

# **STATES OF JERSEY**

## **REVIEW OF PLANNING AND BUILDING FUNCTIONS**

**November 2005**

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### **INTRODUCTION**

I was appointed in September 2005 to carry out a review of planning and building functions in the States of Jersey and to report to the President of the Environment and Public Services Committee.

The brief which I was given before beginning work contained a list of ten items, essentially dealing with the efficiency of processes and procedures throughout the Department, and with the adequacy of the policy background, questions of resources, procedures, and quality assurance. I deal with all these matters in this report. But as I talked to a variety of people it became clear that there were wider issues about the role of the Department within the Civil Service and about the culture of the Planning Department in a changing world. It was obvious that it was necessary to deal with these questions before turning to the detail.

The review took place against the background of the imminent introduction of a new system of Government and also a new Planning Law, and this was the major reason for seeking a review now. There is also to be a new Chief Officer for the Planning and Environment Departments shortly.

There were criticisms of the way the Department operated (or at least had operated in the past). These criticisms were sometimes conflicting, but they were important and need to be addressed before the changes in governance and legislation come into operation. I judge that some of the comments which were made were justified and others not; that some of them are within the power of the Department to correct and some not; and that some of them go beyond the way in which the Department itself operates and embrace issues relating to political and corporate policies. I have tried to confront all these issues, both strategic and detailed. I am completely independent and have no connections with the Island. This has meant a steep learning curve as I have sought quickly to understand and appreciate the particular character and culture of the Island. But it also means that I am able, I hope, to make wholly objective recommendations.

I have visited Jersey three times. The first visit (excluding travelling time) lasted for one and a half days, the second for just over three days, and the third for just under two days.

This is a relatively short period of time in total and, though I think I have gained a good understanding of the situation, there may be areas where further study is necessary.

During those visits I met a large number of people who gave freely of their time, and I am grateful to them. They included the Bailiff, the President of the Policy and Resources Committee, and the President of the Environment and Public Services Committee (to which I will refer as the Planning Committee for ease of reference). They also included two Connetables (Simon Crowcroft and John Germain) and three Deputies (Gerard Baudains, Collin Egge and Celia Scott Warren). At official level I met the Chief Executive, Policy and Resources, Chief Officer of the Economic Development Department, HM Solicitor General, and, of course, the Chief Officer, Environment and Public Services Department and the Director of Planning – who gave me a particularly large amount of time, patiently explaining the operation of the system in the States to me. I also met nine other members of the Department's staff, and talked to representatives of the Environment Department, Health Protection, and Public Services Transport section.

Outside the Civil Service I spoke to two of the largest developers in Jersey and to two of the leading architects. I met representatives from the Chamber of Commerce and from the Institute of Directors. I also met the Managing Director of WEB, and the Chief Executive of the Jersey Evening Post. In addition I have read a great deal of material including various guidance notes and advice notes, some case studies of particular planning applications, the Island Plan, and other relevant papers.

### **Structure of the Report**

In the first part of the report I summarise, without much comment, the views which I received about the Department during my visit, though without attributing them to individuals.

In the second part I deal with the strategic questions about the role and function of the Department.

I then go on to look in greater detail at procedures and processes, starting with Policy and then dealing with the Development Control function – which, as always, excited the greatest comment. This includes an examination of the way in which the Committee operates and some comments and recommendations on appeal processes. I then deal more briefly with Historic Buildings and with Building Control (which attracted little unfavourable comment) and in the final section I deal with some cross-Departmental issues including management and quality assurance, and staffing resources. I refer to the specific Project outputs which were asked of me before giving a summary and list of recommendations.

## 1 GENERAL COMMENTS

Many very strong views were expressed to me about the general performance of the Department. These were not consistent – there was much praise as well as some strong criticism.

There was a consensus however that things have been improving, in almost all areas, over the last couple of years and I think it is important to stress this. There was much appreciation for the efforts of the Director of Planning and his senior staff in making these improvements, and the Department was seen as being on an upward curve. The leadership shown by the Committee President has also been important. Those who made the fairly strong criticisms which follow were usually careful to stress that they were not aiming their comments at individuals who are now in the Department.

There was also a general view that the changes which had been made to the Departmental structure – the merging of Planning and Environment with Public Services under one Chief Officer – had been extremely beneficial, and that the opportunity presented by the departure of the previous Chief Officer, and the imminent appointment of a successor, was likely to give a further boost to the planning function.

At a general level, the concerns fell into three categories.

Firstly there was a very widespread view that the Department was too concerned with minutiae and that it did not take a strategic view. It was felt that there was too much concern with “driveways and plastic windows” and that the underlying policy framework – for example the production of supplementary planning guidance to follow up the Island Plan, or the preparation of a plan for St Helier – was lacking. It must be said, however, that there was some evidence that – in paying close attention to very detailed issues – the Department was meeting the wishes of many residents of the Island, who take a keen interest in such matters. I deal with this later (pp 18-19) – but dropping the minutiae may not be as easy as some imagine.

Part of this same point was a concern about “red tape”. This is something of which all Planning Departments are accused, but it is an important issue.

The second comment is a related one. It is that the Department lacks “confidence” (a word used by two people) or is “timid” (to quote a third). It does not show leadership. The Waterfront was used as one (very complex) example of this but there were many more. It was also said that Planning was a “Cinderella” Department, with inadequate resources and a lack of support from the centre. It seems to me that this raises some corporate issues as well as real concerns for the Department itself.

The third comment was that the world has changed and that the Department has not changed with it – or at least not sufficiently. For example the Island Plan was prepared at a time when heritage and conservation were primary concerns; but much greater priority

is now given to economic growth and planning policy needs to move on to reflect this. Again I return to this later.

These three points are crucially important and I have discussed them with a range of people. All were careful to put them in the context of the Jersey culture. This is a relatively small Island, with a relatively small population. Politicians are close to the people they represent. Fairly small matters can become highly controversial very quickly, and the press is quick to seize on such issues. At least two outsiders expressed great sympathy for the Department in this pressured situation.

In fact, it must be said that the view of the Department from outside was in many cases more favourable than that from the inside. When it comes to the details of the process, as opposed to the strategic issues above, it was seen by many – though not all - as being generally efficient and responsive. Architects and developers were often complimentary. Though they would, of course, like quicker decisions, especially favourable ones, they understood the pressures on the planners. There was respect for the officers, especially at a senior level, and certainly a feeling (which I have already mentioned) that performance has improved.

Having said that, I did hear some strong criticisms from outsiders in the development and business world. I have tried to be objective about these; I am conscious that, as a planner myself, I could be accused of an impartiality by-pass. Many of the criticisms are familiar – they have probably been made about every Planning Department in the UK. They arise largely from the fact that every significant application is likely to attract opposing views and that there will inevitably be disappointed people once the decision is made. They reflect the keen interest which people in Jersey take in planning issues, which can be time consuming. They also arise, I think, from a perception – as it was put to me several times – that the process is too “politicised”. And some of the criticisms are conflicting; for example in two consecutive meetings I received a complaint firstly that the planners sought too much information in outline applications, and secondly that they did not ask for enough.

Some of them represented, I think, a lack of understanding of the planning system and the pressures upon it – which may reflect a lack of effectiveness by the Department in explaining it to the outside world. Members and Officers need a better understanding of commercial imperatives; businesses need a better understanding of the importance of the role of Members and of the importance of public involvement. But some of the complaints were justified, and all of them deserve to be taken seriously. I will explain and deal with them in this report.

It is perhaps even more important to report the view that there is a degree of public scepticism of the decision making process; people feel that there is inconsistency, perhaps favouritism, maybe even corruption – though I must stress that I found not the slightest evidence of this and was impressed by the professionalism of the process. This is a very fundamental issue, but it is generally felt – and I agree – that the move to

Ministerial Government and in particular to open Committee meetings will assist in improving public confidence in the system.

There were particular concerns about various aspects of the consultation process, about the appeal system, and a variety of other topics, all of which I discuss later

## **2 STRATEGIC ISSUES**

In the previous section I mentioned three strategic issues which had been raised with me, as follows.

### **2.1 Is there a lack of strategic vision and a concentration on minutiae?**

Yes I think there is.

But a variety of other questions flow from this – in particular why is it so? And how can it be changed? There may be many reasons for it and I think it can be attributed to a combination of the following.

Firstly, as I hinted in the last section, there is a demand from States Members and from members of the public for attention to detail. People are concerned about the activities of their neighbours, in a fairly crowded island, and expect the planners to look after them when development of even a minor nature is proposed which might affect them. As one person said “to be visionary is to take a personal risk”.

Secondly the Department seems to have found it difficult to establish a leading role in policy making. In saying this I do not underestimate the importance of the Island Plan (though some do). But for example in the development of policy for the Waterfront their efforts to take a lead have at times been misunderstood, overlooked, or ignored, for various reasons. They have not been able so far to take the lead which is required in taking forward detailed plans for St Helier. This is changing I think, and in part it relates to the confidence question which is discussed below. But the new Chief Officer will need to seize – and be allowed to seize – the initiative on these and other issues.

Thirdly there are questions about how the resources of the Department are used. The policy section is very small and though consultants can be used for some of the bigger tasks there is a constraint here, to which I will return.

It is worth adding that this was a concern at the time of the ERM review of the Planning Department in 1999, which I have seen, and though the Island Plan has been completed since then some of the same issues remain.

An obvious step to take in order to tackle this problem is to remove some of the minutiae and to free resources to deal with policy. There is a wish to do this inside the Department as well as beyond. This would mean looking at the level of detail in development control and considering whether a lighter touch would be acceptable in Jersey; it would also mean raising the level of exemptions significantly.

It is my firm view that the Department and the States would benefit from the greater application of resources to policy making. This applies not just at the higher level (such as the plan for St Helier) but also to more detailed policies and design guidance. I will make recommendations on this in the section which follows later on development

control, including suggestions on exemptions, the level of detail, delegation to officers, appeals, enforcement and historic buildings.

## **2.2 Is there a “lack of confidence” within the Department?**

Yes I think there is.

I think this is something which has its roots in the past and I think it is improving and can improve further. It is hard to define – the people who raised it may not all have meant the same thing – but it reflects a feeling that the Department has not over the years been able to thrust itself into the centre of policy making in the way that it should. It also must reflect the fact that planning has been a subject (as it always is) of criticism and that this must affect morale and therefore confidence. I do not think it is something which the Department can deal with alone however, and I refer to some corporate issues below.

There is recognition within the Department that it has not shown leadership in the past, and that given the will and the resources there are some challenges to relish in putting planning at the heart of Jersey Government. No doubt this will be the primary task of the new Chief Officer of the Department.

## **2.3 Is there a failure to keep up with changing policies?**

I think the answer here is yes, up to a point.

It seems to be the case that the Planning Committee, at the time when the Island Plan was produced, placed greater emphasis on heritage protection, and less on economic growth and development, than it does now. It is to be expected that political emphasis will change as circumstances change – this is neither reprehensible nor avoidable. The question is whether plans and policies allow for this change of emphasis and whether they are moving quickly enough in response to it. In particular has the States of Jersey Strategic Plan 2005-10 been embraced by planning policy yet?

The Island Plan is in fact a flexible document which in many ways does give sufficient scope for the kinds of development now being contemplated. It does, it is true, place constraints on such development – rightly because there is a political and popular demand for such constraints and, once again, in an Island where it is essential to protect an attractive environment for future generations, it is not reasonable to expect no restraint on the quantity or quality of development. But it has been followed by further policy statements such as the report of 14 January 2004 on Industrial Requirements on the Island, which recommends a more flexible approach, and the report of 14 May 2003 on the change of use or conversion of modern farm buildings, which recognised changing conditions in agriculture. The Planning Committee has responded to changes in emphasis in rural policy, recently giving permission to a number of developments such as golf courses and driving ranges.

There are arguments on both sides here. On the one hand, it is necessary to accept that there are conflicting pressures on the Planning Committee and the Planning Department, and that the pressures for “no change” can be as great as those for change. One person said to me that Planning should be an “enabling” Department. I think it is possible for it to move in this direction, given a clear policy basis, but it can never be just “enabling” – it has other responsibilities.

It is also important to accept that planning policy cannot be infinitely flexible, and that it cannot twist this way and that in response to particular pressures or personalities. This would be a recipe for uncertainty and inconsistency. There are, rightly, formal processes of consultation and debate which have to be employed in order to change direction (and it is anticipated that this will be done through a review of parts of the Island Plan shortly, as the Strategic Plan proposes).

I can understand the views of those who are frustrated with this process however, and I think it is probably true that the Planning Department have not been in the forefront of change, and were not very much involved in the preparation of the Strategic Plan. The issues which I have discussed about lack of confidence may help to explain this.

Acceptance is needed on both sides here – by the Planning Department that the world is changing and by others that the Planning Department has particular pressures upon it and balancing acts to perform.

## **2.4 Corporate issues**

This leads me neatly to corporate issues. I have said that I agree that the Department is not taking sufficient lead in policy matters, for various reasons; that it lacks confidence and leadership; and that there are at least questions about its adoption of policy changes. The more I discussed these issues with various people and the more I thought about them, the more I came to believe that they are as much a matter for corporate action as for the Department itself. The Department does not exist in a vacuum. Of course action is needed within the Department – indeed it is generally recognised that it has already begun, and no doubt the new Chief Officer will help to accelerate this process. But the Department needs support from the centre – from the Council of Ministers (in the new system) and the Corporate Management Board – if it is to change in the ways which are sought.

There needs to be ownership of planning policy at the centre. In particular the Island Plan needs to be understood and supported. The role of planning in mediating difficult issues such as those on the Waterfront needs to be respected. It must be appreciated that planning operates in a very public environment, even more so when Committees are opened up. There needs (and an outsider said this strongly to me) to be political support and involvement for planning – not just from the Planning Committee. The Department needs both to be involved closely in the process of policy evolution and to be given a clear and public brief as to what the Council of Ministers expects.

None of these things is absent and I believe that – just as the Planning Department itself has improved over the last couple of years – there is now a much clearer sense of purpose and intent at the centre. This will be enhanced in the new Ministerial system. But there is still a step to be taken in embracing the Planning Department within this process rather than criticising it.

Underlying these comments is the matter of trust. I sensed – and this was confirmed in various conversations – that trust between all Departments, not just planning, was not satisfactory. There is obvious awareness at a high level that in order for the States to function efficiently trust needs to be built – between Departments and between Officers and Members. I have observed rather more in the way of investigations, disciplinary actions, votes of no confidence and so on than I would have expected. These are time consuming and damaging exercises, and better corporate ways need to be found of resolving disputes. This is clearly accepted at senior level. I hope that this report, though it is critical in places, will nonetheless help to enhance this level of trust – at least as far as the Planning Department is concerned. The States can be assured, at the very least, that the Planning Department operates in a straightforward, honest and professional way, with high standards of integrity.

## **2.5 Conclusions**

Though these wider issues were not part of my original brief I believe that they are of great importance for the Planning Department and indeed for the States of Jersey. I believe that Planning should be at the centre of policy making - it is not at present. In order for this to happen it needs to change, and be allowed and encouraged to change, its culture away from dealing with “minutiae” and towards forward planning. Recommendations follow later in this report which reflect this. It needs support in making these specific changes (which will not be easy), it needs understanding of its particular challenges, and it needs to be brought into policy making at the centre in a much more obvious way. The presence of the new Chief Officer, when appointed, on the Corporate Management Board will greatly assist in this process. In the meantime I **recommend** that both the Department itself and the Corporate Management Board should actively consider ways in which the Planning Department can play a more central role in policy making.

### 3 THE POLICY DIVISION

The above discussion of strategy leads logically into an examination of the policy division of the Department.

#### 3.1 The Island Plan

I have already referred on several occasions to the Island Plan. This was regarded by users as being a good plan – clear, well written, easy to use. This is my assessment too; it compares well with other documents of its kind that I have seen. It is generally accepted that it needs to be updated to deal with changing policies and to update the housing figures (and this is well advanced, at least in the case of housing). This should enable any feeling that the Plan is not sufficiently positive to be addressed. As I have indicated I think this process needs to be “owned” by the States as a whole and not just seen as a planning exercise; but of course it needs to be done correctly and thoroughly with genuine consultation and involvement by the community. A Public Examination into the changes, rather than the slightly distant, though no doubt thorough, process which took place previously, should increase political and public acceptance of the Plan. Article 3 of the 2002 Law provides for this but is not explicit about the way in which representations should be considered. I **recommend** that a public examination, based on the “Examination in Public” style employed elsewhere in the UK, should be used to examine future rounds of changes to the Island Plan.

I was concerned about the process whereby Members of the States Assembly can ask the Committee to alter aspects of the Plan by individual proposition. I appreciate that this is likely to be a difficult matter to address and goes to the heart of the way the Island is governed. But it seems to me to raise at least two problems.

The first is that changes can be proposed without any rigorous process (perhaps without any process) of public involvement. Property rights can be, and are, affected by these changes. Though I was told that this was not a frequent occurrence, I did look at the Route de Noirmont case (which I mention later) where such a proposition added complexity to what was already a difficult case. This principle seems to me to be potentially unfair.

The second is that it is bound to introduce confusion and inconsistency. Policy cannot be allowed to shift frequently in response to particular cases and changes should not be made “on the hoof”. As time goes by it will become more difficult for users to discover which parts of the Plan have been changed and which have not. Changes might at present be made in isolation, without reference to the underlying strategy of the Plan, and without proper statistical analysis or support.

I **recommend** that it should be not be possible to ask the Committee to alter the policies in the Plan simply by a proposition in the States Assembly. The proper way to make changes is at the review stage, with thorough consultation. The alternative, if urgent reasons for change occur during the life of the Plan on a specific issue, is to seek a full

report from the Officers on all the implications of the change, channelled through the Planning Committee (or Minister), with an opportunity where necessary for the public to comment – especially where property rights are affected.

States Members may feel, if this change is made, that they are being deprived of a right which they have long had and which should remain. I will discuss their wider role in planning issues later. But in respect of the Plan, which is agreed at States level, I believe that they must accept that – once it has been agreed – it must remain in force until the next review, or that if changes are needed urgently they must be properly debated in public and implemented in the way I have described. The recommendation I have made for a public examination should help here; States Members would be able to participate in writing or in person and have their views considered by an independent person.

### **3.2 Housing sites**

It is very evident from all the discussions I have had both inside and outside the Department that it is the housing part of the Plan which has caused the most controversy and which has taken up huge amounts of the time of both Members and Officers. In this Jersey is no different from other places – the allocation of additional land for housing is always highly controversial. It is not for me to discuss policy, but it is clear that there is some need for new housing and that the Island Plan made an effort to arrive at a consensus as to the extent of this need and the locations for it. There were 11 Category A sites, and these have been the subject of three rounds of consultation – in the Plan itself, at the Development brief stage, and then again at the planning application stage. These sites are set out in paras 8.68 – 8.87 of the Plan. It was made absolutely clear in Para 8.70 that the figures given for the yield on each site were “...only an indication of yield...”. Subsequent proposals for the detailed development of the sites have thrown up higher figures and this has been the main cause of the controversy. Some blamed the Department for imprecision in the Plan; many blamed developers for seeking to cram too many houses onto sites; some even sought to go back to the principle of whether the sites should have been allocated at all. At least some of these points seem to have been based on a misunderstanding of the Plan.

The fact is that the States approved these 11 sites, with only an indicative figure of yield. Though Members were obviously surprised by the elevation in the numbers on each site, this should not have led to any need to reconsider the allocation of the sites. Matters of principle were determined at the Plan stage. Members were of course entitled to dispute the capacities of the sites, and a debate about density and housing mix would have been perfectly reasonable. It may be that developers had sometimes sought too high a provision on some sites (and there was considerable suspicion, as always, about what was seen as the aggressive approach of the larger developers). But, importantly, it is also the case that it makes sense to maximise the use of each piece of land and that such an approach would reduce the need to allocate sites for housing elsewhere.

The amount of effort required from the Department in relation to these sites was enormous; just one of them, for example, has led to a series of at least five public

meetings. The treble consultation has been time consuming for everybody and people have clearly sought to go back on the policy agreed in the Plan.

There is room for argument as to whether the Plan could have been more prescriptive regarding the numbers on each site. Certainly the gap between the original estimate and the eventual figure has been large in one or two cases; the gap really should not be so great. But indicative figures are quite normal in plans of this kind, and it is normal to be conservative. It is almost impossible to give precise figures in advance without carrying out very detailed physical surveys, including assessments of things like transport and drainage, and without having a clear idea as to the likely mix and size of types of housing. The amount of work involved, for a significant number of sites, would be beyond the resources of the States.

In view of the Review which is about to take place of the Housing part of the Plan it is crucial that the Plan is crystal clear, and that the indicative figures are as realistic as possible. Greater care must be taken to ensure that understanding amongst Members and Officers is very much improved, and that they know exactly what they are approving and why. Assuming there are additional housing sites in the Plan, all parties need to understand the meaning of the figures which are given for yield, and how much flexibility there might be. And, this having been done, there should be no departure from the Plan. The Planning Department should not find that implementing policies which have been agreed by the States is as time consuming and difficult as it has been over some of these 11 sites.

### **3.3 Conformity**

One of the questions I was asked to consider was whether the policies set out in the Island Plan are followed in decision making, and I asked widely for views on this. For the most part (notwithstanding the point above) I was re-assured. At a meeting of the Development Control Sub Committee which I attended it was clear that Members were also very much aware of the Plan.

However my attention was drawn to some deficiencies in the way the Development Control Division consult with the Policy Division and I am aware of at least a couple of cases where policies in the Plan were only picked up very late in the process. Whilst some policies are regularly cited in reports, not all policy considerations may be taken into account and there are cases where the Policy Division is not consulted on cases which do raise policy issues. There are various reasons for this and I have comments to make on it in the section on cross-Departmental issues below (p 42). I also comment later on the very unfortunate physical separation between Policy and the rest of the Department. I understand that steps are already being taken to improve linkages between the two divisions and to bring greater rigour to the consultation process between the Divisions.

### 3.4 Supplementary Planning Guidance (SPG)

There is, I think, a consensus that more SPG is needed, and indeed some of this is already well under way. The Plan for St Helier is urgent, and I understand that a brief for Consultants will shortly be available. Such a plan is much needed in my view, for many reasons, and it needs to be done thoroughly and thoughtfully.

In addition a series of planning advice notes, to put flesh on the bones of the Island Plan, is proposed and some of these are under way. The Policy Division is, as I have indicated, a small team (though I was impressed by their quality and commitment, which is the equal of similar groups on the mainland); it is clear that their work on these notes is regularly interrupted by the need to tackle urgent ad hoc issues. Members of staff have been seconded to do other jobs within the States. One post is devoted exclusively to mapping. Though one person is shortly to return to the division he will be dealing almost exclusively with the Waterfront. I will deal with resources later (p 44) but I think this Division needs to be strengthened in some way to produce more policy documents.

It is also the wish of the Development Control Division to produce advice notes for applicants if staff time becomes available. It is important to draw a clear line between the advice for applicants which this Division might produce and the work of the policy division; I think there is a valuable role for both – but obviously close liaison between the two is essential.

I believe from conversations with people inside and outside the Department that the production of more Design Guidance would be particularly valuable. This would have the twin aims of making clearer to applicants what was required (thus hopefully making the process more efficient) and – importantly – raising standards and expectations. Within St Helier this would be likely to form part of the Plan which is being produced (and an Urban Character Appraisal, which contains design advice, has already been prepared as part of the work on the Plan); but a Design Guide for the rural areas would also be very valuable. From my (admittedly limited) experience of the Island I think that the quality of design could be described, at best, as “mixed”.

In view of all these demands I **recommend** that in the allocation of resources greater emphasis should be given to the production of supplementary planning guidance, including a Plan for St Helier, advice notes and design guidance for applicants, and further advice on the implementation of the Island Plan.

### 3.5 Policy making – openness

I note that while in the new system planning applications will be considered in open Committee, the same may not apply to policy making. The Island Plan itself, and any reviews, will of course be the subject of consultation, as will any supplementary planning guidance. Major decisions are likely to be made by the Council of Ministers and I understand that they propose that some of their meetings will be held in public – which will assist in developing a sense of openness and transparency. I **recommend** that where

the Council of Ministers takes decisions on planning policies this should normally be done in public. But other decisions will be taken by the Minister.

I do not want to make too much of this – the States are moving rapidly towards greater transparency and this is very welcome. But on the other hand there may be criticisms of the process in the future and this needs to be monitored. The scrutiny panels which are to form part of the system will undoubtedly be helpful in this area and provide reassurance. But the problem which can arise is where a consultation has taken place on a policy issue; there are conflicting views from the public; and the Minister takes a decision in private as to the way ahead. Those whose view has not prevailed may be dissatisfied with this – they may not have seen the grounds on which their argument was rejected, nor the thought processes involved. They may quite wrongly suspect that their views have been unreasonably ignored. I **recommend** that where the Minister takes a decision the reasons for it should be published and made clear. It will be necessary to monitor this approach but, again, I put these recommendations in the context of a move which is already taking place towards a more open system of decision making.

#### 4 DEVELOPMENT CONTROL

There is a great deal to say about development control, and related matters such as the appeal system. This is not unusual – it is the front line of planning and always raises interest and controversy in the press and amongst the public. Jersey is no different from other places except that – as I have already said - this controversy is probably heightened by the geography and culture of this relatively small place.

In general I was impressed by the professionalism of the senior Development Control staff whom I met, and with the process which I observed (all too briefly) at a meeting of the Development Control Sub Committee. Though I have a number of recommendations to make about process, I do not have criticism of individuals in the Department or on the Sub Committee. Indeed those to whom I spoke outside the Department were warm in their praise of senior D C staff.

There are three points of a general nature which I should discuss before coming to the detail. The first is the complaint I have already mentioned about “red tape”. I have already talked about the problem of minutiae versus policy.

The processes which I have seen in operation are not dissimilar from those I have seen in operation elsewhere, and I do not consider that in general terms the process itself is more complex than it needs to be. In fact, it may even be seen that some of my later recommendations will add a small degree of complexity in order to increase transparency. The Report of Mrs C E Canavan into the Trinity Landfill site gives an excellent summary of the process at page 7. I have seen a flow chart of the way in which applications are processed and this is quite normal. There is a comprehensive Manual and there are clear advice notes for staff (such as the note on “Screening and Other Duties”). The Department uses a standard computer system which is similar to those in use in many Authorities and which also provides management information. It has expertise in this field and is aware of the latest developments such as the PARSOL project. The legal processes and the professional standards which are set are also broadly the same as in the UK. The sub Committee meets every two weeks and operates processes very similar to those I have seen elsewhere (except for the openness issues which I consider later).

However I do think it is the case that the level of detail of development control in the Island is greater than elsewhere. The attention which is paid to things like windows and doors, paint colours, advertising and signage (an example which was mentioned several times to me), and a range of other such issues is considerable. Once again this is likely to reflect a general Jersey view of the importance of such issues at least as much as an obsession on the part of the planners themselves, and Members will have to consider whether they are prepared to be more relaxed about such detail. However I **recommend** that a review is carried out of the level of detail in development control with a view to introducing a lighter touch. This would free resources for other work if it were accepted.

I mentioned exemptions earlier, and I have no doubt that increasing the level would be controversial; it is not a step to be taken lightly. The Island is not the same as the

mainland and what works in England may not work in Jersey. It is certainly the case that in an attractive environment, where tourism remains important, where quality of life is high, and where there is an articulate and informed population, the detail of things like house extensions assumes great importance. On the other hand the higher levels of exemption which were introduced against a background of some controversy in England have not led to the degree of concern which some had anticipated.

I therefore **recommend** that the level of exemptions is re-examined, with reference to the levels of permitted development currently in operation in England, and that the level of exemptions is raised significantly.

The Department also needs to keep a close eye on the number of occasions on which exemptions are removed by means of a condition on a planning permission. I received comments on this; I do not have evidence that it is a normal procedure but it would be sensible, in the spirit of removing detail, to ensure that this is only done where it is necessary – as it sometimes will be.

The second general point, which came from developers, is about speed – though the complaint was made in a way which demonstrated both that the reasons for delay and the improvement which have taken place since the introduction of the service level agreement were appreciated. It is a problem which mainly affects larger applications. I will return to this when I discuss targets later in this report (p 27).

The third was my own observation that when things go wrong, they go very wrong. I looked in some detail at a couple of case studies (the Trinity Landfill site and the Route de Noirmont housing site) and some of my recommendations follow from that examination. The latter in particular was a relatively routine proposal, for one or at most two dwellings on a site which was designated as being within the urban area; this has led so far (it is still not resolved) to three applications, two requests for reconsideration, and a proposition in the States Assembly to redesignate the site in the Island Plan. These are complexities which on the whole are not of the Department's making.

Turning to the detail, I will deal with the process in sequence – what happens before any application is submitted, the consultation processes, Committee consideration, and appeals/requests for reconsideration. In doing so, I will touch on targets, consistency of decision making, and the role of States Members who are not on the Planning Committee. I will touch on resources before moving on to enforcement.

#### **4.1 Pre- application**

There are only a couple of points to make here, and then only briefly.

The first is that I received comments from outside that it was difficult to arrange pre-application discussions with planning officers. This, it was said, had improved; but access was still a problem. It was appreciated that this was a matter of resources in the D C section. The view from the Department was that this was indeed a problem and that they

would like to carry out more such discussions and negotiations. This could help both the efficiency of the process and the quality of the outcome. If it were possible to produce more guidance for applicants the need for such discussions would be reduced but not eliminated. I return to this important point when I discuss resources.

The second concerns “repeat applications”. In the Route de Noirmont case, as an example, the refusal of an application was followed by the submission of a very similar one. This wastes the time of the Department and of Members; the recourse for a disappointed applicant should be through the appeal process. I **recommend** that when a legislative opportunity occurs measures should be introduced to enable the Department to decline to deal with applications which are very similar to proposals which have been rejected within the last two years (or some other specified period). Similar legislation exists in England.

#### **4.2 In principle applications**

This is an issue which was raised by several people – though as I have indicated they made different points. Some thought too much information was being sought at that stage, some too little. The Canavan Report (on the Trinity Landfill site) has many sensible things to say on this. I will add little to what it said except to observe that there is still a degree of confusion about the level of detail required at the in principle stage. It is my view that the States will need to seek more, rather than less, information. Experience in the UK suggests that this is inevitable.

#### **4.3 Consultation with other Departments/screening**

This is an area which was causing serious problems two or three years ago and which I was asked to examine carefully. I met with senior representatives of the relevant Departments. I can report a unanimous view that there has been a huge improvement in this area over the last two years or so and that the Environment, Health Protection, Transport and Drainage officials are broadly satisfied that the Department is operating properly and conscientiously in ensuring that they have opportunities to comment. I have looked at the advice and processes which relate to screening and I find them to be comprehensive. I think I can state with confidence that this is not now an area of significant concern.

This is not to say that problems never arise – human error means that very infrequently a problem may arise – but this in part relates to the way in which the consultee Departments themselves handle the case work. It seemed to me that the system described by a member of the Environment Department, which is used in that Department, offered a good model and should be considered by other Departments.

Three problem areas did suggest themselves. The first relates to Transport and is the result of the fact that there are many Transport Authorities in the Island which need to be involved. I **recommend** that a single point of contact should be established, presumably in the Department for Transport and Technical Services, for all highway consultations –

that person to be responsible for ensuring that Parishes and others are brought in where necessary.

The second concerns consultation with the Economic Development Department. Though neither Department expressed any particular concern about relationships, and this is not a major issue, it did seem to me that a better codification of consultation arrangements would be of benefit to both and would avoid any mistakes being made.

The third area of concern, and the one which attracted the greatest range of comment, from various sources, was the Health Protection Department. The overlap between Environment and Health Protection in dealing with contaminated land was a specific concern, and it was a major issue in the Trinity Landfill case and others. I was also intrigued and worried by the proposal for a “Health Impact Assessment”, to be prepared in certain cases in addition to the Environmental Impact Assessment. At a time when there is a wish to reduce red tape this seemed unnecessary to me – all the issues should, and in my experience normally would, be covered in the EIA itself.

My own experience suggests that many of the overlaps and problems which were described to me, and which have occurred in cases such as Trinity Landfill, could be avoided if the relevant responsibilities of the Health Protection Department (including expertise in respect of contaminated land, noise and air pollution) were incorporated within the Environment Department. I know that this has been considered in the past. It would bring all the issues into one place, under a single Chief Officer who could ensure that there was no duplication or inconsistency. I appreciate that this is not straightforward because the Health Protection Department has other responsibilities in relation to Public Health which would not sit so easily within the Environment Department. Nonetheless I **recommend** that consideration should be given again to bringing the relevant responsibilities of Health Protection within the Environment Department.

#### **4.4 Consultation with the public**

I am not convinced that at present the arrangements for consultation with the public are satisfactory though I know that there are proposals to improve them significantly. It is a very important issue in terms of the transparency and credibility of the system and the esteem (or lack of it) in which it is held. In moving to the new Ministerial system, it is essential that this process is rigorous, that people really believe that they have an opportunity to involve themselves in the process, and that they are clear about the way to do this. It would appear that the public – and even States Members - are not fully aware of the present system. This is difficult to address, because the information is in fact readily available, but efforts to publicise these processes have to be continuous.

Currently applications are advertised in the press, and are available in the Parishes and on the internet. It is intended to introduce a system of site notices shortly. Clearly this will improve the position and it would be wise to monitor the effectiveness of this approach. The alternative is a system of neighbour notification, which may be a more thorough approach – and the onus can be put on the applicant to carry it out – but there can also be

difficulties in determining who should be notified. The Isle of Man, having recently considered the issue, has also decided to go down the site notice route, but will keep it under review. I **recommend** that the site notice system is monitored carefully, possibly including in due course surveys of public reaction, and that the idea of neighbour notification is considered further in the future.

Of rather greater concern is the way in which representations are treated, and whether all parties have equal access to decision makers. I will deal with Committee processes in section 4.7 onwards. But I heard that there are occasions where applicants but not others are given the opportunity to address Members. I believe that this is quite wrong. All representations should be dealt with in the same way; all should be reported to the decision making Committee, and all should have an equal opportunity to make their views known. The changes which are proposed in moving to open Committees will provide the opportunity to ensure that these principles are followed. I **recommend** that when representations are to be made to the Committee an equal opportunity should be afforded to all parties, for or against the proposal, to put their views forward.

#### **4.5 Consultation with States Members**

Connetables and Deputies expressed some concern about their access to information about planning applications in the areas they represent. These concerns seemed to me not to be justified – the information is easily available to them, but they are not sufficiently aware of it. Copies are held at all Parish Halls. I will have more to say about the role of Members who are not on the Planning Committee. But on this issue I **recommend** that the internet should be the main source of information; applications are already placed onto the website and Members should be assisted if necessary in knowing the means of accessing and using this information. This route is cost and trouble free for the Department, and convenient for the Members themselves.

#### **4.6 Delegation**

I have looked as requested at the code of practice for the delegation of planning decisions to Officers, dated March 2004, and also at the kinds of application which have recently been considered at Committee. I note that in 2004, 89.2% of decisions were delegated – a figure which is not out of line with figures elsewhere.

Clearly the present code, which refers to the Sub-Committee and the full Committee, will need to be changed to reflect the Ministerial system. The present system leaves a lot of room for judgement. It is not easy, for example, to define when representations are “...not of sufficient weight to influence a decision...” and there is a danger that by erring instinctively on the side of caution the Department will refer more items to the Members than necessary. In general it appears that most applications where there is any public interest are considered by the Committee, even though in many cases the issues seem very straightforward. In looking at Committee agendas I felt that there were some applications which could safely have been delegated to Officers – especially as Members have the power to request that any item which is of particular concern to them should be

brought before them. I **recommend** that in reviewing the system to take account of the new arrangements, Members should seek to increase the proportion of items delegated to Officers.

#### **4.7 The operation of the Committee**

Though I have concentrated in most of this report on the Department itself, it is obviously the case that the way in which the Committee operates is crucially important. It needs to be led and run in a way which is efficient and effective; which reflects public views and aspirations but also supports the Officers in their task; which takes account of States policies but which operates in an open, fair and impartial way. I was able only to attend (briefly) a meeting of the sub Committee, which went about its business in a serious and objective way. I have held discussions with the President, who obviously has a very good grasp of the issues and has the necessary leadership skills. He has brought about significant changes during his period in office which will have long term benefits, including the restructuring of the Department which I mentioned earlier.

I am of course conscious that the system of governance is about to be changed dramatically, and that from next year there will be a Minister and a Planning Applications Panel. The Panel will consist of three Members. Its meetings will be held in public once the new law comes into force and, though it is not intended initially, it is likely that public speaking rights will be introduced in the future.

All of these changes are obviously positive, and it will be necessary to allow them to operate for a period in order to assess their success. The key objective must be to increase the transparency of the process, and to increase public confidence in the objectivity and consistency of it. Since this is such a major issue, I **recommend** that at the time of the introduction of the system, a major effort should be made through the local media to explain how it will operate and to stress the benefits in terms of openness and fairness of the new process.

#### **4.8 The size of the Panel**

I was surprised by the size of the proposed Panel which, like the present sub Committee, is very small. A similar issue has arisen in the Isle of Man, where a Commission has recently concluded that "...it is ...difficult for such a small body....to reflect reasonably the full range of Island interests, whilst a larger Committee would help to seek to ensure that all aspects and implications of a proposal were thoroughly considered". They went on to recommend a Committee with a maximum size of eight, though I understand that the Island (which has particular difficulties because of the small number of elected members) has opted for a figure of five.

I think the same issues arise in Jersey, and an outsider said to me that "...the composition and attitudes of the Committee does heavily influence the decisions..." – which obviously should not be the case. A range of views should be represented. I recognise that now may not be the time to change course – the new system having not yet got under

way. But I think a larger Committee would also help with another problem. More than one person said to me that the position of Members on the Planning Committee was a very exposed one. By its nature assiduous and objective attention to controversial planning applications, where there was likely to be opposition to whatever decision was made, could jeopardise a Member's prospects of re-election. This is a concern – planning is important and Members should not feel inhibited from being involved. It may be that a larger Panel would spread the load and reduce the exposure of individuals. I appreciate that a change in the law would be necessary but I **recommend** that the size of the Panel should be kept under review and that the possibility of enlarging the Panel should be considered.

The similar pressure on the Minister himself or herself is a different, and equally serious, matter and requires the new Council of Ministers to act in a co-ordinated and supportive way.

#### **4.9 Frequency of meetings**

I have noted that the sub Committee currently meets every two weeks. This is more frequent than in many Authorities, and it places a great demand both on Members and on Officers in preparing for each meeting. If the steps which are discussed in this report are taken, and the load on the Committee is reduced through raising the exemption limits and increasing delegation, it should be possible for them to deal with matters on shorter cycle. I **recommend** that consideration is given to moving to a three week Committee cycle. If this works satisfactorily a four week cycle could be considered later.

#### **4.10 Open meetings**

Open meetings will involve some change to the way in which the Panel operates. As I have indicated I attended a small part of a meeting of the present sub-Committee and found it effective. But the behaviour of both officers and Members will have to take account of the presence of the press and the public. I do not anticipate that this will be a major change, or a serious problem, but it needs to be anticipated and planned. Procedures will have to be rigorous. As a small and detailed example, it is the current practice to attach relevant plans to the wall only when each item on the agenda is considered; it may be necessary in future to make them available for the public to see before and after the meeting.

Papers are currently available for a minimum of three days before the meeting, but wider availability of reports may be necessary. There are many minor details of this kind to be considered and I suggest that if it has not been done, visits should be made by planning and legal staff and by Members to Authorities where such procedures are well established.

#### 4.11 Reports

I was specifically asked to look at the adequacy of reports to the Committee. I have looked at approximately forty reports in two Committee agendas. They follow a format which is familiar to me, cover all the areas which I would expect, and they seem on the face of it to be thorough and clear. Obviously, however, it would only be by following cases through the process, visiting sites, talking to the parties and so on that it would be possible to establish this beyond doubt, and I am aware that the Canavan Report did find an inconsistency – though not one which was fundamental – in the Trinity case.

In the open Committee system it is particularly important that representations from the community and from individuals are readily seen to be taken into account. Such representations are in fact attached to Committee reports at present, as well as being summarised in the report, and Members do receive a very comprehensive set of information in this respect.

I believe the structure of the reports is such that Members will normally be alerted to any potential deviation from agreed policies, but I have referred elsewhere to the need for better liaison with the policy division. If there is a problem it lies not with the reporting systems as such (on which I was specifically asked to comment) but on the lack of rigour in internal consultation. I understand this is already being addressed.

#### 4.12 The Code of Conduct

In 2004 a code of conduct for Members involved in Development Control was issued and publicised. I think this is an excellent document, but I have two comments to make.

The first concerns site visits. I understand that applicants or their agents are permitted to give presentations to Members during site visits. Although the code of conduct says that there should be no discussion of the merits of the case it seems that the presentations go beyond merely pointing out the features of the site. This was one of the important reasons for the problems which arose on the Trinity Landfill site. Third Parties are not normally given the same opportunity.

In my view this is quite wrong. Site visits should be for no purpose other than to gain an appreciation of the characteristics of the site and its surroundings. It is particularly important in moving to the open Committee system that this should be strictly enforced. If an applicant is to be given the opportunity to address Members it should be done in an open session, so that all the arguments are in the public domain, and anyone with a contrary argument should also be permitted to address Members. I **recommend** that the rule that there should be no discussion of the merits of a case at site visits should be strictly enforced and that the applicant or agent should not be permitted to address Members on site visits other than to point out factually the relevant features of the site.

#### 4.13 Other States Members

The second concerns States Members who are not members of the Planning Committee or its successor. They have an important role to play in planning, as local representatives, and I would not wish to make any recommendation which inhibited them from making their views known. However I gathered from various discussions that their interventions were sometimes made in a way which was neither timely nor efficient.

States Members should be fully aware of planning applications in their “patch” and I have already recommended that the website should be seen as the main way of doing this. They should be invited to comment in writing and to attend the Planning Applications Panel, if they wish, to address the decision makers. The views of all Members must obviously be taken fully into account by the Officers in their reports and considered by the Committee.

These mechanisms need to be clearly understood, and intervention after the Committee/Panel has made its decision should not normally be necessary. Similarly, propositions in the States Assembly, before the Committee considers the case, do not seem to me to be either necessary or appropriate; they are likely to be made without the full and balanced information which later appears in a Committee report, and may stray far from genuine planning considerations. Clearly they are designed to put pressure on the Committee to make a particular decision for or against an application – but this is better done by attendance at the Committee meeting, where arguments can be put in the context of the full information, rather than at the earlier stage.

The circumstances in which individual cases may be raised in the States Assembly, before or after the decision, need to be limited and codified. This is an important issue because I think that some of the references to “red tape” may relate to the way in which Members intervene in a somewhat unstructured way. A change of culture in the way in which Members engage with planning seems to me to be needed.

I therefore make two recommendations. Firstly I **recommend** that a document similar to (but less detailed than) the Code of Conduct should be produced for all States Members. It should be clear that this is not intended to limit their right to intervene – on the contrary it should be designed to ensure that they intervene in the most effective and efficient way, and at the right time. Like the existing code it should place emphasis on propriety issues and advise Members how to deal with lobbying and other pressures.

Secondly I **recommend** that training should be provided for these Members in order to ensure that they have a full understanding of the planning function, its complexities and opportunities. It might be valuable for this to be facilitated by an independent person, in order to demonstrate clearly to them that this is not an attempt by the planners or the Planning Minister to shackle them but an effort to structure the process for everybody’s benefit.

#### 4.14 Decisions contrary to Officers' recommendations

Members do, of course, make decisions which go against the advice of the Officers and clearly they are entitled to do this. I am given to understand that it is rare that a decision is made which is wholly contrary to the Officers' recommendation. But as the Trinity Landfill case showed, it can lead to immense difficulties. The Canavan Report recommended a "cooling off" period, where Members were disinclined to accept the recommendation on a substantive matter, to enable the preparation of a further report. I support this proposal and **recommend** that it is implemented. It might have avoided the problems which subsequently arose at Trinity.

#### 4.15 Targets and Performance

The targets by which the Department's development control performance is measured are set out in the Service Level Agreement of September 2003. There has been a consistent improvement in this performance in recent years. For the years 2002, 2003 and 2004 the percentage of applications decided in eight weeks was 58%, 68% and 73% (with performance this year running at 78%); the target is 75%. The percentage decided within 13 weeks in the same three years was 77%, 83% and 90% (the target is 90%). The average number of days for a decision has fallen from 76 in 2002 to 56 in 2003 and 46 in 2004.

Even though it has to be said that the number of planning applications received has fallen during the period, from 2,584 in 2002 to 2,196 in 2004, this is a significant improvement in performance and it reflects the point I made right at the beginning of this report – that the Department is generally seen to have improved over the last couple of years and to be on an upward curve.

There is a whole series of other targets in the SLA. That on providing pre-application advice is not adequately met, as I have already said, and (again as mentioned earlier) the production of supplementary planning guidance is behind schedule. But other targets relating to performance in registering applications, issuing consultation letters, advertising in the local paper, and other administrative tasks are generally met.

Though in general this performance is good, the target of 75% is lower than that in England and Wales, where overall 81% of applications were determined in eight weeks (against a target of 80%) in the second quarter of 2005. Many Authorities missed this target, some by a substantial margin. It must be added that there are differences with Jersey, for example because of the higher levels of exemption in England.

This is a policy decision for the States which involves a trade-off between resources and performance; and between prioritising speed versus allowing more time for pre- and post-application discussions. I do not think it is a big issue because of the general level of satisfaction which was expressed to me. Nonetheless I **recommend** that over a period of three years the target should be raised to 80% in eight weeks, with the figure of 90% in 13 weeks remaining unchanged.

Targets are imperfect things, however, and the problem here is undoubtedly in relation to the ten percent or so of applications which are not dealt with in 13 weeks; outsiders did raise this quite strongly with me. In this, Jersey is no different from any other Local Authority. There will ALWAYS be a proportion of applications which take longer, for a whole variety of reasons. They may simply be very large and complex; there may be a great deal of political involvement or a major public response; there may be illness or other accidents either in the States or on the part of the applicant/agent. Commonly it is necessary to await revisions or further information from the applicant.

The question is whether anything can be done to reduce the time which is taken on these cases. I think that some of the recommendations I have made, for example about the more efficient involvement of States Members, the raising of the exemptions threshold to free up resources, and the production of better design guidance and SPG will all help. In general I do not think Jersey performs less well than other Authorities in dealing with these cases, but there must be concern about the small number which become highly controversial and take a long time to get through the process. This is a matter of culture – not just within the Planning Department but among State Members too. The Canavan Report made a recommendation about this, suggesting a process for identifying where applications have seen no action for a period, and I support this – but would go a little further. I **recommend** that for very large applications, or any case where the 13 week period is clearly likely to be exceeded substantially, a specific plan with timescales and milestones should be produced and agreed with the applicant (for whom it will also carry obligations) and with consultee Departments.

In the case of very major applications – the kind which raise a huge number of issues or a great public response, or are of Island-wide importance, there is a provision in the new legislation (Article 12) for a public inquiry to be held before the Committee makes a decision. I strongly commend the use of this power. On matters such as the Waterfront Development I believe that it can not only increase the opportunity for public involvement, but could also – if used sensibly – reduce the overall time taken in reaching a decision. It would force both “sides” to be clear about their intentions and arguments at an early stage and to take account of public reaction to proposals (or at least to have good reasons for diverging from that reaction). It would enormously increase the transparency of the process.

The targets, like those in the rest of the UK, tend to measure the things that are easy to measure (such as timescale) but not the things which are more difficult (such as the quality of decisions). I will return to this in the section on “Quality Assurance” later in this report (p 45).

They also tend to concentrate on development control and building control, though there are valuable targets for the review of the Island Plan. I have more to say about this in the section on “project outputs” (p 48).

#### **4.16 Consistency of Decisions**

I referred earlier to the question of whether applications were being decided in accordance with the Island Plan. I note that all Committee reports contain a reference to relevant policies in the Plan and I observed at the meeting I attended that Members were very conscious of its importance. I also note that there may be other important policy considerations and that Jersey does not have the same legal primacy of the Plan as other parts of the UK.

I have however commented on some cases where liaison between the Development Control and Policy Divisions had not worked well and I make recommendations elsewhere on this point. I also have a reservation about the understanding of the Plan on the part of States Members, and perhaps even of officials in other parts of the Civil Service. I have said that there needs to be corporate “ownership” of the Plan. In general terms, however, I think that for the most part the policies in the Plan are followed.

#### **4.17 Planning Obligations**

Planning Obligations are new in Jersey and they were the source of many comments from the private sector. It is inevitable that there will be teething problems on all sides with a new system such as this – and it has to be said that even in the UK, where the system is well developed and there is plenty of experience and case law, it is still the subject of concern and confusion. It is a complex and contentious process.

Perhaps the main point made by outsiders was the need to be clear at the outset what kinds of planning obligations might be regarded as necessary in each case. In this I have great sympathy. As experience grows it will, of course, become easier to predict what might arise.

From my discussions it was clear that there is a great deal of concern about this in the business community. However it must be said that there is a comprehensive policy document and that there has been extensive consultation on the issue, culminating in a report to the Committee in February this year. It is clear from that report that Officers and Members are aware of the problems of delay and uncertainty which might be associated with planning agreements, and of the need for early notification and discussions. The policy itself, which is similar to those in operation elsewhere, is set out very fully; it is bound to be the subject of controversy in its early stages. It is only through experience and continued consultation that these problems can be overcome.

The other point which was made to me was that there is delay in dealing with the legal side of planning obligations. Though the Solicitor General did not make much of her staffing difficulties when I met her, it does seem that there may be a problem here.

#### **4.18 Appeals**

This is an important part of my report; I believe that it is in this area that the greatest problems in the Jersey Planning system occur.

There are at present three ways in which a decision can be revisited. At present this normally applies only to first parties. There is a proposal to introduce third party appeals and I deal with this later (p 34).

The three routes are set out in Development Control Practice Note No 3. The first, and most frequently used, is the request for reconsideration (RFR). This is not technically an “appeal”. Under the present system cases which have been determined by the Sub Committee may be reconsidered by the full Committee, on request of the applicant, generally because it is argued that there is new information available. This is commonly used – there were 96 cases in 2004 (55% of all the cases refused). Of these 20 were successful. It is understood that in most years the figures would be higher. Under the new system it is assumed that requests for reconsideration will be considered by the Minister sitting with the members of the Sub Committee.

It has been increasingly common for the applicant or his agent to be allowed to address the full Committee in RFR cases but this privilege has not always been available to all the other interested parties.

The second process is for the matter to be reviewed by a Board of Administrative Appeal. Though this is in some ways an attractive route, it is only used by four or five people per year on average. The decision is not binding on the Committee, which on reconsidering the decision can re-affirm its original view. Its value is obviously limited, therefore.

The third is an appeal to the Royal Court. This is a very effective route and will involve a thorough examination of the case. However it is seen as expensive and forbidding, and in practice unattractive to most potential appellants – so much so that only a handful of cases are considered by the Court (7 in 2002 and 2003, only 1 in 2004). Even though the steps set out in Rule 15 of the Royal Court Rules 2004 do not appear unduly onerous, and there have been instances where an individual has pursued a case through the Court without legal representation, the Report to the States (Draft Planning and Building (Amendment) (Jersey) Law P210/2004) lodged on 23<sup>rd</sup> November 2004 recognised the problems surrounding the Court.

I would add another very important point: that under the existing law the rules do not allow for the involvement of third parties in the way that they should. Under the new law this will change and I believe it is important that this provision is brought into force (I understand it may be delayed) in order to demonstrate the fairness of the process. Where a person has objected to (or commented on) an application, and that view has been supported by the Committee, then that person should have a continued right to express relevant views at the appeal stage. This does of course involve additional administrative work, though in most cases this should not be substantial.

The Planning and Building Law 2002 included provision for an administrative tribunal – a Planning and Building Appeals Commission. (Article 107). This was subsequently ruled out, in the same 2004 report, essentially on grounds of cost and the Royal Court was re-instated as the appellate body.

The existence of an open, fair, impartial and accessible appeal system is in my view essential to the operation of the planning system. Its value is not just in resolving disputes objectively and efficiently, though of course this is crucial. But its existence also pervades the whole of the system – even when it is not used, the knowledge that it may be used is taken into account by the decision maker. Conversely, applicants will not appeal frivolously to a properly independent body, but will do so only if they believe they have a good case. They will know that the body is not subject to influence, and that all parties with an interest will have equal access to it.

I do not regard the RFR process as being a satisfactory system for a variety of reasons. Firstly it is not independent; the same people who made the original decision (augmented in the Ministerial system by one additional person) will be reconsidering the case. Members might be (or at least might be thought by outsiders to be) vulnerable to lobbying and pressure at this point. Secondly it is not transparent. Though this might be expected to improve when Committees are opened up, at present it appears to be the case that applicants can present “new” information to Members, but that other parties may not have the same opportunity. Thirdly, it was suggested to me (from outside the Department) that applicants, knowing that they have this route available to them, will often submit a relatively “thin” application to the sub-Committee, with the intention of going on to the full Committee/Minister with more information if they are unsuccessful; this must certainly be a danger (and one causing much unnecessary work for the Department). Fourthly, in the new system, it will not be a good use of the Minister’s time for him or her to be involved in this quite large commitment to case work; the Minister should be concentrating on policy, and will have wider responsibilities as a Member of the Council of Ministers. Fifthly it appears not to bring a final resolution – in the sense that (as in the Route de Noirmont case) further requests for reconsideration can follow regarding essentially the same application. Sixth, the very high proportion of refusals which go to RFR, and the relatively low proportion of cases which are successful, suggest that the system might be too readily accessible to those whose cases are weak.

The Board of Administrative Appeal ought to be a useful body when it comes to suggestions of administrative or procedural error – rather like the Ombudsman in other jurisdictions. Article 9 of the 1982 Law sets out the limited grounds on which it can consider a case. It is clearly not a suitable body to examine the planning merits of a case, however, having neither the power nor the expertise to determine such matters, and its role in planning is likely to diminish if a more accessible appeal system is brought into operation. One person suggested to me that in purely procedural cases (not just in planning) it ought to be given greater influence – but I do not think that is a matter for this report.

The Royal Court is of course independent, it is transparent, and it is decisive. But it is not seen as being accessible by appellants and does not, in my view, adequately involve third parties.

#### **4.19 The tribunal**

As mentioned earlier the proposal for a separate tribunal has been dropped. In my view this is a pity. It might be supposed that, because I ran the Planning Inspectorate in England and Wales, I would be bound to say that. But I note that outside the Channel Islands the whole of the British Isles has some form of tribunal. The Irish, Northern Irish, Scottish, and English/Welsh systems vary considerably in their form and structure but all carry out essentially the same procedures. All are independent, open and impartial. In the Isle of Man, Inspectors from outside the Island are used to determine cases in a similarly impartial way. All of these systems have a high degree of trust. They offer a variety of different ways of resolving disputes, using written or oral routes, and are open for all to use. They place a discipline on Authorities and applicants alike and bring a degree of thoroughness and professionalism to the whole of the process.

It is of course true that the cost of running such a system can be high, though the number of cases in the Jersey context is likely to be quite low; I would expect it to be significantly less than the 96+ which currently go via RFR because people would not use a Tribunal without considering the chances of success much more carefully. For the Solicitor General the cost should not be high because legal representation would not normally be needed.

The Isle of Man system may not be acceptable in Jersey but it is a very effective and inexpensive way of dealing with the problem.

I hope therefore that the notion of a separate tribunal of some kind will not be lost. Of course I respect the reasons why the decision has been made, and I think there are other measures which can be taken to improve the situation. However, I **recommend** that the proposal for a separate tribunal should be revisited in due course.

#### **4.20 The Royal Court**

I am aware that discussions have been taking place at a high level with the Royal Court to examine whether, the Tribunal having been dropped for the time being, a more accessible system can be devised within the Court. Reference was made to this in the November 2004 report mentioned earlier. The proposition, which I regard as extremely sensible, is that three routes should be available to an aggrieved party – the decision as to the correct route being taken by the Court Administration. The first, for the simplest cases, would be the use of mediation; the second would be a new route, for cases involving planning merits only, using simpler procedures (written representations and hearings), and the third – for the most complex and difficult cases or those raising points of law - would be the present procedure.

Opinions differ as to the likely effectiveness of mediation. Some fairly limited experiments have been carried out in the UK which suggest that for small householder cases and for issues which involve design or appearance but which do not go to the heart of policy, such a procedure can be very effective. Mediation can be very quick and inexpensive, and can produce an enduring solution – though there is no guarantee that (in its true form, where the mediator assists the parties to reach their own agreement rather than determining a solution for them) it will actually produce a conclusion. But I think it would be valuable to experiment with this method in Jersey, where many of the disputes do concern relatively minor matters.

It is the second route which is innovative and different and which I believe ought to be pursued. It is proposed that there should be a simple process. Many cases would be dealt with by written representations only, with, I would assume, a site visit by the decision maker(s). In England and Wales between 70% and 75% are dealt with in this way; in Ireland a much higher number. As an alternative there would be an informal hearing process. In England such cases are heard by a single Inspector, in a very informal round table session, with no legal representation; again there is always a site visit. Around 20% of cases are dealt with in this way, and it is a popular process which enables parties to meet with the decision maker but without any formality and without significant cost to them. In England, unlike Ireland, parties have a right to choose an oral hearing. The third method in the UK is the public inquiry, which again is normally heard by a single Inspector, but with greater formality and with legal representation, and a site visit.

In all of these cases third parties have a very clear right to involvement.

There is, of course, an opportunity for parties who are aggrieved with this process in England to go to the High Court and beyond to seek judicial review.

There are various questions to be resolved concerning the application of this system in Jersey, but none of them seems insurmountable. In principle, it is important that the process is freely available to all, with no deterrent to potential appellants – though there is a need to discourage frivolous cases. I understand there is likely to be a fee involved; and I would argue that the award of costs should be made possible – either against the States if its decision was found to be wholly unreasonable or against the appellant if the appeal was found to be wholly without foundation. There are questions as to who should hear appeals. Should they have planning expertise? And if so, where is the source of such expertise? How can the decision maker be seen to be demonstrably independent? From what I have learned of the system in Jersey it seems likely that these cases might be heard by a Jurat, assisted as necessary by a Commissioner who would be a person, probably from outside the Island, who has suitable expertise. The Bailiff has the power to appoint such people. It is my firm view, though I know it is disputed, that in these cases where it is the planning merits which are at issue, professional expertise on the part of the decision maker(s) is necessary.

I would anticipate that the third option – a full hearing by the Court with a Judge and two jurors (or expert Commissioners) – would rarely be used in planning cases in practice.

Where it is, I believe that third parties should be able to give evidence, and that a site visit should take place. I am aware that there has been some debate about this but my experience is that it is impossible to reach a sound conclusion on a planning case without familiarity with the site – though safeguards are needed as to the way in which the site visit is carried out.

Of course the existence of an opportunity for judicial review, or reference to the Court of Appeal, of decisions made by either of these routes is an important safeguard.

There is much more to be said on this issue, and I can assist further if necessary. I am sure that the Planning Inspectorate in England and Wales or their equivalents elsewhere would also be willing to help with the detail. At this point however I think that for the States of Jersey the way forward is clear. I **recommend** that the proposal for an alternative system within the Royal Court for dealing with planning cases should be pursued with urgency.

It would not surprise me at all if this were to evolve into a tribunal system, the (important) role of the Court itself being in judicial review.

I also **recommend** that the system of requests for reconsideration be terminated, and that this should be done at the same time as the introduction of a simplified system in the Royal Court. I have already indicated my concerns about this process. But in addition, I believe that if an alternative and more thorough system is being established in the Royal Court it is essential to make sure that people use this system – with all its advantages of demonstrable fairness and impartiality, and its deterrence to hopeless cases.

Because there are resource issues here, the phasing out of RFRs will ease pressure on the Department. Although provision will have to be made for the additional cost of running the appeal system, there will be savings which will offset some of those costs. However it would be very difficult for the Department to run both systems at the same time.

I believe the process will bring greater order and discipline to planning, and by giving an opportunity for interested persons to be heard before an independent arbitrator, it may remove some of the less structured interventions in the process and the extended debates which currently take place.

#### **4 21 Third Party Appeals**

The new Law contains at Article 114 a provision for third party appeals. To date the Committee has determined that this provision will not be activated, on grounds of cost, but it remains in the legislation.

Elsewhere in the British Isles third party appeals exist in the Republic of Ireland (and I understand that visits have been made to Dublin to examine the system there) and the Isle of Man. Serious consideration has been given recently to introducing them in Scotland and Northern Ireland but the decision has been made not to proceed for the time being. In

the Isle of Man I understand that in total there are around 250 appeals per year of which about a quarter are from third parties.

Third Party Appeals are superficially an attractive proposition. They provide members of the community who object to a proposal with an opportunity to be heard by an independent person. They are, of course, all the more attractive at present in Jersey because those people do not have an opportunity to address, or even attend, the Sub Committee where the decision is made, but this is shortly to change.

It is sometimes argued that because first parties have a right of appeal against refusal, third parties should have an equal and equivalent right to appeal against an approval which they believe might affect them. In my view this is not so. The existence of planning laws removes, in the interests of the community, a right which had previously existed for property owners to develop their land with little constraint. It does not remove a right from the rest of the community – it confers one upon them. It is the job of the States to protect the reasonable interests of the community, taking fully into account any representations received, and to do this expeditiously. So long as this happens, there should be no need for further debate (unless the States have behaved improperly).

It is my view that by opening up the process in the ways which are intended and which have been discussed in this report, and by demonstrating the transparency and objectivity of the decision making process, the need for third party appeals will be reduced. To put it another way, it is only if the decision making process is, or is thought to be, unsatisfactory that there is a need for third party appeals.

It was clear from what was said to me that part of the impetus for this innovation comes from a distrust of the way in which the larger developers operate in Jersey. I do not say that this is justified. But it arises for example from the perceived practice of seeking outline planning permission for a relatively harmless development and then bringing forward a detailed application for a different and potentially more harmful scheme. I am not in a position to comment on the veracity of this – but I will observe that developers, if they do engage in such practices, do themselves no favours.

The disadvantages of third party appeals are obvious, of course, and will have been clear from the discussions with Dublin. The first is the question of resources and cost; these are likely to be very considerable, even with the limitations which are proposed in Jersey. At a time when the reduction of “red tape” is a priority it would seem inconsistent to introduce a new process of this kind unless there were an overwhelming case for it. The second is the delay which is caused to development whilst time is allowed for an appeal to be made – and then, if it is made, for it to be heard. The third is that it will tend to take virtually all contentious decisions away from States Members to another body.

In the Jersey context I would add that, in view of the discussion earlier, there is an urgent need to attend to the problems surrounding first party appeals before proceeding, if necessary, into a new area.

Should it be decided to introduce such a system there are various ways in which the number of appeals can be influenced. It is already proposed to limit the right of appeal to those who have made representations at the application stage; this limitation was recently introduced in Ireland and has at least put a restraint on the growth in numbers, though it carries the danger that additional representations will be made at the earlier stage in order to gain the right to appeal. It is also now proposed to restrict the right to those with an interest in property within fifty metres of the site boundary. This will clearly limit the numbers very effectively, though it is a somewhat crude criterion; it could cut out those beyond fifty metres who might genuinely be affected by a larger development. The Isle of Man has a rather more vague criterion – people who have a direct interest – which is open to debate and argument and is not recommended.

It is understood that there will be a fee (as in Ireland); Other possible measures are to limit such appeals to cases where the decision is significantly in conflict with the Island Plan (though this is not always easy to define); or to limit them to cases above a certain size.

In my view it is important for Jersey to introduce the other reforms which are either currently in the new Law or which I have recommended in this report. The introduction of these proposals will bring quite sufficient change for the time being! But more importantly they will bring an openness and transparency to the process which is presently lacking. It is important, as I have said, that efforts are made to explain this new set of processes and to enable States Members and the Public to take advantage of the opportunities which they offer for greater involvement and understanding. I **recommend** that third party appeals are not introduced for the time being, and that the position is reviewed when the currently proposed reforms have been in operation for (I would suggest) a period of five years.

#### **4.22 Resources – Development Control**

A number of issues which I have raised come together at this point. Firstly performance is on the whole good, in terms of target timescales, and has much improved (though I have suggested further improvements). But some of the larger cases are not determined quickly.

There have been comments that pre-application discussions are difficult to arrange, and also that there is a shortage of advice and guidance for applicants. These suggest a degree of strain, and the picture which was painted to me within the Department was one in which staff – while able to deal with casework – struggled to do any more than keep up with the pressure.

A surprising number of the people whom I met outside the Department said that they thought resources were inadequate. One person used the word “dire”. It was suggested that staff were “demotivated” from being “kicked around”. I found, myself, that staff were highly committed, but obviously events – not excluding the preparation of this report – can conspire to lower morale.

The recommendations which I have made would, if implemented, affect the resource situation. On the one hand, increases in exemptions and delegation, and a reduction in the level of detail, would reduce the workload, perhaps significantly. (However, the States would have to embrace this change keenly – otherwise even more work might follow in dealing with complaints about it). So, to a lesser degree, might the regularisation of the involvement of States Members, and improvements in consultation procedures with other Departments. On the other hand the changes to the appeal system which I have suggested might increase workload, though if requests for reconsideration were phased out then the increase would be much less. (But third party appeals would be an entirely new area requiring additional resources). Some increases in work might also be expected from the opening up of the Committee system and associated measures (such as the introduction of site notices) designed to improve transparency and community involvement, and from new procedures such as high hedges.

Is the Division working effectively, or is it engaged in “red tape”? I indicated earlier that the processes are much the same as in any Local Authority in the UK, and I did not see evidence that time was being wasted on unnecessary procedures. But having said that, the time I was able to spend in looking at these processes was very limited. I would expect that the new Chief Officer would wish to examine them step by step.

There are of course issues of the quality of staff as well as quantity. A number of people made the same point to me. They said that the senior staff were extremely reliable and competent, but that there was a gap at the next level and that the more junior staff were much less experienced and much less able and confident in giving advice. Those staff regularly found it necessary to refer matters to a higher level, and their advice carried the danger of being contradicted by more senior staff.

Two issues follow from this. Firstly there are difficulties in recruitment on the Island. These arise partly from the “residents first” policy which means that preference may have to be given to individuals who, however competent they may be, lack experience and a wider view of planning from having worked elsewhere. It also means that filling posts can take a considerable time. And when advertising more widely, it can be difficult to attract individuals in mid-career to come to live in the Island, for a variety of obvious reasons (in particular the availability and cost of housing, the breaking of family ties, questions relating to the continuing education of children, and so on). This is compounded when posts are not permanent. Neither of these problems is easily capable of solution.

Secondly, therefore, there is a particular need to provide opportunities for training and development for those at more junior levels in the Department. Job swaps within the Department are possible but difficult in such a small team. Innovative approaches, such as seconding them to an Authority on the Mainland for a period, might be beneficial though they would be costly. But I **recommend** that efforts should be made to provide opportunities for more junior staff in development control to gain wider experience, through job swaps or secondments to other Authorities.

On the question of specialist expertise, I gained the impression that in general the skills which were needed were available to the Division. There was one exception to this – on landscape advice. It would probably be impossible to justify the employment of a specialist full time but means should be investigated of obtaining advice when needed and budgetary provision may be needed for this. Design advice is also important; though there is architectural expertise within the Department this might be increased.

My overall judgement on the evidence I have been able to obtain is that the number of staff is not excessive. The raising of exemptions and other measures, if implemented, will release resources; these should be used to provide a very much better service in pre application discussions and also to produce development control advice notes (and better advice via the website) to assist potential applicants or objectors.

#### **4.23 Enforcement**

I was asked to consider the enforcement function of the Department, but received very little comment on it. Over 600 cases have been investigated in each of the last two years and they appear from the information I have been able to gather to have been dealt with satisfactorily. Resources are currently adequate but are about to reduce because of retirement and the Fundamental Spending Review reductions, and this will place a strain on the section.

There is one important legislative point. There is at present no cut off point for enforcement action – officers have to trace activity back as far as 1964, which causes a very great deal of work. In the UK, if an activity has been taking place, or building work has been completed, without complaint, for four years then enforcement action can no longer be taken. This provision has not caused significant problems but it has greatly reduced the strain on enforcement sections. I **recommend** that a cut-off period of five years for enforcement action should be introduced. A similar cut-off point should be introduced for property searches.

## 5 HISTORIC BUILDINGS

I received a large number of comments on this section of the Department.

The first, which is easily dealt with, is that one of the two posts on the establishment is currently vacant and that the remaining member of staff is under great strain. This is clearly the case, and the post needs to be filled.

But the majority of the comments related to the question of whether the policy on historic buildings was too interventionist and too “petty”. Many people had views on this, several of them referring either to the particular approach of an individual who has now left or to the views of former Committee Members. There is a very large number of Registered buildings on the Island (3200) and it was argued that while many of them were extremely important and merited the highest level of protection, there were many others where a lighter touch was appropriate. There was, it was said, too much effort paid to the very fine detail of these buildings and this was unnecessary. There was reference again to the priorities of previous Members of the Planning Committee, who were allegedly over-concerned with “maintaining the traditional”. This was not a unanimous view however, and it was said that because a large number of buildings had been lost in the 1950s and 60s, it was important to protect the remainder carefully. Jersey had, it was said, been relatively relaxed about the subject in the past and needed to “catch up”. It has no Conservation Areas, only a very small grants programme, lacks technical guidance and knowledge, and does not have a strong lobby in support of conservation.

This is very difficult for me as an outsider to determine; it is a matter of Policy for the States and I find it hard to make a judgement. The nature of the Island and its environment is such that the protection of historic buildings is especially important. Jersey has signed various International Conventions committing itself to the protection of its historic buildings (Valetta, Granada). And often this is inevitably a matter of fine detail. But on the other hand the concern about detail was made to me so frequently that I do think there is an issue here. I **recommend** that an exercise is carried out to assess whether the number of protected buildings stands at the right level and whether the level of detail in dealing with developments affecting such buildings is appropriate. It may be that this exercise will confirm that the current policy is about right, and certainly any change will be met with resistance. However, a policy change would be consistent with the wish for the Department to take a more strategic approach to life, as described earlier.

In respect of buildings in St Helier itself, the forthcoming plan should provide detailed and comprehensive guidance on the way forward, and the Urban Character Appraisal recommends a strengthening of control to protect the features and character of the town.

## **6 BUILDING CONTROL**

Though I was asked to examine the Building Control Division it was generally accepted that it was less likely than other parts of the Department to lead to significant comment or a need for substantial change. Like all Building Control, it is a largely technical activity which (apart from the making of policy) operates largely without political involvement.

The percentage of applications which were dealt with in five weeks was 48% in 2002, 86% in 2003 and 99% in 2004. The target in the SLA is to deal with 90% in five weeks – so the target is being met and there has been a very considerable improvement in performance over the last three years. As with planning applications, this has partly been assisted by a reduction in the number of applications (from 1672 in 2002 to 1372 in 2003 and 1214 in 2004, partly due to the introduction of self certification for a number of services); and the separation of planning from building approval three years ago has also been beneficial. There has clearly been an improvement in performance too, and in my (admittedly brief) discussion with the head of the section I sensed that there was a culture of seeking to deal with casework expeditiously.

I asked those whom I met outside the Department about this issue and received relatively little response. Everybody would like approval on the day after submission, of course, but in practice it was recognised that performance had greatly improved and was now satisfactory; “pretty streamlined” was the comment of one person. Some concern was expressed about the less detailed form of consent which was introduced a few years ago, and consequent problems which might have arisen for some builders and developers in complying with these more flexible approvals; but the reasons for doing this have been explained to me and I believe they are both clear and justified.

There was one important issue, which was about the regulations rather than their application. The development of the regulations lags behind the UK. An example of this is access for the disabled. In addition some provisions which exist in the new law, notably on dangerous structures, will be delayed.

These are matters of resources in the Division, which of course (unlike its UK equivalents) is responsible for the writing of the regulations as well as their delivery. As with development control it was argued that while the section is sufficiently well staffed to deal with casework at its present levels, it lacks the flexibility to deal with peaks of work, and it has only limited capacity to do policy work.

Despite this I do not think a case can be made for increasing staffing. I think that time needs to be made for these policy issues, which are important; it may be that the use of consultants is necessary to deal with some of them. However there are proposals to reduce staff by one post in 2007 and another in 2008. I do not think that the division could absorb these reductions and continue to provide an acceptable level of service and I think this should be reconsidered. The “user pays” system means that applicants will rightly expect the present service to be maintained.

There were also comments about liaison between building control and development control. I will mention this in the next section.

## 7 CROSS DEPARTMENTAL ISSUES

### 7.1 Structure and Linkages

I was asked to consider the organisational structure of the Department. There is no “right” way of organising a Department like this, and there have clearly been various reorganisations in the past which have brought together and separated different sections. It is important to keep the structure under review and to make changes from time to time in response to changing circumstances. But much more important than the actual structure is the way in which sections work together.

I found that there were apparent deficiencies in this respect. First, and most obvious, there is not a sufficiently close link between the development control and policy divisions. This arises as much from their geographical separation as from any unwillingness to work constructively together – the Policy Division is located in a Portakabin separate from the rest of the Department. I **recommend** that urgent steps are taken to bring the policy section into the main building as soon as possible. I also **recommend** that seminars and discussions between the two sections (and others), which I understand used to happen at one time, should be organised in order to increase understanding and the two way flow of information. I believe these would be welcomed by staff. Areas for initial discussion might include housing, rural policy (especially the use of redundant buildings), historic buildings, design guidance, and the plan for St Helier; but there will be many others. These might on occasion also involve other Departments such as Environment.

The second area of linkage which is important is between development control and building control. The latter, during their site visits, have an opportunity to monitor the implementation of planning permissions, and particularly of conditions, and to alert DC staff to any variations. Though this is never as simple as it seems, because building control staff have their own difficult job to do, there does not seem to be sufficient exchange of information between the two divisions to enable BC staff to pick up obvious departures at an early stage. I **recommend** that the heads of the two sections should be asked to examine ways in which they could work more closely together.

The third area which I have considered is the relationship between the Historic Buildings section and the rest of the Department. It would be desirable to bring it closer into the mainstream, and I know that this is already under consideration. There is a case for incorporating it within the Development Control Division, which is where most of its direct influence is felt; most of the comments I received concerned the impact on planning applications. On the other hand there may be benefits in distancing historic buildings from the coalface a little – as a way of trying to avoid them becoming too involved in detail and also of emphasising the importance of their policy making role. Whilst either of these would be beneficial, both to those within the section and also to the efficiency and effectiveness of the process, on balance and after discussion I favour the latter. I **recommend** that the Historic Buildings Division is brought within the Policy Division.

Otherwise I do not see any need for structural change.

## **7.2 Accommodation**

I have already mentioned accommodation in relation to the separation of the Policy section from the rest of the Department, and that is a particularly important issue. There are however two others. Firstly, the present offices are crowded and not conducive to efficient working. Secondly it would be very beneficial if it were possible to co-locate the Planning and Environment Departments. The solution of these two problems may require fairly radical action but the smooth running of the planning function could be enhanced if it were possible.

I **recommend** that the accommodation requirements of the Department, and the possibility of co-location with the Environment Department, should be addressed urgently.

## **7.3 Public and Media Relations**

One of the things that became increasingly clear to me is that the level of understanding in the Island of how the planning system works – and how it will work in the future – is low. I think that an important part of the role of the new Chief Officer will be to tackle this issue. It is an advantage for somebody new, without any “baggage”, that he or she can do this in a way which is seen to be objective.

I have already recommended that at the time of the introduction of the new open Committee system, and other parts of the new law, the media should be asked to assist in explaining the changes, and the way in which the system will operate. The way in which planning is portrayed in the Jersey Evening Post will change, and the media recognise that they have an important role in explaining the process accurately and in disseminating information which will enable it to run smoothly. But I think more time and effort needs to be spent in keeping the press informed about planning issues, policies and processes. The Department may need assistance in doing this from somebody who has experience of dealing pro-actively with the Press.

In addition I think closer links with the business community would help to explain the pressures on the planners, which some understand well but others do not; and would provide an opportunity to create a better mutual understanding.

## **7.4 Resources and Management**

This is the most difficult part of my remit. I have, to recap, made several references already to staffing issues. Firstly I have said that I think the Policy section needs to be strengthened. Secondly I have said that I think that if exemption levels are raised there may be scope for modest savings in Development Control, and I think they should be used to improve pre application advice. I have made some comments about the nature of

the staff in DC. Thirdly I have suggested that the building control section is staffed at about the right level, though it struggles to produce and implement policy initiatives.

The background is that following a report in late 2002, fees were raised significantly in order to fund the recruitment of additional staff in the Department. It was recognised that performance had been unacceptable for some time, and the ERM study of 1999 had identified a need to address the long standing resource problems. The report said that “The Planning and Environment Committee believes that so far Jersey’s Planning Department has done well to survive these intense pressures. It has introduced many improvements in recent years without which the service would almost certainly have collapsed.....However it is absolutely clear that the present service falls substantially below the very high level of expectation of Jersey’s public and of ... professions ..... Therefore maintaining the current service level with existing resources.....is neither sustainable nor a realistic option”. The industry accepted the introduction of the “user pays” approach on the basis that they would receive a significantly better service. In 2003 it was agreed that ten new posts should be created, though not on permanent contracts.

In practice the ten posts have never been filled, with only seven extra staff having been recruited. Though as I have indicated this has brought about a significant improvement, resources are still tight.

This is compounded by the proposals in the Fundamental Spending Review for 2005-7. This proposes a reduction in manpower in the Department of three posts in each of the years 2005, 2006 and 2007. I believe that by any measure, and even allowing for any possible improvements in efficiency which might be achieved (as set out earlier), this would lead to an unacceptable reduction in the level of service. I note that at page 48 the Canavan Report made a similar point. The Chief Officer, Environment and Public Services has also referred to the problems which can arise as a result of staff shortages, and noted that this can lead to a very substantial amount of additional work. It would be inconsistent to ask the Department not only to maintain and improve its levels of service in development control and building control, but also to take a central role in policy making and become a more pro-active Department, whilst at the same time implementing such significant reductions in staffing.

I recognise that in Jersey as in all places resources are limited. Significant increases in staff will not be possible, and I do not think they are necessary. Nonetheless I have reported a view from outside that the Department is currently under-resourced. The industry sees the fee levels as being high and expects a better resourced service.

Efficiency improvements are possible and must be pursued, as always. And Consultants can be used for peaks of work or specialist tasks provided that funding is made available.

I conclude that (given the limits on financial resources in the States) resources in Development Control and Building Control – though tight - should remain at their present levels though they may need to be used in different ways. I **recommend** that the Policy Division should be strengthened by the addition of one post.

## **7.5 Management**

It is of course essential that the resources which the Department has are managed effectively. The Department has in place processes such as staff appraisal. And there are performance targets for each staff member. Despite this I was told that there "...is not a culture of performance review..." It would take a great deal more time than I have been able to spend in the Department to assess the adequacy of these processes – indeed it is an exercise in itself, for which a management consultant could charge an enormous sum; but it is one which the new Chief Officer will need to carry out.

However, I think that over the last couple of years this is an area which has improved. The merger which I mentioned earlier of Planning and Environment with Public Services has been beneficial. The leadership of the President of the Committee should also not be underestimated in improving the management culture. The further changes which are about to take place in governance, combined with the changes I have recommended, will in any event require changes to management, and the accommodation issue which I have mentioned is important too.

## **7.6 Quality Assurance**

In discussing targets earlier in this report I indicated that it was important to balance the measures of speed and efficiency by looking carefully at the quality of the Department's work. This is something with which many have struggled. The nature of planning is such that there are winners and losers in most cases, and the latter tend to find ways of expressing their unhappiness – whilst the former tend to remain silent. So a false impression can be created.

I was asked to consider the detail of the quality control mechanisms which are already in place in the Department and I have looked at these. There is a wide range of checks in place. Committee reports, for example, are signed off by senior officials and there are mechanisms for checking the work of junior staff. All of these appear to me to be normal – the kinds of measures which might be expected. In a tightly resourced organisation like this, errors will be made and I am aware that at least one of these has been a cause of concern; but there is no evidence that these are widespread. It has simply not been possible for me in the time available to examine this in great detail. It would be necessary to trace through processes step by step, to interview more members of staff, and ideally to follow the process through a whole Committee cycle to identify all the measures which are taken in detail and to comment on them. If there is concern about it then it will be necessary either to carry out a further study of the issue or to ask the new Chief Officer to carry out such an exercise when he or she is appointed.

There are a number of more wide ranging approaches to quality assurance which might also be adopted:

- 1 Using complaints and comments

This approach is relatively expensive, but it can be effective. It works by employing a person to investigate complaints and comments which are received in the Department. That person (perhaps called a Quality Assurance Officer – QAO - or something similar) would report to the Chief Officer and would not be part of the Planning Department. He or she, working on a part time basis, and possibly across the whole of Environment and Public Services, would investigate all complaints and categorise them as “justified” or “unjustified”. The QAO would respond to the complainant accordingly, and would also recommend action to the Department where a complaint had thrown up a problem which could be addressed. The role is a tricky one. On the one hand the QAO must be seen to be impartial and must be trusted by outsiders to investigate complaints thoroughly; on the other he or she must not be seen to mount a “witch-hunt” against the Department or individuals within it. The role is a constructive, not a destructive, one and should lead to real improvements in performance.

The number of justified complaints per annum can be used as a measure of quality. It is far from perfect, and needs to be read intelligently; but it can be translated into a target (not more than x% of cases to be the subject of a justified complaint). This system is used in the Planning Inspectorate in England and is effective in maintaining standards.

## 2 Surveys

Many organisations carry out surveys of “customer” response. These often work best if they tackle a specific issue, though in Jersey – this being a new approach – it may be sensible to start with a general survey of applicants, agents, consultees, and people who commented on applications, to assess their views as a benchmark for future surveys (and to repeat this general survey from time to time). Specific topics for annual surveys might include: an assessment of public awareness of the system, how they can get involved, and so on; a survey of regular users of the system (developers, agents, architects) to gain views as to how it might be improved; or surveys on particular areas such as the appeal process, building control or enforcement. The value of doing it in this way is that it not only enables people to give an opinion but it can also – if framed carefully – generate useful suggestions for improvement in specific areas.

## 3 Sampling

Taking a random sample of cases, post decision, and investigating in detail how they were processed and determined can be a very simple (though quite time consuming) method of verifying that the process is operating satisfactorily. It should be done by an independent but informed person – if a “QAO” were to be appointed he or she would be the right person.

## 4 An Advisory Panel

Many planning Authorities have an advisory panel of some kind to advise on quality and performance. This would typically include a cross section of local architects, developers,

lawyers and business people and also representatives from the conservation and environmental lobbies, perhaps the press, and interested members of the public. There might be ten or twelve members. It should not meet too frequently – perhaps twice a year – but it should be an important body whose views and recommendations should be taken seriously. It would need some secretarial support, which might best be provided by an outside organisation.

#### 5 Peer Review

It is always valuable to compare performance with like organisations. In the Jersey context comparison with places like Guernsey and the Isle of Man would seem particularly appropriate. Keeping in touch with developments elsewhere is important, and there are various organisations, including the RTPI, which can provide bespoke training for Members or Officers.

#### 6 Post decision visits

It is valuable for both Members and Officers to see, in an organised way, the results of their efforts – it is after all the results on the ground which are important. Committee Members should annually visit sites where applications have been allowed, covering a mix of larger and smaller schemes throughout the Island, to consider any lessons – good or bad – which might be learned from their previous decisions.

#### 7 States Members

It would be very valuable to obtain the views of all States Members systematically. Their view of the quality of the planning service is important – they are the democratic representatives of Jersey people – but such a survey might also reveal a great deal about the needs of the Members themselves.

I **recommend** that appropriate Quality Assurance measures from the list which I have described above should be introduced.

## **8 PROJECT OUTPUTS**

In my terms of reference I was asked for three specific outputs from the work I have done. In fact as I indicated at the outset I have covered a number of much wider issues, in response to comments which were made to me, and the summary and recommendations below reflect that. However I must deal with the three points.

The first concerns the organisational structure, number of staff required, and their technical competency. I have covered this in several places. In summary I believe that the number of staff in the Department is just about adequate for the task in hand. I believe they can be used in different ways, particularly in development control where various steps might be taken to reduce the level of detail and increase the scope for pre application discussions and the production of advice to applicants. I believe the policy division needs to be strengthened, in response to the widely held view that the Department needs to become more pro-active and to play a more central role in policy making, and I recommend the addition of one post. I have expressed concern about proposals to reduce staff over the next couple of years, and this reflects concerns expressed by others. I do not think it possible to maintain the level of service required, and set out in the Service Level Agreement, if these reductions are made.

In terms of technical competence, I believe that overall the standard is good and compares favourably with other places. However there are recruitment problems, and some of the more junior staff in development control lack a breadth of experience and would benefit from gaining a wider understanding of planning issues by secondment or job swaps to other Authorities.

In terms of the structure – there is no “right” way to organise a Department like this and the way in which sections work together is probably more important than the way they are structured. I think there are deficiencies in this respect, partly caused by accommodation problems – upon which I make recommendations. As to the structure itself I make one recommendation which is that the Historic Buildings section should be brought into the Policy Division.

The second point concerns quality assurance mechanisms, and I have dealt with this in the previous section of this report.

The third concerns a set of public performance criteria to demonstrate the level of overall performance. This already exists in the form of the Service Level Agreement. I have suggested that one of the targets – on the percentage of applications determined in eight weeks – should be tightened but that others are satisfactory. I note that the main problems occur in relation to large applications which – as in all sets of targets of this kind – fall outside the scope of the figures. A target to deal with 90% of applications in 13 weeks is both sensible and normal – similar targets exist elsewhere. But it is the 10% which will always fall outside the 13 weeks which are of concern and I have suggested a system of individual arrangements between the Department and the applicant in the largest cases which should help to resolve this problem.

There are also targets (in the legislation) for the review of the Island Plan – a subject which is sometimes missed in target regimes and which is important.

It is always difficult to measure quality, and here the suggestions I have made on quality assurance should help. It is possible to use the number of justified complaints as a measure of quality, though this is resource intensive. Surveys provide an alternative and would be useful at this point in the Jersey context.

I think that by adding these features (a quality measure, an arrangement for large applications, and a reference to the local plan target) to the existing SLA, Jersey will have a good set of performance criteria. Performance obviously needs to be published annually. But all targets need to be interpreted. The ability of the Department to meet them will depend on a whole range of factors which may be beyond its control – the most obvious being any significant increase or decrease in the number of applications received, or a reduction in resources. Several very large applications all arising at the same time would also cause problems for a tightly resourced Department. It is essential that the annual figures are accompanied by a sensible, and perhaps an independently verified, commentary which provides some explanation of the trends and figures.

## 9 SUMMARY

I have sought to examine the Department from a strategic point of view as well as looking at the detail. There are clearly questions in terms of its position within the States organisation, and it needs to be brought more closely into the centre of policy making. There are also very many issues of detail. In both cases these often go beyond the Department itself into the corporate management of the States or into the political or legal framework.

I heard a good deal of criticism of the Department, though much of it was conflicting and much of it was inevitable – because the nature of planning processes and decisions is such that there are almost always disappointed people. The Department, and the Committee, are constantly seeking to balance conflicting needs – economic development, the environment, the need for job creation, public resistance to change, the need to deal with agricultural decline, the need to protect the character of the countryside, the right of people to enjoy the use of their property to the full, the rights of neighbours to have protection from harmful development nearby – and so on. It is important that the people who comment on the work of the Planning Department and the Committee recognise the difficulties in resolving these conflicts – and most of them do.

I certainly think that some of the criticisms are justified, however, and I have made recommendations about them. In some cases the many changes which have recently taken place, or are about to take place, will be sufficient to deal with them. There have already been improvements over the last couple of years, and many people remarked upon them. The Department has been reorganised. There will soon be a new Chief Officer, a Minister, and an open Committee system. Changes are afoot (and much needed) in relation to appeals. In addition, there is a need to be less involved in detail and more in strategy. More can be done to explain the planning system to various audiences and to maintain a dialogue with users of the system. I have recommended many changes in detail in relation to development control and the way the Committee/Panel will operate; the way policy is made and adopted; the approach to historic buildings, and so on; and I have also considered accommodation and resources. I have made suggestions about quality assurance and about training and development for staff.

The Planning and Building Department is an asset to the States of Jersey. It is professional and its staff are honest, hard working and dedicated to the interests of the Island. The Committee and its President – though inevitably the focus of regular controversy – are also an asset and do a difficult job well. Though many improvements are necessary and possible, the States must surely aim to take full advantage of the skills at its disposal, and to give the Department the support it needs through the period of change which lies ahead.

## **10 RECOMMENDATIONS**

### **Corporate issues**

I recommend that both the Department itself and the Corporate Management Board should actively consider ways in which the Planning Department can play a more central role in policy making. p 12

### **The Island Plan**

I recommend that a Public Examination, based on the “Examination in Public” style employed elsewhere in the UK, should be used to examine future rounds of changes to the Island Plan. p 13

I recommend that it should not be possible to ask the Committee to alter the policies in the Island Plan simply by a proposition in the States Assembly. The proper way to make change is at the review stage, with thorough consultation. The alternative is to seek a full report from the Officers channelled through the Planning Committee (or Minister) with an opportunity where necessary for the public to comment. p13

### **Policy making**

I recommend that in the future allocation of resources greater emphasis should be given to the production of supplementary planning guidance, including a Plan for St Helier, advice notes and design guidance for applicants, and further advice on the implementation of the Island Plan. p 16

I recommend that where the Council of Ministers takes decisions on planning policies this should normally be done in public. p 16

I recommend that where the Minister takes a decision on policy the reasons for it should be published and made clear. p 16

### **Development Control**

I recommend that a review is carried out of the level of detail in development control with a view to introducing a lighter touch. p 18

I recommend that the level of exemptions is re-examined, with reference to the levels of permitted development currently in operation in England, and that the level of exemptions is raised significantly. p 19

I recommend that when a legislative opportunity occurs measures should be introduced to enable the Department to decline to deal with applications which are very similar to proposals which have been rejected within the last two years (or some other specified period). p 20

## Consultation

I recommend that a single point of contact should be established, presumably in the Department for Transport and Technical Services, for all highway consultations. p 20

I recommend that consideration should be given again to bringing the relevant responsibilities of Health Protection within the Environment Department. p 21

I recommend that the site notice system (for informing the public of planning applications) is monitored carefully and that the idea of neighbour notification is considered further in the future. p 22

I recommend that where representations are to be made to the Committee an equal opportunity should be afforded to all parties, for or against the proposal, to put their views forward. p 22

I recommend that the internet should be the main source of information for States Members on planning applications and that Members should be assisted if necessary in knowing the means of accessing and using this information. p 22

## Delegation

I recommend that in reviewing the delegation system to take account of the new arrangements (the Ministerial system), Members should seek to increase the proportion of items delegated to Officers. p 23

## The Committee/Panel

I recommend that at the time of the introduction of the new system (Minister and open Committee meetings) a major effort should be made through the local media to explain how it will operate and to stress the benefits in terms of openness and fairness of the new processes. p 23

I recommend that the size of the Panel should be kept under review and that the possibility of enlarging the Panel should be considered. p 24

I recommend that consideration is given to moving to a three week Committee cycle p 24

I recommend that the rule that there should be no discussion of the merits of a case at site visits should be strictly enforced and that the applicant or agent should not be permitted to address Members on site visits other than to point out factually the relevant features of the site. p 25

I recommend that a document similar to (but less detailed than) the Code of Conduct should be prepared for all States Members. p 26

I recommend that training should be provided for all States Members in order to ensure that they have a full understanding of the planning function, its complexities and opportunities. p 26

I recommend that a “cooling off” period, as recommended in the Canavan Report, should be introduced where Members are disinclined to accept the recommendations of officers on a substantive matter, to enable a further report to be prepared. p 27

#### Targets

I recommend that over a period of three years the target should be raised so that 80% of applications are determined in eight weeks, with the figure of 90% at thirteen weeks remaining unchanged. p 27

I recommend that for very large applications, or any case where the thirteen week target is clearly likely to be exceeded substantially, a specific plan with timescales and milestones should be produced and agreed with the applicant and with consultee Departments. p 28

#### Appeals

I recommend that the proposal for a separate appeals tribunal should be revisited in due course. p 32

I recommend that the proposal for an alternative system within the Royal Court for dealing with planning cases should be pursued with urgency. p 34

I recommend that the system of “requests for reconsideration” be terminated and that this should be done at the same time as the introduction of a simplified system in the Royal Court. p 34

I recommend that third party appeals are not introduced for the time being and that the position is reviewed when the currently proposed reforms have been in place for (I would suggest) a period of five years. p 36

#### Staff

I recommend that efforts should be made to provide opportunities for more junior staff in development control to gain wider experience, through job swaps or secondments to other Authorities. p 37

#### Enforcement

I recommend that a cut-off period of five years for enforcement action should be introduced. A similar cut off point should be introduced for property searches. p 38

## **Historic Buildings**

I recommend that an exercise is carried out to assess whether the number of protected buildings stands at the right level and whether the level of detail in dealing with such developments affecting such buildings is appropriate. p 39

## **Cross Departmental issues**

I recommend that urgent steps are taken to bring the policy section into the main building as soon as possible p 42

I recommend that seminars and discussions between the two sections (and others) should be organised in order to increase understanding and the two way flow of information.  
p 42

I recommend that the heads of the development control and building control sections should be asked to examine ways in which they can work more closely together. p 42

I recommend that the Historic Buildings Division is brought within the Policy Division.  
p 42

I recommend that the accommodation requirements of the Department and the possibility of co-location with the Environment Department, should be addressed urgently. p 43

I recommend that the policy division should be strengthened by the addition of one post. Resources elsewhere should remain at their present levels. p 44

I recommend that appropriate quality assurance measures from the list which I have described (using complaints and comments, surveys, sampling, an advisory panel, peer review, post decision visits, States Members) should be introduced. p 47