land use requirement clearly Health are undertaking a very big bit of work around the White Paper as to what the future of Health could or could not be. The land use requirements of that, i.e. the physical size of what they need, will drop out of that work. We are certainly involved in some of those discussions to say, you know: "What are the options that are possible?" But I think it is too early to say what the land use requirements could be. It may well be hospitals nowadays need more

space in certain areas, less space in some other areas as technology is utilised, and things like that. So, certainly, over the forthcoming months we really expect to get more heavily involved when it gets into those sorts of planning issues.

The Deputy of St. Martin:

If it becomes obvious at a stage some time in the near future that the existing site will not be big enough for Health's requirements, I mean, we know in a very general way that we have decided that possibly an Island site down at the waterfront will not be big enough either. If it then obviously comes out of the discussion that there is nowhere in the built-up area that is a suitable size for a hospital, I presume that building a hospital in the green zone will not fundamentally be an issue for you, inasmuch as we need to provide healthcare for all the Islanders?

The Minister for Planning and Environment:

I think you have already made a statement which has a really good agreement, and there were some suggestions from the Assistant Minister for Treasury and Resources, I think, to the effect that alternatives down on the waterfront site would be too small. I am not necessarily satisfied that that position is either accepted by the whole of the States Assembly or indeed by my office.

Deputy J.H. Young:

So your officers think that that might be an alternative?

[11:00]

The Minister for Planning and Environment:

It really depends on the quantum of development that is required, and that has to go back to my previous comments as to what type of health service is being proposed by the health authority and, within those policies, the extent and the size of hospital facilities that that policy would be promoting.

Deputy J.H. Young:

From what you have said, Minister, you are now actively involved in this, it would seem. In our previous discussion you spoke about the restrictions on your resources. Are you able to serve that team adequately and deliver what you have said?

Chief Executive Officer:

We are currently, yes. Health have been inclusive in terms of involving us at early stages to try and cover off some of these issues. What ultimately we end up with we do not know yet, so making a judgment at this point around what policies would apply, what policies would not apply, what sites would be appropriate or otherwise, it may well be that a solution on-site is also deemed appropriate in the longer term. We have, after all, all of our secondary healthcare in one location, so there would be a debate to be had around how the current hospital campus can be utilised in the longer term, and that has to be considered as well as any new build options, I think. So what policies would apply, what would not apply, undoubtedly, if we ended up with a proposal for a new building on a new greenfield site of that nature, it would need to go through the proper planning processes. It would have a public inquiry, I have no doubt, because it is not something catered for in the Island Plan. But that will be due process that we would have to go through at that stage.

Deputy J.H. Young:

So they could have an inquiry on that if necessary?

Chief Executive Officer:

Something of that nature, I think, yes, undoubtedly it would be a departure from the Island Plan. I think that would be clear. But invariably we could also look at solutions on the current site as well because there is already a big quantum of service already there, so ...

The Deputy of St. Martin:

I would have to say from very much a personal point of view what you have just alluded to is something which I feel strongly about. We will have to in the near future develop our hospitals, spend a lot of money on facilities there, and it would seem strange in a way to then, at the same time as we are doing that, build a brand new facility somewhere else, which we would have to duplicate. It would seem to me, if it is at all possible, that extending into that block that the hospital currently sits in would be to me ...

Chief Executive Officer:

Yes. Ultimately it will be a matter for the Health Department as to what is ultimately possible, I think, in terms of what their actual needs will be, and the work that they are going through at the moment will demonstrate what the actual needs are and whether that is able to be delivered, what is the most cost-effective way to deliver that, really. I think that is what they will be needing to assess. The land implications of that will undoubtedly then fall out as to whether it is a one site, 2 sites, new site type of project. It could be many things, really.

Deputy J.H. Young:

Thank you. I think you have been very helpful to us. Thanks.

The Minister for Planning and Environment:

There are other issues in terms of any refurbishment of existing buildings, in terms of the extent to which current medical practice is able to provide the highest levels of bacteriological kind of safety that could be more easily afforded by new build. So that is why I have specifically asked officers to sit on the group, because I think it is a cross-ministerial issue, and prior to asking we did not have links.

The Deputy of St. Martin:

No, I certainly could not agree more and I would like to state that where we have major projects like that I would have thought it was just normal that all departments that you are going to be involved with would sit down right at the beginning of any development and say: "Right, what issues have we got to feed in for the common good on this?" It seems crazy. Yes, I agree.

Deputy J.H. Young:

I think if we can move now to the last item of major projects, and here we are seeking information. I think all of us would like to know, and I specifically with this, Minister, what is going on about Fort Regent, please?

The Minister for Planning and Environment:

I think in a word, not a lot; that is probably 2 words. I mean, I was Assistant Minister previously and sat on a group with some of the officers from the department under the chairmanship of the previous Minister for Education, and we sat for a period of getting on for a year, and a report was produced at the end of it outlining a potential way forward. That potential way forward was heavily dependent on a States Member, whether it be the Minister for Education thinking he was going to be in the new States Assembly or not did not really come into it, but the recommendation was that some Member should come forward to properly inscribe requests for monies to deliver the next stage of the plan, which was to try and find ways not to pass over the property to commercial and director interested parties, but to find a way to properly inscribe sufficient monies in order to improve the fabric of the building. Those requests have not been made by any States Members yet, although there is still time, I think, in the forthcoming budget processes for somebody to pop out of the woodwork and make the requests. But at the end of the day, I think a decent body of work was undertaken, which in some ways underlined the thinking of past groups to say that we needed to be moving to open up the Fort, and the quickest and easiest way to attract greater interest in the building was to provide access services from South Hill.

Deputy J.H. Young:

Sorry, this piece of work that you are referring to was?

The Minister for Planning and Environment:

This piece of work was done. It was presented to the States just before the States reconvened with the new House.

Deputy J.H. Young:

They have accepted that, in the status of a master plan?

The Minister for Planning and Environment:

That was in the status of as far as we were able to achieve a master plan. That said, since then there have been other competing interests in terms of the Fort Regent area. There were plans that were suggested a number of years ago by the Planning Department to have a spine park which extended from Fort Regent all the way down to the La Collette area. There has been an absence of comprehensive master planning for the harbour area and the La Collette recycling area for a number of years, and again it is something that I have specifically highlighted my intention to move ahead on in order to get the Planning Department into a position where we can properly master plan the area and do it in a way that brings on board all of the other competing parties.

Deputy J.H. Young:

Oh, right. That is within one of the regeneration areas in the Island Plan.

The Minister for Planning and Environment:

Yes, that is right. So at the moment, I am seeing that the work that was undertaken by the previous group has been useful as far as it went, but being used as a continuation of that process in order to properly establish a firm master plan, not only for the court provision, which is marching ahead quite quickly in terms of the States potentially want to set it up as a private body to reorganise by a board, and the planning problems

that potentially might kind of accrue if we have independent bodies pulling in one direction and the Island bodies assisted through the Planning and Environment Department pulling in another.

Deputy J.H. Young:

So if I have understood you correctly, there is no group, there is no one group working on this at the moment?

The Minister for Planning and Environment:

There is a new master plan function that is being called for through our department to look at Fort Regent, La Collette and the harbour areas in a comprehensive fashion.

Deputy J.H. Young:

But you have not got the resources for it?

Chief Executive Officer:

Yes, it is in our pipeline of supplementary planning guidance that the policy team is expected to produce, so at what point it pops up and gets produced would purely be down to time and resource, but there has to be a balance between access, heritage, the leisure users, community users, commercial opportunities. There is a huge piece of work to be done there, huge potential for the Mont de la Ville area as a whole, but again, it is down to resources. If we are going to expect our existing team to do that, it is going to be somewhat down the list time wise.

Deputy J.H. Young:

Yes, I think we may come back on another occasion on the La Collette end of the Mont de la Ville plan and talk to you about that, because obviously that is tied up with other matters, but before we leave the subject of Fort Regent, I think it probably leads in nicely to our next item. Is there a heritage study? You mentioned about the central conflicts of heritage issues. Are you in a position ...

Chief Executive Officer:

There have been some heritage studies done. I am not aware of anything recent, because obviously we have a Napoleonic fort now, which clearly has a lot of heritage value. We need to balance some of those issues off with commercial opportunities, later interest, that sort of thing. So I am not aware of the latest. We can find out the latest, whatever the last heritage assessment of the site has been but, yes, it is a big issue there.

Deputy J.H. Young:

Okay. Do you want to come back on this now?

The Deputy of St. Martin:

No, I think it is just another example, a bit like the hospital, where the parties concerned needed to be working together to move forward rather than coming up with individual ideas from different directions that then ...

The Minister for Planning and Environment:

I see the Planning and Environment Ministry as being pivotal in bringing all of those interested parties together, rather than looking back through the past and seeing a lot

of individual partners, not really the Environment Department, pulling in different directions.

Deputy J.H. Young:

But to do that, you need the support of the Council of Ministers.

The Minister for Planning and Environment:

No, we need a limited access to some extra monies and the support from the Council of Ministers will obviously be sought for any projects that need the Assembly's support, as well as the Council of Ministers' support, but that is not to say I need the support of the Council of Ministers before embarking on the work. The work function is itemised within the Island Plan. The only bit that is missing is that we need, as I say, a small sum of monies to be allocated in order to take that work further at a faster pace.

Deputy J.H. Young:

Thank you, Minister. I think we should close that item now. I would like now to move to, we billed it as protection of heritage and ecology, so I think there are 2 parts of that we want to talk about. We want to talk about the building heritage and the arrangements and then we also want to then go on to talk about what you might call the natural sites, the sites of ecological protection, and of course not to be forgotten, the archaeological as well. But I rather suspect the conversation will be joined up, because I think we are probably dealing with the same law on the subject. So our starting point, Minister, is when we met you last time, you told us as far as buildings were concerned that you were resurveying all of the existing assets, heritage assets, that is privately owned buildings, privately and publicly in the Island and that by quarter 3 you would have that work done and that by quarter 3 of this year you would be notifying all owners of properties of the status of their properties, whether or not it has been changed. I wonder if you can give us an update on that work, please.

The Minister for Planning and Environment:

Yes, I think that the officer can reply on this one on my behalf and to indicate the timetable, but I think we are pretty much in line to deliver. There may have been a little bit of slippage, but I think we are pretty much there.

Chief Executive Officer:

Yes, we have assessed all the buildings. If I call them all listed buildings, they will soon all be called listed buildings, but we used to have B.L.I.s (Buildings of Local Interest), S.S.I.s (Sites of Special Interest), P.S.S.I.s (Proposed Sites of Special Interest). There is a bit of a range of different names for different types of buildings. So everything that was known to us on our list has now been resurveyed. We are currently undertaking a review of buildings which have been flagged up to the department as potentially having heritage interest and they should be on the list. So the piece of work today has been to go through all of our listings, all of our B.L.I. listings, S.S.I.s and P.S.S.I.s to assess whether firstly they should still be in the list, do they still have heritage value, and, if so, what that heritage value is. We have a piece of work that will look at around 200 properties which are currently not on the list but potentially could be, so we are assessing those. Once that has been undertaken, by the end of year we would have gone through all of those buildings and given them a new ranking of 1 down to 4. Some will come off the list, some will stay on the list and

some will be added to the list, so we are currently on track to do that and the relisting of the process will take place. We are still on track to do that by the end of this year.

The Deputy of St. Martin:

So we will have lost 6 months on the original estimates of when the sign-off ...

Chief Executive Officer:

Yes. What we have chosen to do is roll out our document management system into this area as well, so when we embarked on our planning I.T. (information technology) changes around the planning application sense, the building control, we have also rolled that out across the rest of the department at the same time. We have taken that opportunity to put it into building control and also to planning policy and also the heritage team, because all of this can now also be online. So some of that delay has been, I think, for good reason, because a lot of this information will now be online for consumers as well as the planning application side of things. So we have had a bit of time slippage because of that, but I think ultimately we will end up with a good product at the end of it.

Deputy J.H. Young:

So as we speak now, what will owners of properties, the 3,500 owners, know? What will they be aware of at today?

Chief Executive Officer:

They certainly have all been visited, so they would have known that, hopefully.

[11:15]

Some have allowed us in their properties, some have not, but the majority have, I think, so that has been quite positive. They will know that they have been visited. I am not sure what the latest communication has been out there, whether they know: "By September, by October, you will have a revised listing." That is something I can check.

Deputy J.H. Young:

So they have not received notification formally yet?

Chief Executive Officer:

They have not received notification, yes.

Deputy J.H. Young:

They know something is going on?

Chief Executive Officer:

Yes, they know they have been visited and the purpose for that visit, that we are reassessing. They have not yet been told what their number is, if I can put it that way.

Deputy J.H. Young:

What about the ones that are not currently listed and they know that they are under consideration, do they?

Chief Executive Officer:

They do, yes, and they will go through that formal process of notice. If we go down that process of intention to list, they will get a formal notification of that ...

Deputy J.H. Young:

Later on?

Chief Executive Officer:

... which they can appeal and all of that process.

Deputy J.H. Young:

Later on. So at the moment, they do not know what restrictions are likely to be imposed on their properties?

Chief Executive Officer:

If any. No, they do not, no.

Deputy J.H. Young:

So in September, they will get a notice, they will all get notices?

Chief Executive Officer:

They will get notices as to what grading they will be, yes.

Deputy J.H. Young:

Will that tell them what the restrictions are?

Chief Executive Officer:

The majority of those properties are already listed, so they already have an assurance ... well, they should already know that they have some restrictions.

Deputy J.H. Young:

But when they get the notice, they will know what the restrictions are?

Chief Executive Officer:

Well, they will certainly know what grade they have got. The restrictions debate really comes as to depending on what they want to do, but it depends what is listed. If the entire property and all of its internal layouts are listed, then clearly that implies more restriction than: "No, we are just going to list the frontage of this building."

Deputy J.H. Young:

Right.

The Deputy of St. Martin:

Would you consider it to be a good idea if you are writing to these people, because some of them have never been written to before if my understanding is correct, that if you are going to write to them, do you not think it would be a good idea to say: "This is your listing under the new scheme and this is what you can and cannot do" and use the opportunity while it is there to list those restrictions?

Chief Executive Officer:

Yes. They have certainly all been communicated with, because our surveyors have had to go round to their property, so they have all been communicated with and we have had a number of media releases as well. What we cannot say is: “You can definitely do this. You can definitely not do this.” It is going to be: “You can apply for permission to do many things” but the debate, the decision about whether it is appropriate or not, will come at an application stage. But certainly, yes, if you are a grade 1 listed building, there will be far more restrictions on you than if you are a grade 4 listed building, and some of those owners may not have a listed building in future, they may come off the list.

The Deputy of St. Martin:

The list, when it is published, will be available on the internet?

Chief Executive Officer:

It certainly is, yes.

The Deputy of St. Martin:

Will that be under the planning heading or will that be under Jersey Heritage Trust?

Chief Executive Officer:

It will be via the planning website, because we are responsible for maintaining that list.

The Deputy of St. Martin:

Where will the Jersey Heritage Trust fit into the new system? If I understand it at the moment, they currently hold the list.

Chief Executive Officer:

No, no, we definitely have the list. We use the Heritage Trust under a contract to give us heritage advice into the process, so that we have a service level agreement with them every year to give us heritage advice as to the heritage value of buildings.

The Deputy of St. Martin:

That will be ongoing?

Chief Executive Officer:

Yes. They have a panel of experts, local experts that sit to advise us as to the heritage value of buildings, which is a good counterbalance to obviously the department resource.

Deputy J.H. Young:

Where is the list now? How can people find whether their ...

Chief Executive Officer:

The list is online already, but there is a ...

Deputy J.H. Young:

Does it work?

Chief Executive Officer:

... a formal list, a physical list you can come and look at, but there is also a list online.

Deputy J.H. Young:

So there is a paper list?

Chief Executive Officer:

Both, I think. I think there is both.

Deputy J.H. Young:

You are confident your website works?

Chief Executive Officer:

Yes.

Deputy J.H. Young:

I will come back to you on that.

Chief Executive Officer:

Tell us if it does not.

Deputy J.H. Young:

Well, when I last used it, it does not.

Chief Executive Officer:

Okay.

Deputy J.H. Young:

It presents you with a very uninformative screen, but you are going to produce a paper list as well?

Chief Executive Officer:

It may be uninformative at the moment to say that because we have not given a building a formal listing yet, so at the moment, many buildings are appearing as a proposed listed building, for instance. It does not tell you much more about that until this assessment has been undertaken. Then what we expect to happen, you can click on a building on the map. It will say: "Yes, this is a grade 2 building and this is the assessment as to why" and that should be available online, so that is what we ...

Deputy J.H. Young:

So that is where you are aiming to get to?

Chief Executive Officer:

Yes.

Deputy J.H. Young:

When we get to that point, I think you told us last time that the law is that when somebody puts in an application, if it is not on the list at that time, it is not on the list, and that is the basis on which the application is determined.

Chief Executive Officer:

Correct, yes.

Deputy J.H. Young:

So there will be clarity about that when you have finalised this list?

Chief Executive Officer:

There will be. We cannot apply listed building policies to non-listed buildings.

Deputy J.H. Young:

Well, I think one of the issues that has surfaced is this position that when people put in applications on a building that they do not think is listed that they are then told it is listed and that therefore ... sorry?

The Deputy of St. Martin:

I was going to say in our terms, I was under the impression that they put in an application on a building that is not listed and the officer involved looks at the application and says: "Actually, I think I am going to list this building now, because I have just realised it should be listed" and then applies a listing.

Chief Executive Officer:

Okay, there are 2 things there. Firstly, information to a building owner as to whether they own a listed building or not, most owners should know whether their building is listed or not. If there is doubt, we have a master list of all listings that will put them beyond doubt whether it is listed or not. Planning officers cannot apply a listing arbitrarily to a building just because we receive a planning application. There is a very formal process to go through. The Jersey Heritage team has to visit the premises to assess its heritage value. The Minister then issues a notice of intention to list, if it is appropriate. There is a legal right of appeal against that, if need be, before the Minister formally makes the decision to list, so we certainly ...

The Deputy of St. Martin:

Any complaints that we have had are complete conjecture and not true?

Chief Executive Officer:

Yes. We certainly cannot bring down our listing on a property just because we feel like it.

Deputy J.H. Young:

As an aside issue there, do you have a register of complaints?

Chief Executive Officer:

We do, yes.

Deputy J.H. Young:

Okay, thank you.

Chief Executive Officer:

I would say we do get complaints. We get a lot of moaners and groaners which ...

Deputy J.H. Young:

Is it on the internet? Do you know where it is?

Chief Executive Officer:

... I could refer to some of them. Yes, we get complaints. We do not get many complaints. Of the very formal complaints, we get very few. We get, if you like, formal complaints through the planning process and people appealing, people asking the Minister to reconsider planning applications, but we do not treat those as service complaints. That is a form of planning decision. We get a lot of moans and groans really. I can be clear about that.

Deputy J.H. Young:

So we have complaints and we have moans and groans?

Chief Executive Officer:

Yes, some people, they want to comment about something. They are not entirely happy, but they do not want to make a complaint.

Deputy J.H. Young:

Is there a complaint procedure on your website?

Chief Executive Officer:

There is, yes.

Deputy J.H. Young:

Thank you very much. Now, I digressed there. Coming back now, I think that deals with buildings. Thank you for that. If we could move to, okay, ecological sites, and could you tell us how will people know what sites are protected in terms of wildlife and ecological value? For example, my recollection was before we had the new planning law and the register, the States or the Committee used to pass orders and they had a map in them which shows you the area that was protected and all the things you could not do and all the special species. Has that disappeared under the new law?

Chief Executive Officer:

No. All of the listings of Sites of Special Interest are done under the Planning Law, the 2002 law. I have a list here that I can show you. We have a big list of ecological, wildlife sites and also we have a list of geological.

Deputy J.H. Young:

Is that the register?

Chief Executive Officer:

Yes, so that is our list of listings, so we have listed buildings, we also have listed places and we also have ecological assets which are listed. We will have a boundary to those as to why they are listed and there are deeds now behind that, and we will also have a list of geological assets, which were also listed for their geological value.

Deputy J.H. Young:

So is that part of the same computer register?

Chief Executive Officer: Yes, it would be, yes, and these boundaries will be recorded on our geographic information system, too, so we know what boundaries exist.

Deputy J.H. Young:

So is that the equivalent, for example, my recollection is Les Landes, Les Blanches Banques and gorse lands are all areas where this is protected and under the law, the prevention of people destroying plants or birds or wildlife, that is still in place?

Chief Executive Officer:

Yes. You mentioned Les Blanches Banques. That is the top of the list here in terms of how big an area. That is 130.1 hectares. It was designated in 1996. We will have a map of that, what that designation is, and that constraint exists and has to be taken into account in all of the work.

Deputy Chief Officer and Director for Environment: But it is fair to say also that other areas of land that fall outside of these designated areas do fall under the same protection regimes in terms of law as those ones.

Deputy J.H. Young:

How is that? I mean, I am puzzled about that. The register gives you the legal powers. The areas of land ...

Chief Executive Officer:

Yes, the legal powers exist under the current laws, such as the Protection of Wildlife Law, for instance. We have legal powers under that. The designation of an S.I.I. just in effect is a factual designation to say: "This is of value." The laws that apply then on that area and any other area about wildlife will apply, but what the designation does is flag up that this is a known area of value. It does not say that the Wildlife Law, for instance, will apply to that area as well as it will apply to something which is not designated, but these sort of designations do not in themselves bring additional statutory powers. It is a way of saying: "This is a special area. You must take this into account. This is known" but the actual power comes under the other laws that we operate under.

The Deputy of St. Martin:

So it is more of a planning issue rather than a wildlife or ecological issue?

Chief Executive Officer:

I think it probably is, yes. It sits under the Planning Law as: "This is a special area. This is a designation" in effect. To a certain extent, it not dissimilar to saying: "This is a retail frontage" or: "This is a public open space." It is a designation that exists to flag up an area of special character, and then we have a range of laws we apply, nearly 39 laws and subordinate law.

The Deputy of St. Martin:

So from a building point of view, that S.S.I. creates even more restrictions on what you could do from a planning, building, construction sort of point of view?

Chief Executive Officer:

Yes, it would, because ...

The Deputy of St. Martin:

The protection of the wildlife, ecology, flora, fauna inside the area, the area itself, does not matter because the law applies equally over the whole Island.

Chief Executive Officer:

It is governed across the whole territory, yes.

The Deputy of St. Martin:

Yes, okay.

Deputy J.H. Young:

But would you accept, I mean, there are powers in the planning laws to allow you to be specific on S.S.I. of particular additional things you cannot do?

Chief Executive Officer:

Yes, as I say, as Deputy Luce I think has highlighted, it is more it sits under the Planning Law as a planning tool.

Deputy J.H. Young:

But that includes such things as not destroying a plant, et cetera, so it goes quite wide.

Chief Executive Officer:

Oh, yes, yes. It is also clear under the Wildlife Law that if there is a protected species, whether it is in an S.S.I. or outside of an S.S.I., that same power exists.

Deputy J.H. Young:

So what you are saying is the S.S.I.s are less significant for ecological purposes than they were because we have the Wildlife Law?

Deputy Chief Officer and Director for Environment:

The S.S.I. would, during the planning process, highlight the fact that it is indeed a designated area, but from a regulatory perspective it would enjoy the same power as any other area in the Island.

Deputy J.H. Young:

How many people have you sent papers through to the A.G. (Attorney General) for prosecution under breaches of Wildlife Law and S.S.I. ecological areas in the last 12 months?

Chief Executive Officer:

I do not know off the top of my head. We can find out as to how much sort of action we take on that area of law. What I can say, the Wildlife Law is quite difficult at the moment. We are looking at changes to the Wildlife Law to include habitats. It does not include habitat protection at the moment, so that is something we want to mirror here, as you see in the U.K. legislation and in other areas as well. There is a Wildlife Habitats Law, rather than just a Wildlife Law.

The Deputy of St. Martin:

But what you are saying is you can destroy habitats but provided you do not destroy the wildlife that are living in the habitat, you are okay under the law at the moment?

Deputy Chief Officer and Director for Environment:

I think as the law currently stands, you need to find specific evidence that species has been killed, for want of a better word, on the site, so you need to find proof, you need to find ...

Deputy J.H. Young:

Have you got the resources to enforce these laws?

Deputy Chief Officer and Director for Environment:

We have some resources to enforce these laws but not enough, but the point I am making is that - or what I would like to make - is that rather than just having to provide evidence for extinction of a life, if you like, we could do with the power that allows us to establish that the ecology or the ecosystem that supports that specific species has been tampered with.

Deputy J.H. Young:

Okay. One of the areas which I think is subject to public comment is Les Écréhous and nest disturbance of nesting birds and so on. Now, are they S.S.I.?

Chief Executive Officer:

I can tell you. I have my list here.

Deputy Chief Officer and Director for Environment:

Well, it certainly comes under Ramsar.

Chief Executive Officer:

It has certainly got a Ramsar designation.

Deputy Chief Officer and Director for Environment:

It is an ecologically sensitive area if it is not an S.S.I., but again it is governed by the laws of the land essentially, as opposed to any special purpose legislation.

Deputy J.H. Young:

But would you not agree is not Les Écréhous a Site of Special Interest? Has it not got heritage interest?

Chief Executive Officer:

It certainly has. It is one of the debates we are currently having, because the buildings on Les Écréhous, for instance, have a heritage protection. We certainly have not got an area-wide S.S.I. designation, so yes, part of the heritage of the site is covered, some of it is not currently.

Deputy J.H. Young:

Will you be looking at that?

Chief Executive Officer:

I think we are currently looking at it, yes. The next question really is what level of protection that gives, because you have mentioned disturbance of nesting birds, that sort of thing. It is a very remote bit of our territory. For us to monitor that, it is quite difficult.

Deputy J.H. Young:

Hard for?

Chief Executive Officer:

Physical reasons.

[11:30]

Deputy Chief Officer and Director for Environment:

The question you are asking about: "Do you have the resources to do that" is quite flatly no.

Deputy J.H. Young:

No, but have you not discussed this, for example, with the Constable to try and work out arrangements for perhaps getting people delegated or what have you on the rocks?

Chief Executive Officer:

Well, what we have done, clearly we have our marine resources team, the fisheries team. They are at sea for a number of days a year. They will often go to the Écréhous as well as some of our other offshore reefs as well. We have also worked with a lot of the users of the offshore reefs, whether it be the owners, whether it be the leisure industry, fishermen and so on as to a self-policing standard as to what is expected of people or not expected. That is a less resource hungry way of regulating, in effect, that we expect people to behave themselves. There will always be instances where people do not behave themselves, but that is as much an issue for the offshore reefs as it is for our Island resources as well, and not everyone behaves themselves when they should do.

Deputy Chief Officer and Director for Environment:

In addition to that, we have our natural resources team, who goes out and recognises that we have specific breeding areas, nesting areas, ropes those off and takes the ropes back again. We put up signage stipulating that certain behaviour should be taking place or should not be taking place in these areas. That is published in both French and English and put on signposts and that is made available to our friends across the water as well as across here in terms of codes of practice and codes of behaviour that we expect.

Deputy J.H. Young:

So you have a public awareness programme on that?

Chief Executive Officer:

Yes. Short of having someone stationed there throughout the nesting season, it is very hard to police. It is a remote piece of territory.

Deputy J.H. Young:

A bit off the subject, this, but you did mention the fisheries protection vessel, the Norman Le Brocq. How many days at sea did it spend last year policing our territorial waters?

Deputy Chief Officer and Director for Environment:

Less than the year before. I could not tell you off the top of my head, but I can find out.

Deputy J.H. Young:

I think it is a question as to whether or not we are adequately able to meet our regulatory requirements, because I have certainly heard reports about that.

Chief Executive Officer:

I think the answer is they go to sea. We certainly have an intelligence-based regulation service rather than a: "We are out at sea every day steaming around the Island" because that is very resource hungry. We certainly work very closely with Customs and the Coastguard in terms of who is fishing in the area and who is not fishing in the area, so all boats have a radar transponder on them. We know who is fishing. Basically by looking on the radar, we know who is in which patch, who should be there, who should not be there. We have planned visits at sea. We do go to sea on a ...

Deputy Chief Officer and Director for Environment:

Weekly basis.

Chief Executive Officer:

... regular basis. Frankly, we have to time when we go to sea, because if it is a night sailing, we need 4 or 5 people on that boat for health and safety reasons. If we are doing boardings, we need a complement of officers on the boat for safety reasons. So yes, it is resource hungry, it is fuel hungry, so yes, we try and I guess, if you like, blend our intelligence that we get through Customs and the Coastguard with our own intelligence. So it is always a balance, and I think the officers themselves would certainly like to go to sea a lot more, because a lot of the job is out there getting their hands wet, so to speak.

Deputy J.H. Young:

Are you aware of the reports of pair trawling close to our coast causing terrible damage?

Chief Executive Officer:

Yes. We have had some very successful prosecutions, certainly pair trawling being one of them and that was fairly recently, sort of 12 months or so ago. So I think we have a very good record of taking action where we have the intelligence and the evidence that people are being naughty, frankly.

The Deputy of St. Martin:

I am sure you would agree that the technology that we can use these days is a great tool in this as well ...

Chief Executive Officer:

It is, yes.

The Deputy of St. Martin:

... because I believe the pair trawling one you are referring to was prosecuted under radar evidence.

Deputy Chief Officer and Director for Environment:

Yes, it was, and I think it was a landmark case in terms of the U.K. as well, which if we can continue down that route, then that is fantastic. It gets the message across as well.

Chief Executive Officer:

We have 800 miles of territorial sea and one boat, so there is a ...

Deputy J.H. Young:

Again, there is a resource issue.

Deputy Chief Officer and Director for Environment:

Indeed, an important one.

Deputy J.H. Young:

Well, thank you for your help. I suppose I better mention archaeological sites. Do you treat those very much as registered building?

Chief Executive Officer:

Yes, archaeology is a very important part of again the planning system, so that if there is a potential archaeological issue on a site, we would expect that to be taken into account, a lot of pre-assessment before planning applications even come in. We use a service based in the U.K. We do not have our own archaeologist in the department so if we do need expert archaeology advice, we get that from Oxford.

Deputy J.H. Young:

So what is the policy: "Do not disturb it, leave it in place"?

Chief Executive Officer:

It ranges, really. I think the first thing is knowing what you are dealing with, frankly, so there is a lot of pre-assessment, whether it be desktop assessments. There is a lot of information you can get about land by looking at the history archive and desktop assessment. Sometimes that will also indicate that we need to do invasive testing, such as boreholes, to understand where the archaeological horizon is. It is no point if it is 6 metres and you are only going to touch the top metre in a development, then it is less of an issue, for instance. So there is a range. Sometimes it will be of such importance that you have to excavate the site and have a look at it. At that point, sometimes you get heritage which puts a complete stop on development. Sometimes it is about preserving onsite to allow the development to take place over the top of it, sometimes it is about recording and letting the heritage go, so it really does depend on what the ...

Deputy J.H. Young:

If it is the last one, who pays?

Chief Executive Officer:

If it is a Stonehenge, for instance, and it is of international importance, then clearly you would be taking a much more stringent line.

The Deputy of St. Martin:

How do you work that out if it is buried 6 metres underground?

Chief Executive Officer:

You do it through radar work, you can do it through borehole work, you can do it through the technology, really.

The Deputy of St. Martin:

Have you reached any views on the gasworks site?

Chief Executive Officer:

Yes. The gasworks has heritage under it, without doubt. It has some Neolithic potential there as well as more recent 20th century sort of archaeology, so it is something that the applicant, the owner of the site, already knows about and they certainly are aware they are going to have to do some work there to assess what it is.

The Deputy of St. Martin:

If the assessment work comes out with a second Stonehenge, they will not be allowed to build on top of it, surely?

Chief Executive Officer:

It depends where it is on the site, but yes, they may well need to design their scheme around it. It really depends on what is there. I think it is fair to say prior to the 20th century a lot of our heritage, whether it be here or elsewhere, had been taken up and moved. You know, people have used stones in the past: "Oh, that is a nice piece of stone. We will use that in our development" or whatever it might be, and you can see evidence of that all over the place where building materials are moved around, whether it be abbey remains or Neolithic remains and stones are used in many respects. We will have to assess what is still there.

The Deputy of St. Martin:

To be fair to the archaeologists at the gasworks, for example, would there be a case for radar identification of the stones that are part of it, excavating them and replacing them in an area of the Island where they could be protected?

Chief Executive Officer:

I am not an archaeologist, but I am not sure if that is heresy in archaeology terms or not really, but it would depend on what is there. You know, they certainly are aware. They have done a lot desktop stuff already. They know that there is potential here. We have a dolmen that sits under the road by Grand Marche. There is a dolmen that sits there; that is why the road is named as it is. The issue is as to what archaeology exists linking that dolmen to other areas of Neolithic settlements. So they are doing some of that radar sounding work. They may well need to do some borehole work as well to see where that horizon sits.

The Minister for Planning and Environment:

One further comment. I think, Deputy Luce, would that mean if the archaeological remains were proved present and to an importance level that was kind of sufficient, would it mean that any developer would be prohibited from building over it? From the work I have seen in London and other places, there are Roman remains and there are big bank buildings built over them, so it does not automatically apply that if you do have remains that are going to remain in the ground that that prohibits any development that takes place over it. It might well mean that the foundations have to be reworked and the construction that applies in order to cantilever over the site is achieved, but it does not certainly in my mind preclude particular developments necessarily.

Deputy J.H. Young:

Thank you very much, Minister. I wonder if I could close that subject now and move to the last one on our list. When we met you last time, Minister, you gave us I think a commitment, and I think you have given this publicly in the States, that you are bringing forward a consultation document for the review of the planning appeals system. What we would like hear from you, if you can, please, is some information of how the current appeals system through the Royal Court is working since the new Planning and Building Law was enacted in 2006, in particular if you can give us any information on the number of appeals, first and third parties, the number that you have won, the number that you have lost and the numbers that are pending, please.

The Minister for Planning and Environment:

Yes, the officer has prepared a paper on this and he has all the statistics at his fingertips.

Chief Executive Officer:

I have some spreadsheets in front of me. So we have some stats here that we can share with you from 2004 to 2010 and also since the ministerial government has come in since 2006. So if you allow me, I am just going to read through some of these stats: since the introduction of ministerial government, we have 90 appeals through the Royal Court; 51 of those have been first-party appeals, 39 have been third-party appeals. Third-party appeals were introduced in March 2007, so that is the figures from then. That is the headline figure as to the number that are submitted. Not all of those appeals end up going to court because in many cases the appellant will think: "Well, okay, I am going to submit a new planning application" and sometimes we do resolve things that way. They withdraw an appeal; they get planning permission for something else. So of the 51 first-party appeals, only 19 have gone to court and, of those 19, we won 15 of them, 15 were dismissed, 3 were allowed, although one of them was subsequently overturned. We went to the Court of Appeal on one of those decisions, so we subsequently won it, so we have only lost 2 out of those 19.

Deputy J.H. Young:

So you had a second bite of the cherry on one of those?

Chief Executive Officer:

We did. We felt that the Royal Court judgment needed a challenge at the Court of Appeal, so we went to the Court of Appeal.

Deputy J.H. Young:

I might come back to that. So you challenge an appeal finding ...

Chief Executive Officer:

Yes, there is sometimes you get a judgment against you. Whether you are the first party or you are the Minister, the law allows you to challenge a Royal Court decision by taking it to the Court of Appeal. If you feel you have grounds to appeal, then you can do so, and so in that case we clearly felt we did have grounds and ultimately we did win at the Court of Appeal. We have one judgment pending, so we have, as I say, 51 first-party appeals, 19 went to court, 16 dismissed, 2 allowed, one pending. So that is not a bad appeal rate for us in any case, so that is not so good for the first parties. Of the 39, the third-party appeals, only 16 went to court, and third-party appeals are different, so 7 were dismissed, so we won 7, 5 were allowed, one of which has been sent back to the Minister for reconsideration and we are awaiting judgment of 4. So it is a lot more balanced. In general terms, our appeal sort of status generally it is around 75 per cent win rate for us as a government compared to the appellant. So that is generally where we have got. We have a big issue now in terms of how we want to take an appeal system forward and which maybe we will come on to, but they are the headline stats that ...

Deputy J.H. Young:

Can I ask, of the 39 third-party appeals, did any of the applicants apply to join in proceedings?

Chief Executive Officer:

I do not know off the top of my head.

Deputy J.H. Young:

So we just treat them as straight third parties? It is all right, it is a technicality. Now, in terms of resources, is there a cost if people make appeals? Do they have to pay fees?

Chief Executive Officer:

Yes. This is one of the issues I think the appeal discussions that we got coming on later this year is to take a case to the Royal Courts costs a significant sum of money. They will need to retain their own legal advice and they will need to pay court fees and so on, so there is a cost to appealing in Jersey which ...

Deputy J.H. Young:

Is there a fee to the department?

Chief Executive Officer:

We use our own Law Officers resource and we also use our own Appeal Officers resource, so to a certain extent that is already paid for, but there is a cost if we were to break it down, but it is officer time. Clearly there is a cost to the States in terms of the Judicial Greffe and the costs of the court. So yes, there are costs on both sides. The fact is that we do not get a built-in law officer. We do not have a built-in law officer.

Deputy J.H. Young:

So there are substantial costs ...

Chief Executive Officer:

There are indeed.

Deputy J.H. Young:

...for the appellant and the States?

Chief Executive Officer:

Certainly in many cases it runs into tens of thousands of pounds to take a case to the Royal Court if you are paying for legal advice yourself as well as that court time.

Deputy J.H. Young:

In the 2 cases that you lost, were any costs awarded against you?

Chief Executive Officer:

We did get costs awarded. It is not as frequent thankfully as some would expect, but yes, we have had costs awarded and over the life since 2006, costs have been in the order of about £85,000 worth of costs. That does not include some of the recent judgments.

Deputy J.H. Young:

So there is some pending, is there?

Chief Executive Officer:

There are some pending, yes. Sometimes an appellant will win their case in court. They may well ask for costs sometimes. Sometimes the court does not entertain costs and costs awards are knocked back.

[11:45]

Sometimes costs awards are granted, so it does vary hugely. I think it depends on how the court has found our behaviour, whether it has been reasonable or not.

Deputy J.H. Young:

What about third parties, have they obtained costs orders against you?

Chief Executive Officer:

Sometimes, yes. It depends what process they go through, there is a modified procedure. There is also a sort of a more full-blown procedure in court. It is often the case if things go through a modified procedure that appellants do not get costs awarded. Again, it really does depend on how much have expended themselves. Appellants who have expended tens of thousands of pounds and win a case, they will come after us for costs. We are aware some applicants spend hundreds of pounds. It depends who is doing the work.

Deputy J.H. Young:

Well, thank you for that. I wonder, Minister, we have had that factual information from your Chief Executive Officer. Lessons learnt from the 5 years that we have that appeal system: have you reached any conclusions that you will be putting forward in your consultation paper about your procedure?

The Minister for Planning and Environment:

I still think I have maybe a general reservation about the whole process of appealing decisions.

Deputy J.H. Young:

Sorry, beg your pardon?

The Minister for Planning and Environment:

I still think I have some reservations about third-party appeals or first-party appeals and the whole system of having to allow appeals. In some ways, part of me says: "Well, yes, okay, you are being fair" and departments can be found to be in a position of coming to a decision on false grounds or grounds that are not properly substantiated, but on the flip side, it is an expensive process and it does encourage people to query the decision-making authorities maybe to extremes. Certainly if you look at other countries, if any decision made by any decision-making body within the States is in a position to have those decisions queried as an automatic procedure, not as something that is seen as something that happens from time to time, then perhaps we are querying the decision-making process across the board.

Deputy J.H. Young:

So what does that mean, Minister? Does it mean you will not be coming forward with a consultation paper?

The Minister for Planning and Environment:

No, it certainly does not. I think there is merit in the proposals to move forward in the way that we are moving to try and allow the system to be undertaken at lesser cost.

Deputy J.H. Young:

What are your thoughts on doing that?

Chief Executive Officer:

Yes, I think we need to consult with you through a Green Paper on basically the principle of planning merits-based appeal system. At the moment, our appeal system is based on a test of legal reasonableness and whether we would be legally reasonable in making the decision. That is quite a high bar to test in court and to challenge so you cannot effectively challenge a decision based on the fact that you just think we have the wrong planning decision. We need to be found to be legally unreasonable in making that decision, so that is one of the key principles.

Deputy J.H. Young:

Does that mean, in effect, the decision does not have to be wrong, it just has to be so crazily wrong that it ...

Chief Executive Officer:

Basically, yes.

Deputy J.H. Young:

Is that it? All right.

Chief Executive Officer:

We cannot at the moment test in court that we thought this building should be yellow, it should be green, and the planning decision was wrong. That is not a legal testimony so I think one of the key principles we need to run a consultation on is whether we should have a planning merits-based appeal system. We are the only jurisdiction out of the British Isles not to have that so that is one of the key principles. The other key principle I think we need to assess is the mechanism for people to appeal and what we expect in the accessibility of the appeal system. The cost of going to a Royal Court ... in effect, the appeal system at the moment is akin to a judicial review of a planning decision and that is quite a high bar for a man in the street, if you like, to access. So I think there is a question about accessibility of the appeal system and the cost of that appeal system and, therefore, that would then direct us to what does an appeal look like. Do you need legal representation, for instance? Is it a planning inspector that sits? Is it informal hearing? Is it more round table sort of discussion around this case? So these are some of the things I think we need to look at. If we look at the U.K. planning system, we have an option of going that way, which is formal public inquiries which are legal advocates in a more sort of adversarial set-up with a planning inspector acting as the judge. We have informal hearings or we have a written representation appeal whereby both parties just send their written case off and it gets assessed. The inspector will visit the site and make a judgment. So the mechanism, I think, needs to be looked at. The other issue that we need to look at ...

Deputy J.H. Young:

Before we do that, have you looked at the Guernsey Planning Appeals Panel?

Chief Executive Officer:

We have. We have studied Guernsey. We have also had a visit to the Isle of Man and seen how that one runs and there are some principles there, I think, which are very good that we will need to build into the consultation. The other issue that we need to grapple with is the binding nature of any inspector's decision or otherwise and whether it is just a recommendation to the Minister or whether it is a binding decision on the Minister, and that is something also we would need to test in consultation because I think that that certainly does impact on cost. The natural justice of the appeal system, is it naturally just that you cannot argue a plan, just a different planning case and a planning decision very much on balance depending on the case at the time and generally is that accessibility to smaller applicants. At the moment, it is the preserve of people who are willing to spend thousands of pounds.

Deputy J.H. Young:

So when do you think you would be ready to publish this consultation?

Chief Executive Officer:

We are aiming ... it is in our Business Plan for this year, a Green Paper this year. I will be really honest with you. The guy who is meant to be doing this is currently sorting out our I.T. system so he has 2 jobs to share. One is our Planning I.T. system and the second is the Green Paper on appeals. So the I.T. system is pretty much there now so the second half of this year will be planning appeals work.

Deputy J.H. Young:

What is the political process, Minister? If we have a Green Paper, what happens after that?

The Minister for Planning and Environment:

You get a White Paper and then there is a decision.

Deputy J.H. Young:

So the Green Paper goes to where?

Male Speaker:

Everybody.

Deputy J.H. Young:

Everybody, yes.

Chief Executive Officer:

I think what we would be seeking to do is publish the Green Paper. We will need a States decision on this and there will need legislative change if we go down a route of a merits-based appeal system. It would need a change to the Planning Law to allow that. Clearly, before that we need a decent dialogue with the courts with the Judicial Greffe. We also need a dialogue with the users of the system. So ...

Deputy J.H. Young:

At present we have first and third-party appeals?

Chief Executive Officer:

Yes.

Deputy J.H. Young:

Will that continue on in your consultation paper or will you be putting that issue out for consultation whether or not we have first and third-party appeals?

Chief Executive Officer:

Certainly the planning merits-based system will certainly focus on the first-party appeal rights. I do, however, think we need to blend the third-party appeal rights so do we allow a third party to also assess planning merits? That is something that frankly will be up for discussion in the Green Paper.

Deputy J.H. Young:

Okay, all right. I think perhaps the logic is to reduce the administrative costs. At the moment you are saying I think to the panel there are various costs here. You have costs of the department. The Royal Court has costs. The States have costs and also the appellant has costs, and none of that is satisfactory.

Chief Executive Officer:

It is not. I think appeals are a very healthy part of any regulatory system. It sharpens up practice in the decision-making and gives you case precedent for future decisions so it is a very vital thing to have. I do not mind losing appeals in the department. I think it is healthy to lose appeals. What is not so healthy sometimes is the big costs that come in losing appeals and I think you can get all the benefits of an appeal

system, case law precedent for instance, without having to pay costs to appellants of tens of thousands of pounds just because they have had to go through that process in court. So I agree, I think it needs to be ...

The Deputy of St. Martin:

There would appear to be a way forward. On the one hand, you would have to try in some way, shape or form to make it slightly more difficult for people to appeal but if they do genuinely feel they have a case to appeal and they do get there, we have to find a way to look at costs. So there is a balance again to be had.

The Minister for Planning and Environment:

As I say, that is my only reservation, that if we make it too easy for people to appeal, then, in effect, every decision made by the decision-making body would be appealed and you will end up clocking up extra monies in order to do that, which would negate the whole essence of the Island.

Deputy J.H. Young:

Thank you for that, Minister. Do you have any more points there? Well, I would like to thank you, Minister, and your team, for your contributions. You have really helped the panel in all those points. I think we have managed to cover that, so with that, thank you, I am going to formally close the public scrutiny session and thank you all for your attendance and I invite you to leave.

[11:54]