



# **States of Jersey**

FINAL REPORT

## **Development Control Process Improvement Programme 2010**

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## Introduction

POS Enterprises (POSe), the operational arm of the Planning Officers Society, was appointed to provide a team to visit the States of Jersey to evaluate the qualitative nature of the States of Jersey development control process and the protocols and resources which are needed to ensure that consistent quality decisions are being made.

The review is entirely independent and no member of the Planning Improvement Programme team (PIP) involved in the production has any personal involvement with the Island or the States of Jersey.

Throughout the process the staff have been helpful, open and constructive in their comments the Planning Improvement Programme team wishes to highlight and thank them for, their positive attitude to the entire review process.

## Executive summary of findings and recommendations

The review has been extensive and has highlighted many areas where difficulties are currently occurring.

The recommendations provided throughout the report and gathered together in a summary at Section 11 have been made with the aim of enhancing the service and streamlining historic and current difficulties which have been identified by users of the development control system.

The recommendations will only work as a whole. All of the issues raised need to be addressed if resources and management capacity are to be adequate, given the likely deletion of the Director's post (this includes amendments to GDO, delegation levels, IT fit for purpose and the changes recommended for PAP/Ministerial involvement).

The review has identified the following strengths and weaknesses of the existing development control service and its operation:

### Overall strengths of the service

- Commitment of staff
- Willingness of staff to embrace a revised system
- "home grown" staff who are more loyal to the department than might normally be the case in the UK
- Historical background knowledge of Asst Director, Dev Control and Appeals Officer
- More integrated enforcement team
- Strong committed Minister
- Well trained Planning Applications Panel (PAP) which is performing well
- Newly appointed Jersey Architecture Commission and design guidance
- Well written and clear guidance to the public about the application process
- Knowledge and historical memory of many of the staff at all levels

### Overall weaknesses of the service

- Lack of management capacity, particularly with the deletion of the Director of Planning's post
- Lack of DC team leadership and delegation
- Lack of communication or transfer of skills between teams
- Difficult communication throughout the department caused partly by poor accommodation

- Outdated IT system (MERLIN) which does not allow public use, correct overlays, and 100% integration of historic building and enforcement data, and requires additional staff time to obtain outputs than other best practice systems
- Lack on online applications process system which causes far greater numbers of visitors to office
- Difficulties surrounding career progression which arise specifically from being an island
- Inconsistency of interpretation of countryside policies and conditions generally
- Lack of management information available and management of processes in DC
- Weak on conditions and enforceability
- No formalised feedback from Courts appeals process to development control planners
- Lack of an independent body dealing with appeals on a planning merits basis
- No coherent dc process manual and complex systems needing review
- Slow speed of decision making not helped by the level of ministerial involvement in individual cases

The replacement of the outdated development control IT system is an urgent priority. Management information about application levels and targets is essential to monitor and improve the overall level of service being provided, as well as the benefits to be gained from a greatly enhanced public interface through a web based applications process.

The development control service should take the opportunity provided by a new IT system to critically review their processes to achieve “Smarter” working. No step by step process manual exists and thus no full review of working practices has been completed. 80% of all conditions and reasons are bespoke, and given historic criticisms of unenforceable conditions a review and updating of conditions checked for enforceability is overdue.

As best can be determined the current application levels are 1621 applications received up to 30 October 2010. The difficulty in being precise about this figure underlines the problems of utilising management information from a system which is unhelpful to users, and not comprehensive enough for 2011.

Staff levels in the main are considered broadly in line with the level of applications but only once improvements in IT and case management as well as increased delegation and changes to permitted development, are implemented.

However, without these changes being implemented then poor case and staff management and paucity of resources will continue to impede the service.

Simplification of case handling, front loading of the application process by the Asst Director, Development Control and the Team Leaders will be required to address these issues and during the transition period it is considered likely that at least a further temporary full time equivalent resource will be required, and possibly more if an effective pre application service is to be reinstated.

Increasing delegation levels so that applications with less than 3 objections can be determined (without case officers having to undertake the additional work required for reports to Hearings will ease the workload as will increased exempt development levels and the reduced level of intervention in application detail proposed by the Minister. A quarter of all applications determined at Hearings have 2 or less representations, and 22% of all current applications are for domestic extensions and garden outbuildings many of which would be permitted development in other jurisdictions.

For no obvious reason, various elements of process guidance have been stuck in the pipeline for significant periods of time, as evidenced by the Committee of Inquiry into Reg’s Skips, who

noted that an enforcement protocol/guideline was missing as long ago as 2005. Work on providing missing process guidance and revising standard conditions and reasons is considered urgent and essential.

The re-introduction of a pre application guidance service for major applications would be welcomed by both applicants and agents and it should be possible to charge enough for such a service to recover the cost of an additional resource to provide such guidance.

Inconsistency of interpretation of policy on redevelopment in the countryside needs to be tackled, and a system for early recognition of the extent to which applications depart from the Island Plan and for their advertisement is recommended. Planning Obligation Agreements are immature and major opportunities to ensure development fully contributes to the infrastructure requirements, are being missed. A more detailed policy needs to be developed and adopted.

PAP should be asked to determine most controversial applications. It should be able to make a decision on all applications other than a substantial departure from the Island Plan, a major proposal of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre application guidance, or any proposal not in accordance with the Island Plan. This would allow the Minister to avoid becoming involved in a quarter of all applications; avoid expectations of his detailed involvement in minor applications; and allow the Minister to publish pre application guidelines on major sites and seek to encourage developments to implement the Island Plan, most effectively.

Staff resources should be harnessed in support of Ministerial pre application interventions with officers always involved in pre application discussions to ensure that all advice is recorded and communicated clearly. Inclusive transparent pre application guidance is vital. Ministerial guidance developed through masterplans, planning and development briefs or other recorded advice should be made publicly available and fully reported to any Hearing on an application. Planning forums bringing together all interested parties in pre application discussions on major sites will ensure public involvement and greater understanding of emerging schemes. A Ministerial code of conduct template is proposed to reconcile the Minister's decision making and pre application roles.

There is wide support for introducing an Independent appeal mechanism examining planning merits as exists in all other British Isles jurisdictions, alongside the right of appeal on matters of law to the Royal Court. The support appears to extend to a willingness by applicants to pay for the process. Initial concerns about jurisdiction passing off Jersey and cost can be addressed. Either an independent commission staffed by appropriately qualified professionals and Jurats or an environmental court under the aegis of the Royal Court could be introduced.

## 1. Background to review

- 1.1 During early 2010 the Minister for Planning & Environment and the Chief Executive Officer for Planning & Environment have become concerned over a perceived lack of consistency of approach being taken within the Development Control service. Incidences highlighted included a lack of a standard approach in the use of conditions by officers, queries over the consistency of recommendations by officers against approved policy, and concerns over how officers communicate with applicants over process and outcome.
- 1.2 The situation was exacerbated by a recently published Committee of Inquiry report into one specific planning case which had been running from 2005 and which had also called into question processes and protocols operating over that time.
- 1.3 The Process Improvement Programme was commissioned in the context of essential CSR cuts over the coming years and in the realisation that if planning is to continue to deliver good buildings and protect the environment it is essential that services can be provided at a lower cost through process efficiencies.
- 1.4 The aim of the PIP was to audit all current planning processes and procedures and to deliver more robust procedures, eliminate unnecessary processes and effort, streamline the service, extend exempted development and save money.

## 2. Terms of reference

- 2.1 The review was to address the following issues:
  1. the processes and protocols in place to ensure consistent decision-making by officers, Planning Applications Panel (PAP) and the Minister. This would also concentrate on process improvements required for call-ins and departures;
  2. the use, appropriateness, clarity and consistency of Conditions applied to planning permissions;
  3. the consistency of decision-making against approved policy and the extent to which all material considerations are taken into account;
  4. the management protocols in place to ensure appropriate sign off of individual officers' work against agreed standards and the review of these standards;
  5. the protocols in place for recording decisions, site visits and discussions with applicants;
  6. the protocols in place for ensuring appropriate involvement of, and advice to, the Minister and PAP members to support their decisions;
  7. the protocols in place for pre-application advice and the appropriateness of advice given and protocols for the involvement of officers, PAP members and the Minister;
  8. the suitability of resources within the Development Control service, the amount of staff, their experience, skills and competencies within the service to deliver what is being asked of it;

9. the ability to extend permitted development rights to ease pressure on the development control system and its resources.

### 3. Method

- 3.1 A team of two consultants visited St Helier on 22-23 September 2010 to meet with the Chief Executive Officer, agree arrangements for a longer study visit and to observe a meeting of the PAP. In addition the team collected a significant amount of background documentation relating to the operation of the planning system in Jersey, the staffing structure and the processes already in place.
- 3.2 The POSe team returned to St Helier for a two week period between 4-15 October 2010 to undertake stages 1 & 2 of the PIP study.
- 3.3 The PIP has been undertaken using five main techniques:

#### Observation

- 3.4 The consultants observed the regular monthly meeting of the PAP (23 September) and also attended an additional PAP meeting (7 October) which had been convened to deal with applications that needed to be dealt with.
- 3.5 The team also sat in on one of the weekly departmental meetings with the Minister and Assistant Minister (4 October) and observed a pre-application discussion meeting convened by the Minister to negotiate a planning obligation agreement and percent for art contribution on a major development scheme.
- 3.6 The monthly Ministerial Hearing (15 October) was also attended to ensure a full picture of the public decision-making process was gained.
- 3.7 In addition, several members of the department were “shadowed” as they undertook their work of processing and screening the applications received.

#### Interviews

- 3.8 The POSe team visited St Helier for a two week period between 4-15 October 2010 and conducted interviews with the Minister for Planning, Freddie Cohen and the Assistant Minister, Robert Duhamel. Members of the Department staff, and the Planning Applications Panel were also interviewed during the visit and two discussion workshops were held with groups of the development control staff.
- 3.9 In addition, the team met one of the States legal team assigned to planning matters, and representatives of both the Judicial and Administrative Greffes. Interviews were also conducted with agents regularly using the planning system, amenity groups and other interested bodies.
- 3.10 A full list of those interviewed is contained at Annex A.
- 3.11 Throughout the process all interviewees were completely open and frank about their experiences, on the basis that no quotes used within the report would be attributed.
- 3.12 Discussions, in all cases, covered the following areas:
  - general service delivery
  - consistency of advice and recommendations
  - consistency and use of conditions

- levels of delegated decision-making
- communication levels
- Ministerial involvement in decision-making
- Relationships between elected representatives and officers
- The appeals system (including third party rights of appeal)
- Planning obligations and Percentage for Art contributions
- Monitoring and enforcement of conditions
- The use of pre-application discussions
- Design issues

### Documentation and process review

3.13 During the visit the team undertook a detailed examination of the documentation, reference material, systems and processes currently being used including:

- The Jersey (Planning & Building) Law 2002
- Public information and ministerial guidance documentation for applicants and agents
- The planning application forms in use and fees literature
- The Development Control procedures manual
- Pre application advice screening process
- Planning application screening process form and operating system (MERLIN)
- Planning administration validation process and operating system (MERLIN)
- Planning application assessment process and operating system (MERLIN)
- Delegation of statutory powers (October 2009)
- GDO and public information concerning Domestic Permitted Development
- SPG PAN 4: Design Statements
- Members' Code of Conduct for Development Control (2007)
- Environment Scrutiny Panel report on the Planning Process SR2/2007 (Jan 2007) and the Minister's response SR2 Res (March 2007)
- Jersey Architecture Commission Terms of Reference and Guidance Note for Presentations to the Commission
- Talking to the media protocol (Jan 2009)
- Existing list of standard conditions
- Existing list of standard reasons for conditions
- Guide to planning appeals issued by the Royal Court
- Guide to Third Party planning appeals issued by the Royal Court
- Planning & Environment Business Plan 2010
- Live Link system for recording Ministerial Decisions
- The current Jersey Island Plan and the draft Island Plan

3.14 In the course of the study a number of reports related to previous reviews of the development control system were also examined in detail:

- Review of Planning & Building Functions (Chris Shepley Planning) (2005)
- Review of the Development Control Process (Internal review) (2007)
- Review of Development Control Processes (Christine Walwyn) (2008)

3.15 These reports were examined to determine not only whether recommendations had been implemented but also whether practices which had been criticised previously were still current, and if so why had these issues not been properly addressed.



3.16 Other reports which were studied included:

- Committee of Inquiry – Reg’s Skips Limited - 1<sup>st</sup> report (2010)
- Independent Investigation into Planning Application for the construction of outdoor adventure centre at Les Ormes, Le Mont a la Brune, St Brelade (Creepy Valley) (2008)
- Committee of Inquiry into Fields 848, 851 and 853, Bel Royal, St Lawrence – Final Report (2008)
- Independent Inquiry into Planning Application in fields Nos 519,520, 521, 524, 527, and 528, Woodside Farms, La Hocquarderie, Trinity (2004)

3.17 All of these reports had identified specific questions about the operation of Development Control and again these issues were examined to determine, firstly, whether the same practices were still occurring and, secondly, which of them might lead to further problems in the future.

#### **Case File Review**

3.18 The approach was based on an examination of a sample of 66 files and the 38 reports of planning applications submitted to the PAP meetings and Ministerial hearings of 23 September, 7 and 15 October.

3.19 Of the 66 files examined 11 were subject to Ministerial call in hearings (MH), 16 were considered at PAP meetings and 39 were delegated decisions.

#### **Statistical Analysis**

3.20 It became clear at an early stage that producing management information/data reports to provide consistent accurate figures about the number of applications dealt with was impossible, although such figures would be available from most planning information database systems as a matter of course. As a result considerable time has been spent manually manipulating data to provide background evidence about:

- Delegation levels
- Ministerial Call in, consultation and other concerns
- Types of applications submitted
- Return levels for incomplete applications received

## 4. Document and process review

### Overview of findings

- 4.1 Looking at the processes operating throughout the development management service has identified particular problems with the current Merlin IT system, its unhelpfulness to customers, and its incompatibility with the current GIS system and other overlays such as those relating to zoning, historic buildings and water table. The Merlin system is discussed in detail in the Resources section of the report but it is considered an urgent priority that a replacement system is identified and purchased.
- 4.2 A particular problem arose in connection with the statistical information available from both the Merlin system and other sources. There were significant discrepancies in figures provided for all of the following:
- Number of applications dealt with during the year in total
  - Number of applications dealt with during the year by the different DC teams and by individual case officers
  - Number of decisions taken
  - Number of applications dealt with in different classes of application
- 4.3 As a result the base figure of 1621 has been used for the number of applications determined during the 12 months to the end of September 2010 because this appears the most accurate. All recommendations are based on this figure as being the current number of applications dealt with annually by the department and should further investigation prove that this number is significantly below the number of applications actually being dealt with then the recommendations in respect of staffing and resources may require further review.
- 4.4 The report is not recommending any permanent increase in staff resources (other than to provide a full pre-application service which can be self funding if charged for – See Section 7), despite the anticipated reduction of senior management capacity. It is, however, recognised that other steps need to be taken to increase the management capacity within the Development Control service.
- 4.5 It is suggested that such an increase in capacity could be achieved via GDO changes, greater delegation, smarter working (ie review of processes to simplify and eliminate double handling), and a new IT system with more front-loading of the system. Until these recommendations are implemented, a temporary case officer post will be needed, if the backlogs are to be tackled and team leader case management capacity is to be created.
- 4.6 If current application numbers increase significantly, and the major recommendations of this report have not been implemented, additional permanent staffing resources will be required. Additional staff resources would also be required if the recommendations about pre-application advice proposed in Section 7 were introduced. Further work needs to be done to identify the likely level of demand for pre application advice if it were freely available. This could be self-funding if appropriate levels of charges were introduced.
- 4.7 There is no comprehensive DC manual for staff and this, and lack of training in aspects of Merlin has led to over-complex working practices in some areas and staff having to evolve systems, with the danger that the significance of that part of the process on other areas may not have been thought through.

## The Development Control Teams

- 4.8 The 3 teams of case officers are known as the Central, Rural and Support Teams. The Central and Rural teams deal with applications on a geographic split. The Support Team deal with minor applications across the whole island. Administrative support to the three case officer teams is provided by the Applications Team. Each of the three case officer teams is assigned a technician to provide screening support for applications pre registration. An organisation chart is shown at Annex B.
- 4.9 Separate specialist support is provided by a Department Architect, an Enforcement Team and an Appeals Team. In addition historic buildings advice is provided via a discreet team within the Policy and Projects function.

## Methodology

- 4.10 During the visit to the offices interviews were held with some members of staff as well as with agents, amenity groups and consultees. In addition two discussion workshop sessions were held with all other members of the DC staff who were available during the two week period when the consultants were working in Jersey.
- 4.11 Discussions included the following topics relating to documentation and process:
- General service delivery
  - The team structure within the Development Control Team and operational issues
  - Communications – both internal and external
  - The pre-application discussion process
  - Consistency and process for advice, reports and recommendations
  - Consistency and process for the use of conditions
  - Planning obligations and Percent for Art contributions
  - Levels of, and process for, delegated decision-making internally
  - Performance monitoring and statistical analysis
  - Monitoring and enforcement of conditions
  - Ministerial involvement in the decision-making process
  - Relationships between elected members and officers
  - The appeals system (including third party rights of appeal)
  - Design issues

All of these issues are dealt with in more detail in this section.

- 4.12 The Process Improvement Programme (PIP) also revisited the previous departmental reviews which had taken place over the past five years and the progress that had been taken towards implementing the recommendations made.
- 4.13 A detailed study of the existing DC process manual was undertaken and a previous version of the manual (circa 2001) was also reviewed.
- 4.14 About a day in total was spent observing the administrative process for applications on the Merlin IT system and the recording process on individual case files used by administrators, technicians and development control officers. One of the Technicians was “shadowed” for a morning to gain a clear picture of the screening process and the difficulties surrounding the receipt of incomplete applications.
- 4.15 In addition the process for recording Ministerial decisions on the States “Live Link” system was reviewed.
- 4.16 A large quantity of other documentation was examined, including all public information currently available at reception or through the States website.

4.17 Some of the interviewees also provided information relevant to the review. There were clear discrepancies between some of the statistics provided as already referred to earlier in this section and these will be highlighted, as appropriate, in this section of the report.

4.18 Various flow charts were made available for particular elements of the system and an attempt was made by the PIP team to provide one overall flowchart of processes.

### Screening and validation

4.19 When an application is received by the department, it is allocated by the Applications Team to one of the development control teams, for screening and validation on the basis of the site address and the nature of application. In the absence of a team technician, another will cover the gap, because the current process only allows for a 24 hour period for the validation process to be completed.

4.20 In addition to the paper Planning Screening Form which is completed during the screening process, the technicians also keep an overall Excel spread sheet for all screened applications which they use alongside the Merlin system to monitor the 24 hour validation process. This shows the date that the application was received, the date it was screened, its acceptability as an application and the date it was returned if considered incomplete. It shows reasons for return and also allows for a hold until date if applicants can provide the missing information expeditiously.

4.21 One of the issues raised within the department related to the lack of a consistent screening approach between the three technicians. Several staff quoted cases where applications had been returned because a cheque was for slightly the wrong amount or one set of plans had been omitted. In many of these cases a simple phone call or e-mail would result in the missing item being provided or amended within the 24 hour period and this would result in both a better service to applicants, a significant saving in additional work when the re-submitted application has to be re-processed and in postal charges for the department.

4.22 Statistics from the period May-October 2010 were extracted from the technicians' spreadsheet and are show in Annex D. The figures show that during the period reviewed approximately one third of all applications received were returned as incomplete. This is a significant proportion, and the figures also show a substantial variation in the number of returns between the three technicians which tends to back up the concerns raised by departmental staff.

4.23 It is clear from further examination of the technicians' spreadsheet that there is a considerable variation between technicians in the amount of flexibility (leeway) given to applicants to provide the missing elements to an application rather than return it immediately as incomplete. It may be that this is something which has emerged as a response to the current performance target but such efficiencies need to be set against the poorer level of service and associated poor public image, and the substantial additional departmental costs generated as a result. Such criticism could be addressed by grouping all the technicians under one manager and reviewing process to ensure consistency of approach ( See recommendations in Section on Staff Resources below).

4.24 The main reason for such a high proportion of applications being returned as incomplete was that required elements had been omitted. Despite a very well written public information leaflet, many applicants are obviously still confused about what information they need to submit with an application. At the moment the information required is hidden away on the back page of the application form and there is no check list, which an applicant must sign to confirm that all the paperwork is in order before submission. (See recommendations in sub section on Public Information and Forms below)

- 4.25 The screening process flags up previous applications, permissions and refusals on the property via Merlin and requests for the return of backfiles from the offsite storage facility are made on line at this time. The system for ordering backfiles seems to operate reasonably efficiently and there were no complaints about this part of the process.
- 4.26 The screening process requires the technician to identify other factors which would impact upon every individual application. It was clear that this is an area where the Merlin system does not automatically provide the information required. There are problems with the overlays and databases relating to zoning, drainage systems and water table, Registered Buildings, archaeology and TPOs. In addition there is no integration with the separate enforcement database. One of the cases observed provided different information about the address of a property and its status in three separate overlays of the system and only the local historic knowledge of one of the officers involved managed to resolve the confusion. As a result of this, much of this area of the screening process relies on time-consuming references to printed maps and communication amongst the team members as well as liaison with the applicant/agent involved. (Recommendations about the Merlin system are addressed in the Resources section of this report.)
- 4.27 There was some reference to discrepancies arising between the technicians about the identification of consultees for individual applications but the review undertaken did not bring any discrepancies of this nature to light.

#### **RECOMMENDATION**

- 4.28 *Review performance targets for the screening of applications to avoid unnecessary rejection of applications causing more work in the long run.***

#### **Fee structure**

- 4.29 Application fees are checked in the first instance by the technicians against the fee schedule. There are a significant number of problems in relation to the calculation of the correct fee rate to be paid for an application. Applicants and technicians both described the fee schedule as overly complicated to both comply with and administer but it does not appear very much more complicated than other systems currently operating in the UK, although fee levels can be potentially much higher in Jersey. Only technicians are supposed to answer queries about fees.
- 4.30 Some fee reduction/waiving is agreed by either the Director of Planning or Asst Director, Development Control, on an ad hoc basis. This is allowed for under Section 3.5(b) in the Delegation of Statutory Powers October 2009 (revised March 2010), although there do not seem to be any formal guidelines for when this may occur or a protocol to deal with such decisions and it was unclear how decisions to reduce fee rates were reached. This leaves individuals potentially open to criticism.

#### **RECOMMENDATION**

- 4.31 *A formal protocol should be put in place to deal with variances from the published fee rates, which ensures that individual officers cannot be challenged about such decisions***

#### **Application registration**

- 4.32 Once an application is screened and validated the Applications Team deals with the registration process for all applications and they aim to register all applications which have been appropriately screened to a target currently set as “within 5 working days” (100% currently).

- 4.33 It takes between 10-20 minutes to register each application. This consists of hand-stamping the six sets of documentation received, as well as entering information about the application onto the Merlin system.
- 4.34 All details of the application including information about applicant/agent, Third References (these references are to old files relating to the property from before the Merlin system was introduced) and statutory consultees are input. The Policy Team have also asked that information be included on the Merlin system that will assist with their future work but the options currently available are not providing much useable data at the moment.
- 4.35 Once the application has been registered a letter is produced (via Merlin) and sent to the applicant/agent with a confirmation form and site notices for display around the property. At this stage standard letters to all appropriate consultees are prepared (via Merlin) and despatched.
- 4.36 Application files are passed to the appropriate team for a case officer to take responsibility as soon as the certification and photographic evidence of the site notices in situ has been received from the applicant/agent. Photographic evidence should be received within 14 days of registration. The requirement to provide certification and photographic evidence of site notices arose as a result of the Shepley Inquiry into the Les Ormes application in 2008. This system seems to be working well and no complaints about this process were received, although it was noted that neighbour notification (which was also recommended) has still not been introduced and there could still be problems when affected neighbours have not seen site notices in time to comment. However, the practice of not working on the case until certification is received results in up to a two week delay before a case officer starts to work on the file. This is not helping the speeding up of the planning process and is likely to be contributing to the need for a 13 week target (referred to below in the sub section on “13 weeks target”). It may be that changes to the IT system will allow an opportunity for this process to be reviewed to allow for smarter working.
- 4.37 The Merlin system also provides a receipted invoice for the application fee received, although there seem to be some current issues with the invoice numbering system. The Applications Manager balances the fee income received against Merlin on a weekly basis and also checks the Merlin totals against the totals banked in the States Income system.

#### **RECOMMENDATIONS**

- 4.38 ***Review whether the five working days target for registration is too long, given that the initial screening must be completed within 24 hours.***
- 4.39 ***Further consideration should be given to a neighbour notification system as proposed in the Les Ormes report to avoid issues arising in the future***
- 4.40 ***Review the practice of not commencing to work on an application until the certification process is complete to assist smarter working.***

#### **Consultation process**

- 4.41 As described above the Applications Team despatch letters (produced via Merlin) to all statutory consultees on the same day that an application is registered. There are issues surrounding bulky supporting documents to individual applications. These relate not only to how they are recorded when received, but also how they are copied to consultees and then incorporated within meeting agendas.
- 4.42 The Merlin system records information about all letters sent out and the dates when replies are received.



- 4.43 At the same time advertisements relating to all applications are prepared and inserted every week in the Jersey Evening Post (current cost of £400-500 per week). All validated applications are also advertised on the States website. A weekly listing is produced for internal use and discussion at the Minister's weekly Monday morning meeting.
- 4.44 Currently consultee responses are forwarded individually to applicants/agents as they are received. In addition, all signed correspondence relating to an application received is acknowledged, noted and passed to the case officer for the file and a copy is passed to the applicant/agent. Unsigned correspondence is passed to the case officer for information but is not forwarded to the applicant.
- 4.45 The Assistant Director, Development Control and the Applications Manager are currently "trialing" a revised process which will send out batch responses to applicants/agents, and which might also provide more information about who is dealing with an application and the timescale for decision.

#### **RECOMMENDATION**

- 4.46 ***The "trialing" of the revised process for despatch of consultee responses should be prioritised and the letters should include as much detail as possible regarding timescales to inform the applicant/agent.***

#### **Monday Ministerial meetings**

- 4.47 The weekly application list is reviewed at the regular Monday meetings with the Minister and Assistant Minister and at this point both the Minister and Assistant Minister identify applications which they either wish to call in or where they wish to be further formally or informally consulted during the process.
- 4.48 Based on the last 6 months period the Minister has asked to be consulted on or has called in 9-10% of all applications received (160-170 pa, although of these only about 25% are actual call ins).
- 4.49 He has also sought either involvement in, liaison on, extra checks, or has referred to PAP another 14-15% (approx 250 pa). This is in total about 25% of all applications received, although for some of the 250 cases involvement has not been in any great depth. However there is a significant impact on the work of the department arising from this level of interest. Having considered this impact, the Minister proposes to focus in future on the much smaller proportion of called in applications and those he specifically asks to be consulted upon.
- 4.50 The responsibility for following up Ministerial requests falls to the Asst Director Development Control. He provides an initial briefing to the Case Officer on the Minister's concerns in individual cases. Ministerial interest is "flagged" clearly on the outside of the case files and Case Officers then deal with Ministerial involvement directly.
- 4.51 here there is ministerial interest in an application, officers can often feel under pressure to reach a conclusion on the case, before consultations are complete and they have been able to balance all material considerations. This can effectively challenge their independence (and professionalism), which is a check or balance in the system, and then at best there is confusion about their role.
- 4.52 A significant number of cases of Ministerial involvement have led to lengthy delays and negotiations. For example one relatively small application took over two and a quarter years to resolve after Ministerial consultation. This effect was identified by a number of parties interviewed. Agents and third parties who might be expected to benefit from

Ministerial interventions criticised the extent and effect of these, as Jersey has no right of appeal on non determination of an application.

#### **Allocation of applications to case officers**

- 4.53 Registered applications are passed to the Development Control Teams on a daily basis. The Applications Team allocates applications between the three teams of case officers according to a guidance sheet of criteria. This appears to be regularly updated. The list currently being used was updated at the end of March 2010.
- 4.54 As explained previously there are Central, Rural and Support Teams. The Central and Rural Teams deal with applications on a geographic split whilst the Support Team deals with minor applications across the whole island. Currently it appears that the team leaders allocate cases amongst team members in different ways, although both the Rural and Central Teams do normally allocate cases to an individual case officer within five working days. It was impossible to accurately determine how many cases are dealt with by individual case officers because in many cases the Merlin system only shows allocation to a team rather than to an individual officer.
- 4.55 The Support Team's currently have a substantial backlog of 71 case files and these will not be allocated until current cases are closed. The oldest of these backlog cases were already at the 9 week stage of the process. If queries were received relating to these cases then the file had to be found and read before a response could be made. This has the effect of delaying other work and carries the additional danger of a wrong response being provided because of a quick perusal of an application. It also undermines the principal purpose of a support team to move straightforward applications through the system as quickly as possible to avoid it clogging up (see recommendations below and in Section on Staff Resources).
- 4.56 On average 11 full time equivalent case officers have dealt with between 1600 and 1800 cases in the last 2 years. This is at the upper limit of 150 cases per case officer used as a broad benchmark in the UK. It is difficult to judge exactly how many cases each of the individual case officers are handling because the report produced from the Merlin system shows that some cases are shown only as being allocated to a particular team rather than an individual. However three points are clear when comparing the team's caseloads with the UK upper limit of 150 cases per officer. Firstly, there is a wide difference in the number of cases handled by individual officers of similar experience, suggesting that case allocation and management could be improved. Secondly, there is a significant caseload on team leaders, and on one in particular, which must be inhibiting their team leader management roles and their support to more junior staff. Thirdly, the Support Team with approximately 700 applications being determined by 2 full time equivalents (against an upper limit benchmark of 300 cases) needs more support or fewer applications, and this explains their current backlog.
- 4.57 In many cases the team leaders are not directly involved in cases where the Minister had requested consultation or liaison, with the communication being directly between individual case officers and the Asst Director, Development Control. This is not considered to be helpful as there is then no support mechanism from team leaders for officers, and it also undermines the team leaders' managerial function.
- 4.58 It is suggested that cases should be reviewed and allocated by the team leaders in consultation with the Asst Director, Development Control immediately after registration. This would enable early advice to be given to case officers on individual applications, covering such issues as political significance, planning obligations, and "percentage for art". This would also provide an opportunity to reinforce consistency with similar decisions made previously. It would assist in speeding up and "front loading" the process. It would also directly involve the team leaders in the management of individual cases with a view to lessening the day to day pressures on the Asst Director, Development



Control. It is appreciated that there would need to be a concomitant reduction in the caseloads of team leaders as appropriate.

### **RECOMMENDATIONS**

- 4.59 All case files should be allocated within five working days of registration to a named case officer.**
- 4.60 Case officers should (as standard practice) be identified on the Merlin system (or any replacement) rather than simply to a team.**
- 4.61 The Asst Director, Development Control should be involved with the team leaders, in the allocation of applications to case officers and briefing upon them, immediately after registration. This will ensure that political involvement is managed, that consistent decisions are made across the teams and that planning obligations and percentage for art contributions are handled appropriately**
- 4.62 Following the early briefing referred to above, day to day managing of cases should be dealt with directly by the team leaders, with the Asst Director only being involved as a back up or in cases of particular sensitivity.**
- 4.63 Team leader case loads should be reduced as appropriate to allow them to take on the effective management and support of their staff. Until delegation and exempt development levels can be increased, and new IT introduced, there will need to be an additional temporary case officer post to allow for this, to deal with backlogs and to allow the re-instatement of pre application advice as outlined in Section 7.**

### **Design Review meetings**

- 4.64 The Asst Director, Development Control meets with the Department Architect on a regular basis to review the progress on all applications where the Minister, or others, have indicated that there are significant design issues. Individual schemes are reviewed with the case officer concerned, together with historic buildings representation where required.
- 4.65 This is a relatively new arrangement which everyone concerned indicated is raising design awareness throughout the department and ensuring better developments as a result.

### **13 weeks target**

- 4.66 One of the significant changes to the working of the department over the last two years has been the move to a 13 week target for dealing with minor applications. It is understood that the previous 8 week target was raised to 13 weeks because of the poor performance against this target.
- 4.67 Unfortunately, the change seems to have encouraged a culture of working towards the 13 week target even on very minor applications. This is indicated particularly by the Support Team who now leave applications untouched due to pressure of work until nine weeks after registration, as evidenced by the current backlog.
- 4.68 Some frustration about the longer delays was expressed by the agents interviewed, and one referred to the fact that the Development Control Team had recently won an internal award for reaching the 13 week target rather than the previous 8 week one. But, most said that as long as they had the certainty of a result, at the end of the 13 week period, they were reasonably content.
- 4.69 However, 13 weeks is a very long time to wait for a decision on a minor application. With the changes recommended it should be possible to reduce the minor applications target

back to 8 weeks. This would improve service to applications and the public perception of the service.

#### **RECOMMENDATION**

- 4.70 *Reduce the minor applications target incrementally back to 8 weeks once related recommendations in other sections of the report are implemented.***

#### **Case Officer Reports**

- 4.71 Case officers provide full written reports for all hearings whilst delegated decisions are dealt with via application progress analysis reports. All the reports that were looked at were comprehensive with policy implications, material considerations, details of representations, and a recommendation with conditions or reasons for refusal. Reasons for the recommendation were clearly set out, weighing the balance of the arguments for and against permission.

#### **Signing off of officer recommendations – “Four eyes and six eyes”**

- 4.72 Following earlier criticism about signing off of officer recommendations a system known as “four eyes” was introduced for all applications to ensure that a single case officer could no longer make a recommendation to the PAP or on a delegated application decision. This system is working in all cases examined and is now well embedded. The recommendations which follow are not fundamental criticisms of the four eyes system.
- 4.73 Currently, senior officers sign the non delegated hearing report or comprehensive delegated application assessment back sheet, and it is suggested that draft conditions should always be with the assessment sheet for signature, with an extra copy provided to the Applications Team once signed, as they are normally separated in the file. Draft conditions/reasons are therefore currently not initialled on the delegated files and so it is not possible to see if a senior officer did check them before signing on the back sheet.
- 4.74 All application recommendations should be endorsed by the case officer’s line manager or the Assistant Director, Development Control, where the item is already known to be going to PAP or Ministerial Hearing. Two signatures were clearly identified as being provided in all of the case files examined but on occasions the signatures were of a more senior officer, rather than a team leader or the Assistant Director, Development Control. This means that clearance can still be solely within a single team and there is still a danger that policy/condition/reason inconsistency will not be picked up. Other recommendations address this. Similarly, for delegated applications some junior staff are still signing decision notices on behalf of the Director. This should not be normal practice and may lead to further criticism. This may be a loose end from the previous system but requires standardisation.
- 4.75 The “six eyes” process is utilised for applications where the application has not previously been identified as requiring a hearing, and there is an outstanding objection. The six eyes involved in such cases refer to the case officer, the Assistant Director, Development Control and the Chair of PAP. This process will then agree whether the application can be dealt with as a delegated decision or will need to be considered by either PAP or a Ministerial Hearing. This process was observed to be operating well.

#### **RECOMMENDATION**

- 4.76 *All applications should be counter-signed by either the appropriate team leader or the Assistant Director, Development Control.***
- 4.77 *Standardise the signing of decision notices to ensure that junior staff are not allowed to sign them on behalf of the Director or Assistant Director.***
- 4.78 *Attach draft conditions to the application assessment sheet, with an extra copy provided to the Applications Team, and ensure that delegated decision draft***

**conditions/reasons are counter-signed and dated by a senior officer at the same time as the back sheet is signed.**

### **Delegation levels**

- 4.79 The Panel determined 134 applications in the 8 month period from January – August 2010 (A rate of 201 applications pa). (The annual rate was similar in 2009.) This represented 13% of all application decisions. (By comparison the Minister decided 15 applications in this period during Hearings.) Thus in 2010 about 86% of applications were delegated.
- 4.80 This level of Hearing work is significantly higher than UK targets and creates further pressure on a busy development control team. Many UK authorities now have higher levels of delegation in the interests of efficient and speedy decision making, allowing elected members to focus on the more significant applications.
- 4.81 The current delegation agreement (dated March 2010) shows some discrepancies and anomalies throughout the Planning & Building Services Division section. It is not clear whether the agreement was ever subject to legal scrutiny but it is considered that significant redrafting would be helpful and that setting the delegation scheme out in a tabular format, similar to that used by the Environment Division, would provide a much clearer document.
- 4.82 Applications on which there are no objections or where representations have been resolved by condition or amendment can be determined by the officers. This assists in speedier decisions and avoids member involvement in minor matters. The Minister and Chairman of PAP are consulted on whether some cases should be referred to a hearing too.
- 4.83 This leads to a low level of delegation. In many jurisdictions the officers can determine applications where there are small numbers of outstanding objections, provided the officers have responded to and shown how they have balanced those representations in their decision (not necessarily resolved these representations). Based on the last two months' Hearings, approximately 25% of applications currently being referred to a Hearing had fewer than three outstanding representations. Each case being dealt with at a Hearing involves a minimum of four hours additional work. If these minor non-controversial cases were dealt with by officers, resources could be released for more important work.

### **RECOMMENDATIONS**

- 4.84 *Levels of delegation should be reviewed to allow applications to be determined by officers when there are fewer than three outstanding representations to which the officers have responded and shown how they have balanced those representations in their decision (not necessarily resolved these representations)***
- 4.85 *Completely re-draft the current delegation scheme, in a tabular format, in consultation with the States legal team***

### **Conditions**

- 4.86 One of the main areas of concern about inconsistency related to the conditions attached to permits. Section 5 considers the impact of this further.
- 4.87 There is a standard list of conditions, which is incorporated within the Merlin system, but it is understood that this has not been reviewed for some years. The Merlin system also allows officers to include non-standard conditions.
- 4.88 All the officers interviewed described the current list of standard conditions as outdated and inadequate.

- 4.89 The perception is that approximately 80% of conditions imposed are non-standard although this perception is difficult to confirm because not all case officers currently enter conditions onto the Merlin system and no one person is capturing a list of non standard conditions being used which could be incorporated into a new list of standard conditions.
- 4.90 There is currently no one officer who checks all conditions for enforceability and consistency. Given the history of criticism of unenforceable conditions and the risks of using such a high level of non-standard conditions, this would seem to be an unnecessary risk to take in relation to enforceability, because the expertise to check this is already available within the department through the detailed knowledge and experience of the Appeals Team.
- 4.91 The standard conditions should be reviewed forthwith and bespoke conditions reviewed for inclusion in the revised standard conditions.

#### **RECOMMENDATIONS**

- 4.92 All appropriate non standard conditions that are currently being used should be collated together so that an immediate review and updating of the existing standard conditions can be undertaken by the Director of Planning, utilising the experience of the Appeals Team.**
- 4.93 In the short term all case officers should be required to input conditions into the Merlin system because any new IT system will import data from Merlin and this should be as complete and up to date as possible.**
- 4.94 In addition, in the short term, adding the conditions will allow the scale of the use of non-standard conditions to be accurately quantified.**
- 4.95 Once the revised list of standard conditions has been adopted, any officer proposing to use a non-standard condition should consult with the Appeals Team to check its enforceability before it is included in the officer's report, and the Assistant Director, Development Control and team leaders should sign off all non standard conditions and regularly review any which should be added to the standard condition list.**

#### **Site visits**

- 4.96 Current arrangements for PAP site visits are included as part of the Code of Conduct for PAP (16 October 2007), and the protocol for such visits seems clear and helpful.
- 4.97 However, the Code refers in para 11 to decisions to have site visits taking place as a result of the debate and consideration of an application at a PAP meeting. This does not reflect the current practice, where all sites which are the subject of PAP decision are visited by the PAP on the day prior to the Panel meeting.
- 4.98 No one interviewed has suggested that the current procedure for site visits is wrong but it would be appropriate to revise the Code of Conduct to reflect the actual situation.
- 4.99 In other jurisdictions within the UK there have been criticisms from time to time about day long site visits, and members discussing cases to the point where a decision may be pre-empted. It is important to avoid this occurring. Again, no one interviewed expressed any concerns about the current conduct of site visits but this should be regularly reviewed to ensure that no grounds for criticism emerge over time.

## **RECOMMENDATIONS**

**4.100** *Revise para 11 of the PAP Code of Conduct to reflect the current arrangements made for site visits.*

**4.101** *Regularly review the conduct of site visits to ensure that no impression of pre-emption of the decision is taken.*

### **Preparation for meetings**

4.102 The PAP normally meets on a monthly cycle on Thursdays. Ministerial hearings have a similar cycle. In both cases additional hearings are arranged as necessary.

4.103 The agendas for both PAP and Ministerial hearings are drafted over the three weeks prior to the meetings. The agendas are finalised 10 days ahead of the meeting (on a Monday). The Applications Team prepare the content of the agenda and the order of the items and the Asst Director Development Control adds estimated timings for each individual item. The agendas include:

- Officers' reports and application assessments
- Relevant site plans and architectural drawings as well as other information received from applicants/agents
- Responses from statutory consultees
- Objectors written responses

4.104 The full agenda and papers are then forwarded to the Administrative Greffe which prints and despatches them to those involved seven days in advance (5 working days) of the meeting.

4.105 The Applications Team arranges for notices of both PAP and Ministerial hearings to be published (PAP - 5 days ahead) (MH – 3 days ahead). The Applications Team also despatches letters to applicants/agents and to objectors 7 days in advance referring them to the website for agendas, officers' reports and recommendations.

4.106 The Applications Team also prepares the Powerpoint presentation which is used during the meetings to show relevant sites, plans and pictures. This presentation takes a member of the team at least a day to put together per meeting.

### **Planning Application Panel meetings**

4.107 The processes relating to Planning Application Panel meetings are described in detail in Sections 7 and 8.

### **Ministerial Hearings**

4.108 The processes relating to Ministerial Hearings are described in detail in Sections 7 and 8.

### **Decision recording**

4.109 Minutes of the decisions taken by the PAP and by the Minister at Ministerial hearings are recorded by the States Greffe.

4.110 The draft minutes are prepared by the Greffe and sent to the Asst Director, Development Control for comments. The Greffe then produces the finalised minutes for signature and they are then uploaded to the States website.

4.111 Several of those interviewed mentioned that there are frequent enquiries received from both applicants and potential third party objectors about where the minutes are. However, the States Greffe confirm that they prepare draft minutes within 7-10 days of the meeting in accordance with guidance set out by the Law Officer's department. There

seems no reason why the planning department should delay providing comments so that the draft minutes can be published but such a delay appears to occur.

- 4.112 There is a minor concern about this delay in the public availability of the minutes. This is because for third party appeal purposes (and good public administration) the decision notice has to be issued within 7 days of a final decision. There is a potential risk that a decision notice not fully in accord with the minute might be issued if the final minutes are not available before the notice is issued.
- 4.113 The publication of the Minutes from Ministerial hearings are also delayed, for substantially longer periods of time than PAP minutes and again, it is not clear why such a delay is occurring in approving the draft minutes.
- 4.114 The States operate a separate system for Ministerial decisions taken outside of Ministerial hearings and these are recorded across the whole government by an entirely different process known as “Live- link”
- 4.115 The Applications Team is responsible for recording all decisions recorded on “Live- link” and a separate protocol is in place. This incorporates a quality assurance check with the States Greffe to confirm the appropriate wording of the draft decision taken before any decision notice is formally signed by the Minister. The Greffe guarantee to respond within 24 hours with a finalised wording and this system seems to operate well in practice. As far as the issuing of decision notices is concerned the date of signature and confirmation of signature on “live link” is the date on which the decision is deemed to have been made.

#### **RECOMMENDATION**

- 4.116 *Put in place an agreed timetable for service between the department and the States Greffe for production, checking and publication of minutes of PAP and Ministerial hearings.***

#### **Decision letters**

- 4.117 The target for the despatch of decision letters is within 7 days from the decision being taken, either by the delegated process or by PAP or the Minister. Currently the system shows that this target is being met in 99% of cases, although there was some indication that this statistic cannot be guaranteed. The permit cannot be acted on for 28 days from the date of issue, to allow the third party appeal process to work.
- 4.118 The Applications Team produces and despatches all delegated decision permits for the Support Team once such decisions have been signed off and the individual case officers in the other two teams are responsible for producing and despatching their own delegated decision permits. The different procedures used for such an important task appears potentially quite dangerous and it is suggested that a single process should be standardised across all teams.
- 4.119 The Applications Team also despatch letters to objectors about the decisions taken and the date of such despatch is recorded on the Merlin system.
- 4.120 Currently these notifications are sent via ordinary 1<sup>st</sup> class mail and incorporate an explanatory sheet outlining the appeals process available to third party objectors. Notice of a third party appeal must be lodged within 14 days of the letter although there is some legal uncertainty about whether the 14 days is counted from the date of the letter being despatched or the letter being received. The Legal Department confirmed that the current guidance is that the 14 days starts on receipt of the notification and currently there is some leeway given to notifications which are received up to 16 days after the date of the letter. The Legal Department and the Appeals Team indicated that a



number of procedural amendments are currently required to tidy up and clarify the arrangements for third party appeal notifications, which are currently a little “hit and miss”.

4.121 The 14 days allowed for third party appeals to be lodged was also criticised as inadequate for the following reasons:

- Potential third party applicants might easily be away from home for such a short length of time and therefore miss their opportunity to appeal
- 14 days is not a very long period to obtain legal advice and prepare the necessary paperwork for a third party appeal to be lodged

#### **RECOMMENDATIONS**

**4.122 Standardise the production and despatch of decision letters and permits across all three teams to avoid problems arising.**

**4.123 Clarify the legal wording in respect of time period allowed for objectors to lodge third party appeals**

**4.124 Review whether the 14 days currently allowed for third parties to lodge appeals should be extended to 21 or 28 days.**

#### **Percentage for Art**

4.125 Percentage for Art is an internationally recognized funding mechanism where developers are encouraged to allocate a percentage of the capital costs of any new building(s), refurbishment or landscaping scheme towards the provision of public art. The Minister introduced such a scheme in 2006, and the most recent advice note on the subject was published in June 2008.

4.126 Concerns have been expressed about the consistency of approach between individual officers in enforcing the policy and also, from applicants and agents, about the voluntary (or not) status of such a contribution.

4.127 The policy depends on the case officer identifying the need for a “percentage for art statement” to be signed and dated by the time the decision notice is ready to be issued. The change recommended above, whereby applications will be assigned to case officers and a briefing given at the outset will allow early advice to be given to case officers on a proposal’s significance requiring a “percentage for art statement”.

4.128 It is understood that a revised version of the guidance is currently being prepared. This should provide a much clearer steer to officers about when a PFA contribution should be sought.

#### **RECOMMENDATION**

**4.129 Produce, agree and publish the revised guidance on PFA as soon as possible to provide clarity to both applicants/agents and case officers. See also recommendations on PFA in Section 5**

#### **Planning Obligations**

4.130 Planning obligations are provided for as part of Article 25 of the Planning and Building (Jersey) Law 2002. Supplementary Planning Guidance Practice Note 13 of August 2008 (SPGPN 13) sets out the current policy on planning obligations. It was produced because the Minister wished to increase certainty and provide clarity (compared to previous site by site negotiations) for developers and others when planning agreements are needed. Para 1.2 of Part IV seeks to put in place

- An explicit link from the policy framework to the mechanisms for delivering planning objectives related to new development
  - Clear supplementary planning guidance
  - A process which will establish the requirements or scope of an agreement at an early stage before funding decisions are made on development proposals
  - A framework which is transparent, easy to use and understand, inexpensive and simple.
- 4.131 The register of planning agreements shows 11 agreements registered since the beginning of 2006. An average of 3 per annum suggests they have been used very sparingly.
- 4.132 During the Consultants' research in Jersey, the Minister expressed concern at the process by which obligations were sought and asked for consideration to be given to this.
- 4.133 SPGPN 13 provides background and policy including identifying the types of contributions appropriate. (eg. affordable housing, transport education open space, health care , community and social services, environmental enhancements, prevention of crime and disorder, archaeology, conservation and the historic environment). It sets out the relevant criteria an obligation must meet. It identifies in Table 1 a wide (but not exhaustive) list of the range of infrastructure and other benefits that may be sought. Whilst identifying educational need for additional school places generated by large residential developments it does not have other standards of provision set out for other infrastructure and service provision arising from development proposals. Thus there is no contribution level (rate) or tariff identified or alluded to for units of development.
- 4.134 There is no indication of the size of development (a threshold) which would trigger the need for an infrastructure/service obligation. Nor is there any information on the type of development which would be expected to contribute through a planning obligation.
- 4.135 SPGPN 13 says that the Minister will establish an interdepartmental planning agreement group to provide a "one stop shop" approach to the content of a planning agreement on behalf of the States. This is a positive move to meet the stated objectives of planning agreements, as outlined in 4.130 above.
- 4.136 The Practice Note identifies the planning case officer as the first person to be aware of development intentions and that he or she should coordinate the "one stop shop" approach. However, as noted above, there are no specific guidelines on what thresholds or types of development should require an agreement. Thus it is currently left to the case officer's discretion whether to decide to trigger discussion of the need for a planning obligation in any particular case. This can obviously lead to inconsistencies of approach. Furthermore, this uncertainty and the lack of any indication of appropriate levels of contribution will lead to a lot of duplication in the work of the one stop shop group on each occasion they are convened. More significantly, the objectives of scoping the need for an agreement before funding decisions are made and of transparency, simplicity and consistency are not facilitated.

### **RECOMMENDATIONS**

**4.137 *The "one stop shop" group, or an ad hoc inter departmental group, should be asked to :***

- ***Recommend types of development and thresholds of sizes of development above which infrastructure and service provision planning obligations should be sought***



- **Identify the infrastructure and service provision requirements generated by major development and appropriate standards to be sought by planning obligations**
- **Provide indicative tariff rates for these**
- **Revise SPGPN 13 to incorporate the above to ensure the policy objectives can be met.**

**4.138 A procedure should be adopted whereby the ADDC & team leaders identify to case officers at the case allocation stage (or in pre application discussions) that a planning obligation should be sought, and the law officers are alerted to this requirement as soon as possible**

**4.139 The law officers should be asked to produce standard agreements capable of being offered by applicants in simpler cases to seek to avoid delays in permits being issued awaiting the preparation of agreements.**

### **Enforcement**

4.140 One of the main complaints addressed by the Committee of Inquiry report into Reg's Skips relates to the lack of an agreed and published enforcement procedure since as far back as 2005.

4.141 The current Enforcement Team members have joined the department over the last two years and it is understood that a draft enforcement procedure has now been prepared, although it has not yet been agreed and added to the DC procedures manual. The enforcement procedure needs to clarify enforcement priorities and establish a policy on enforcement including appropriate compliance checks. It is suggested that the Rushmoor and Wycombe Council enforcement policies, protocols, and charters can be examined as providing good practice in this regard. The policy needs to continue to reinforce the integration of the Enforcement Team into the department's practices and information sharing. Case review meetings should continue on a regular basis. This is needed for the effectiveness of the service and to overcome past criticisms. However it is also likely that the second Committee of Inquiry report will seek confirmation that such a procedure is now available and so its completion should be a matter of the highest priority.

4.142 Currently the Team only deals with complaints received on a reactive basis and there is no integration of the enforcement data with other data held on the Merlin system. This can mean that vital elements of the case history of a property are not automatically available to case officers or enforcement officers. There is obviously an issue that the enforcement data is confidential but any new IT system should be able to provide a protected module which will ensure greater awareness of a site's history for both Enforcement and Case Officer Teams. A recommendation in respect of this is made in the Resources Section.

4.143 One of the other criticisms, raised in interviews with officers and agents relates to the enforcement of conditions for new permits. At the moment there is no time for case officer teams to check compliance with conditions. It is considered that such a check could readily be undertaken by the Enforcement Team in the course of their normal site visits around the Island, providing adequate briefing is provided by the case officers. To this end it is considered important that the Enforcement Team is more fully integrated within the development control team and co-located as soon as practicable.

### **RECOMMENDATIONS**

**4.144 An agreed enforcement policy and procedure should be produced as a matter of urgency and provided to the current Committee of Inquiry for information.**

**4.145 Consideration should be given to extending the Enforcement Team's role to cover checks on conditions compliance, following briefing from the individual case officers.**

#### **DC procedures manual**

- 4.146 The current D procedures manual is kept by date order and there is no attempt to group documents according to topic or process. The previous manual, which was also examined, was arranged and indexed in a clearer way allowing easy reference.
- 4.147 One of the criticisms made by the Regs Skips Inquiry Report was that some sections of the previous DC manual were blank, including the entire section on enforcement processes.
- 4.148 Examination shows that there are still large areas of process that are not incorporated within the manual, and there still remains a blank where there should be an enforcement process.
- 4.149 Several interviewees referred to drafts of documents that had been or were being written but which had not been signed off for inclusion within the manual. These included:
- guidance on Householder extensions
  - enforcement procedures
  - GDO revision
- 4.150 It is essential that these and other process gaps that currently exist are filled as a matter of urgency. This should not be delayed while a more fundamental re-structuring of the procedures manual is undertaken.
- 4.151 The lack of a complete and up to date procedures manual means that it is difficult to consider the development control system in the round and identify inefficiencies or double handling that are occurring at the moment. If this responsibility were given to one of the team leaders (who are dealing with the procedures on a day to day basis) there would be an opportunity to review and resolve issues arising as well as prioritising the missing procedures.
- 4.152 There are also some anomalies in the documents which make up the manual. For example, the "Decision making framework for planning applications" dated 12 January 2009 states that the "6 eyes policy" no longer exists, although most officers referred to "6 eyes" during interviews.

#### **RECOMMENDATIONS**

- 4.153 The content of the procedures manual should be reviewed thoroughly, completed and re-ordered in a sequential order with an index that shows clearly where process elements are still missing**
- 4.154 At the same time, there should be a critical review of all the processes in place to identify any simplification or "smarter" working that could be achieved linked to the introduction of new IT systems (See Resources Section recommendations)**
- 4.155 Responsibility should be given to one of the team leaders to review and resolve issues arising as well as prioritising the production of the missing procedures**
- 4.156 The manual requires some introductory context. Some of the content currently relates to the minutiae of the payments system ("how to do" training documents) whilst other documents provide overall policies and operational issues for case officers**

**4.157 *The completion of the manual should be treated as a matter of real urgency.***

**Public information literature and forms**

- 4.158 A wide range of public information literature about the planning process is available either, in hard copy, from the reception area, or online, for applicants, agents and objectors alike.
- 4.159 In the main this is well written and easily understandable.
- 4.160 The planning application fee structure was criticised by applicants/agents as being unnecessarily complicated but it is considered that the leaflet explaining the structure is no more complicated than similar documents in the UK. Local authorities in the UK now tend to use a separate application form for householder extension/minor works which is a simpler and shorter version of the main application form.
- 4.161 It is understood that a cross department working group is currently looking at a redesign of the application form, although this re-design appears to be led by the Policy Team which is keen to obtain more quantifiable statistical data on applications than can currently be provided through the Merlin system (see Application registration and Validation earlier in the Process section).
- 4.162 The draft revised application form seen is significantly more complicated than the current form and runs to eight pages rather than the current three pages with one additional page of notes.
- 4.163 It does incorporate a “tickable” checklist which aims to avoid so many applications being returned as incomplete, but this is positioned towards the back of the form. A separate front sheet which incorporates a requirement for signature by the person submitting the application might focus minds more and reduce the number of applications which have to be returned.

**RECOMMENDATIONS**

- 4.164 *Provide a front sheet to the application form incorporating a comprehensive check list of items required for applications of various types and which requires either the applicant or their agent, to sign and certify that all information required has been submitted***
- 4.165 *Give consideration to designing a simpler, shorter form for minor householder applications***

## 5. Consistency of Conditions and policy interpretation in decisions - file review

### Introduction

5.1 This section deals with the elements of the brief requiring the report to address the:

- Use, appropriateness, clarity and consistency of planning conditions attached to planning permissions.
- Consistency of decision making using approved policy and the extent to which all material considerations are taken into account
- Signing off decision notices on files by officers ( also dealt with more fully in the section on protocols for decision making and the document process review)

### Methodology & Standard Conditions/Reasons List Review

5.2 The approach was based on an examination of a sample of 66 files and the 38 reports on planning applications submitted to the Panel and Ministerial hearings of 23<sup>rd</sup> September, 7<sup>th</sup> October, and 15<sup>th</sup> October.

5.3 Of the 66 files examined, 11 were subject to Ministerial call in hearings (MH), 16 were considered at Planning Application Panel hearings (PAP), and 39 were delegated decisions. .

5.4 The standard conditions and reasons list available on the Merlin IT system were examined in detail. The “reasons for conditions” are available to be used as standard reasons for refusal, although these do not appear to have been designed for that purpose.

5.5 These standard conditions and reasons lists have not been comprehensively updated for a number of years and lack inserts to cater for specific site circumstances, although there has been an intention to complete the updating. At this moment in time, approximately 80 % of conditions and most reasons are bespoke, without reference to the standard conditions and reasons.

5.6 Such a high level of purpose designed reasons for refusal and conditions is unusual. It may well be that the very high level of public interest in planning in Jersey means that staff feel under pressure to construct conditions which are particular to a proposal. However it seems more likely that the outdated nature of the standard conditions/reasons list is the main driver for such customisation.

5.7 The conditions reviewed were generally fit for purpose and the bespoke conditions and reasons are generally clear and appropriate. Such customisation is, however, resource hungry.

### **RECOMMENDATION**

5.8 ***The time taken to draft conditions or reasons which are clear appropriate, necessary and enforceable can be considerable and a revised standard set of conditions/reasons (with appropriate inserts to customise the condition to the circumstances) should help to reduce the time taken and ensure greater consistency. That is not to say that purpose designed conditions will not need to be carefully written in circumstances where a standard condition may not be precise enough to achieve the objective. However a list of tested enforceable conditions built on best practice of the DC staff would avoid weak and unenforceable conditions, which have caused criticisms in past reports on planning decisions.***

### **Consistency of the Use of Planning Conditions/Reasons**

- 5.9 As stated above, the conditions reviewed were generally fit for purpose and bespoke conditions and reasons are generally clear and appropriate. Unenforceable conditions have caused great trouble in the past. There were no obviously unenforceable conditions identified in the sample examined, although many were very detailed and if checks for compliance with conditions were undertaken more systematically, some might prove difficult to enforce. The improved signing off processes introduced in recent years would not necessarily catch all unenforceable conditions, without further training and checks. This is dealt with in greater depth in the section on “signing off decisions”, and in the comments about the continuing lack of an enforcement policy.
- 5.10 The Appeals Team have a wealth of knowledge and experience in this area as they review all decisions being challenged in the courts or complaints board in detail.
- 5.11 The current system means that this expertise on the enforceability or otherwise of conditions is normally only deployed after a decision is issued. There is informal contact and advice from the Appeals Team to case officers, but only when it is sought, while an application is being processed. In addition the Appeals Team ran an internal seminar on court decisions or advice from appeal and complaint considerations for development control staff (including on enforceability) in 2009 and a further seminar is proposed before the end of 2010. This is very commendable and should be continued on a regular basis. However training for development control and enforcement officers on the writing and use of conditions and their enforceability, would be a wise investment.
- 5.12 Depending on the consideration of the issues about the management of change referred to in the later section on “resources”, the Appeal Team’s expertise could also be utilised to check the appropriateness of conditions proposed, for enforceability, before cases are signed off. It would be better to harness the expertise before decisions are made, rather than at the appeal stage, when conditions cannot be changed.

### **Percentage for Art conditions**

- 5.13 The Minister had expressed concerns that “percentage for art” conditions were inconsistently applied, and, also, that conditions seeking planning obligations merited review (See also Section 4 above).
- 5.14 Some conditions used in Jersey would be very likely to be challenged if applied elsewhere in the United Kingdom. The use of such conditions has been unchallenged, and has grown up as custom and practice over many years.
- 5.15 Conditions seeking to:
- approve or retain an architect or landscape architect for a development, or
  - approve the development shown on the drawings but not approve the elevation detail in part, or
  - obtain a planning obligation
- have been used unchallenged in Jersey for a number of years.
- 5.16 Case law in the England, Scotland, Northern Ireland and Wales (UK) jurisdictions has provided clear legal guidance on the tests of whether a planning condition is likely to be judged reasonable and therefore regarded as legal by the courts. In the UK, conditions such as those outlined in the previous paragraph, would be open to challenge on tests of unreasonableness. Amended drawings would be required with the acceptable elevational detail and a planning obligation would be required by legal agreement rather than by condition.

- 5.17 There is little case law set by the Jersey Courts on this matter. When the standard condition/reasons lists are reviewed it would be appropriate to take legal advice on the reasonableness of such conditions identified in the previous paragraph, judged against the Planning and Building (Jersey) Law 2002. Article 23 requires a condition to fairly and reasonably relate to the proposed development, and sets out what a condition may (in particular) relate to. The article includes a fair and reasonable test for a condition which is similar to that used in UK planning law. However the detail of the Article is different to UK law and this may possibly justify some of the conditions queried in the paragraph above. Article 23 is unlikely to extend to securing quantified planning gain contributions by condition as Article 25 sets out the arrangements for such planning obligations (procedures for planning obligation agreements are dealt with in the “process review” section).
- 5.18 Percentage for Art is an internationally recognized funding mechanism where developers are encouraged to allocate a percentage of the capital costs of any new building(s), refurbishment or landscaping scheme towards the provision of public art. The minister introduced such a scheme in 2006, and the most recent advice note on this subject was published in June 2008.
- 5.19 The latest version of the standard condition seeking art work to be provided by some development is *“A work of art shall be delivered in accordance with the advice of the appointed Approved Art Advisor and the Percentage for Art statement dated ..... which has been submitted to and approved by the Minister for Planning and Environment. The work of art must be installed prior to the first use/occupation of the development hereby approved unless otherwise agreed in writing.”*
- 5.20 There were few examples of the use of this condition on the sample of files that were reviewed. The 2008 advice note sets out the scale of development to which the policy applies. There were examples of cases below these thresholds where the elevational finishes or hard landscaping materials were enhanced in the spirit of this policy, although the development was not above the threshold.
- 5.21 The policy depends on the
- case officer identifying the need for a “percentage for art statement” to be signed and dated by the time the decision notice is ready to be issued, and the
  - art advisor and applicant having agreed the financial contribution, detailed models/drawings, site, justification, commissioning process, implementation timetable, and ownership and maintenance arrangements.
- 5.22 If the requirements of the 2<sup>nd</sup> bullet above have not been met and the percentage for art statement has not been signed by the time the permit is issued, there could be problems of enforceability if the applicant did not wish to proceed with such a contribution.
- 5.23 Regarding the first bullet point above, if applications are subject to the joint front loaded Assistant Director/Team Leader allocation check referred to in the section entitled “document and process review”, early advice could be given to case officers on the proposal’s significance requiring a “percentage for art statement”.
- 5.24 Regarding the second bullet point, best practice in the UK would seek to obtain a percentage for art scheme by legal agreement rather than condition. This is to ensure the art work or contribution is delivered without the risk of challenge to a condition. Ideally, conditions would only be used when the art work was agreed and was to be provided on the development site, as part of the overall scheme. If the development does not otherwise require a legal agreement this could delay the issue of permission while the agreement is drafted. However a unilateral agreement offered by the developer could avoid delay.



- 5.25 If “percentage for art statements” accompanying development permits are resolved by the time that permits are issued, the standard condition would suffice. If all the issues in the second bullet point are not generally resolved by the time the permit is issued, a legal agreement would be a more secure means of securing the artworks in due course.

### **RECOMMENDATIONS**

- 5.26 ***It is understood that the department is reviewing details of the percentage for art policy, and it is recommended that the adequacy of percentage for art statements at permit stage is considered further in the review. If there are a significant number of permits granted before the percentage for art statements are completed, a legal agreement for the artworks is desirable.***
- 5.27 ***If a planning obligation agreement is needed for a scheme to cover other matters, the agreement could include the percentage for art statement without delaying the development. If only the percentage for art statement triggered the need for a legal agreement then the current standard condition could form the basis of a legal agreement template, with the detail set out on page 10 of advice note 3 (or its successor) added. The developer could complete this as a unilateral agreement to save time but leave appropriate control with the States.***
- 5.28 ***It is suggested that to ensure consistency of implementation of the policy and condition, a department seminar/training event is organised when the revised advice note 3 is adopted.***

### **Consistency of Decision Making with Approved Policy and Completeness of Material Considerations**

- 5.29 These issues were investigated against the sample of 66 files, the 38 reports submitted to the 3 Hearings attended (2 PAP & 1 MH); and by discussions with PAP members, amenity and conservation society representatives, staff within the department and with agent architects and planners who were interviewed. Examples of suggested apparent inconsistencies of policy interpretation identified by agents were also examined.
- 5.30 The current development plan is the 2002 Island Plan and the issue of consistency with approved policy was considered in relation to the policies of the 2002 Plan. The 2007 Environment Scrutiny Panel report on the Planning Process considered amongst other matters, controversies concerning interpretation of Island Plan policies. The Island Strategy and other States strategies such as the rural 2005 strategy were also considered as they have been raised as material considerations in previous reports on the planning service.
- 5.31 The 2002 Island Plan has a large number of policies which need to be balanced in reaching any decision. There can be tensions between policies and their underlying objectives. There can be relevant policies which inevitably point the decision maker in different directions. As in any planning decision, these policies have to be balanced against each other, alongside other material considerations.
- 5.32 As the Environment Scrutiny panel observed in 2007, *“In an attempt to ensure the island Plan was widely embraced, it seemed that strenuous efforts had been made to produce an accessible document for both professionals and for the wider public. Professionals... claimed that the Plan was a good and broadly understood document that had given all involved a ‘breathing space’. Other professionals were clear that there was still plenty to argue about what all those words meant for specific applications. Moreover non experts, including local residents, tended to read the Plan at a rather different level and to give certain policies more weight than professionals. As there was no immediately obvious mechanism within the Plan for ranking particular policies, this practice was*

*understandable and it often caused lay persons to reach markedly different, yet reasoned opinions as to whether a particular application should be permitted.”*

- 5.33 As the terms of reference for the 2005 Shepley report stated *“The Planning function is one of the most controversial areas of decision making and is widely regarded as one of the most challenging political portfolios. Over the last few years there have been a number of highly contentious planning applications which have attracted considerable scrutiny.”*
- 5.34 The level of public interest in planning and environmental matters in Jersey has the highest level of awareness and concern. Other contentious decisions have been examined by Inquiries since 2005. The purpose of this analysis is not to reinvestigate those matters, nor to respond to strong emotions concerning current controversial proposals or decisions. The report’s brief was to review a sample of cases to build a picture rather than focus on particular current controversial proposals
- 5.35 The analysis of case files referred to above checked whether the relevant policies were identified and whether consistent interpretations were being applied across the department. Officer reports to Panel and Ministerial Hearings and delegated case analysis sheets which the review examined, are comprehensive in setting out the relevant policies and are consistent in their interpretation, with the exception of the detailed points raised below.
- 5.36 The file examination identified inconsistencies in the approach to development comprising changes of use including extensions to domestic curtilages, and replacement dwellings and replacement development in the rural areas subject to outstanding character, green zone, and countryside zone policies. The potential result of this was described as *“growing houses in the countryside”*. Significant though this inconsistency is there were no other significant groups of cases where recommendations were inconsistent with policy. One individual exception to this was an identified inconsistency in an officer report to the PAP on a proposal to allow a new building to include residential accommodation previously approved for agricultural workers, but actually to be occupied by people not engaged in agriculture. This was recommended for approval whilst not being consistent with the appropriate policy. This appears to have been because the case officer was aware that the Minister had previously suggested at a Hearing site visit, that moving the new building away from nearby houses into the countryside might be of benefit in relation to noise concerns. However the PAP refused the application on policy grounds
- 5.37 The inconsistency of officer approach to 2002 Island Plan policies G15, C4, C5, C6, C15, C16, C18, and C19 arises from the extent to which there is a presumption against development throughout rural areas in outstanding character, green and countryside zones, and the criteria which might apply to an exception in the policies. Different teams and officers have approached these matters in different ways. For example the policy presumption against development has been regarded, by some officers, as only allowing redevelopment in exceptional circumstances as specified in policy for extensions or redevelopment in the protected rural areas, whereas other officers presume that the exceptions obviate the need for the “presumption against” test to be considered. Some interpret policy more flexibly than others. The 2009 Island Plan has sought to clarify policy and seeks to introduce a stronger presumption against redevelopment or extensions in the Coastal National Park and against conversion to residential use or extensions to curtilages throughout the countryside. It also is designed to provide guidance on other States strategies to meet previous Inquiry concerns about other strategies not being given weight as material considerations.
- 5.38 There has been little interchange of staff or checking for consistency between teams when applications are cleared and this has allowed differences of interpretation to



develop over time. The policy and development control sections are keen to work with each other more closely than has been achieved within the present accommodation arrangements.

#### **RECOMMENDATION**

**5.39 *It is recommended that the Assistant Directors are asked to review the intended application of policy and then run an in house seminar to agree a consistent approach to rural policy interpretation. Other measures recommended elsewhere relating to team changes and joint front loaded Assistant Director/Team Leader allocation will also help align rural policy interpretation, by providing consistent early advice in discussion with the case officer.***

5.40 As indicated previously the delegated case analysis sheets and Hearing reports are comprehensive in setting out the relevant policies and on their interpretation. With the exception of the rural policy inconsistency referred to above, the files examined were consistent with 2002 Island Plan policies.

5.41 Notwithstanding this, staff themselves felt that there were significant inconsistencies in policy interpretation, as well as in the way that teams handled validation and processes. In addition to the rural policy inconsistency, department staff thought that there were other inconsistencies when the PAP and, in particular, the Minister departed from policy in commenting on proposals or reaching decisions on applications.

5.42 Representatives of amenity and conservation societies, architects and other agents highlighted the extent to which some ministerial decisions appeared to depart from policies in relation to historic buildings and replacement development outside the built up area. Both they and members of staff identified that these cases appeared to relate to ministerial involvement in pre application discussions in particular. This is referred to further in Section 8.

5.43 Article 12 of the 2002 Planning & Building Law provides that where the Minister believes that the development proposed would:

- have a significant effect on the whole or a substantial part of the population of Jersey; or
- be a departure (other than an insubstantial one) from the Island Plan,

then a public inquiry should be held before a decision is made. It is understood that only one inquiry has been held since the law was introduced.

5.44 The very high levels of public interest in planning matters would be assisted if a professional assessment was made at the time of registration of an application as to whether the proposal is a departure from the Island Plan, and if so whether it is substantial or insubstantial. This would assist all those seeking to follow the interpretation of policies. The recommendations that follow on Island Plan departures would bring this greater transparency which over a period of time would bring greater confidence of the public and members in the planning process.

#### **RECOMMENDATIONS**

**5.45 *In relation to the consistent application of policy it is considered desirable for major schemes, that would be a departure from approved policy (if approved), to be advertised as major departures and so identified in the weekly application list, in the Jersey Evening Post and on the website, at the time of an application's registration. A decision as to whether they were "not insubstantial" departures, when a public inquiry would be required, should be made at this stage. A definition of a "major" scheme would be required. For statistical purposes in the***

***UK jurisdictions, “major” is defined as 10 or more dwellings or the equivalent quantum of commercial development. That may be appropriate for Jersey or a higher threshold might be set.***

**5.46** ***Development proposals below this major threshold, which are (potential insubstantial) departures, should be identified in the weekly application list, in the Jersey Evening Post and on the website, as possible insubstantial departures (if approved).***

**5.47** ***This publicity for substantial and insubstantial departures, is recommended to***

- reinforce the need for early recognition of such important considerations in the processing of an application.***
- reduce the risk of case officers not putting adequate weight on the approved Plan***
- help address the criticism of inconsistent rural policy interpretation by officers which was identified both inside and outside the department and***
- help the Minister by providing early advice on whether an application is a departure.***

**5.48** The above recommendations on early identification of departures, would work best with the joint front loaded Assistant Director/Team Leader allocation check recommended in the Process section.

## 6. Minor development: review of exempt development in Jersey

### Introduction

- 6.1 This section deals with the possibility of extending permitted development rights and advertisement exemptions to ease pressure on the development control system and its resources. The brief asked for comment on the potential scale of reduction in the number of applications through an extension of exempted development. This would be achieved through further amendments to the Planning and Building (General Development) (Jersey) Order 2008, or, preferably for users, by a revised consolidated order. Planning permission is deemed to be permitted by Ministerial Order for development set out in a Schedule to the Order.
- 6.2 The brief was not to produce detailed worked up proposals. Instead, the review was to look at the broad picture and suggest a direction of travel on possible permitted development increases.
- 6.3 The work has drawn on an analysis of the information available in the department showing the number of applications of different types in the year from October 2009 – September 2010, which could create significant benefits if they were to become exempt from control. During the examination it emerged that the Director of Planning had in hand a review of the amended 2008 Order. He helpfully made his knowledge and expertise available as did other officers. The possibility of extending permitted development was also discussed with PAP members, amenity and conservation society representatives, with agent architects and planners, and the RSL Committee of Inquiry.
- 6.4 More minor development proposals are subject to the requirement to apply for a development permit in Jersey than is the case in the UK jurisdictions, where many are permitted development (equivalent to exempt development). In his 2005 report for the States on the Review of the Planning and Building Functions, Shepley explained that the system tended to get bogged down in detail and concentrated on minutiae. He suggested a review of the level of detail in the development control process, developing a lighter touch and raising the level of exempted development. Dealing with the minutiae requires greater resources to deal with the applications, and additional cost and delay for applicants.
- 6.5 The 2005 report highlighted the level of detail involved in dealing with proposals for replacement windows and doors, paint colours, advertising and signage, compared to elsewhere. Examples of other matters which require a specific planning permit in Jersey but are permitted in most areas in the UK, subject to standard conditions, are:
- house loft conversions;
  - replacement and new windows above first floor and roof level;
  - larger rear extensions, conservatories, garages and outbuildings;
  - garage conversions (unless conditioned to remain as garaging).
- 6.6 Industrial or Warehouse buildings can also, in most cases, be extended by 1000 sq m or 25% subject to standard conditions. These higher exempt development levels in the UK have been introduced without raising great concerns, even in densely developed mature residential areas.
- 6.7 All those interviewed supported the principle of extending permitted development and thought the time was right for such a change. However a lot of those who supported the concept thought others would resist the idea. This appeared to be particularly because of the high level of concern about impacts of very minor development on the character of Jersey. In addition, the conversion of either lofts or garages for extra accommodation for

a dwelling raised issues about the high parking requirements for conversions of garages or roof spaces.

- 6.8 Whilst Jersey is different, neither of these concerns need block an appropriate review of permitted development levels. UK jurisdictions have differential permitted development rights which are more cautious in conservation areas and national parks and areas of outstanding natural beauty, whilst not catching all minor development in the permission net. On site parking is an emotive issue in Jersey, but the minor additional pressures put on parking arrangements, as a result of additional space being created by converting lofts or garages, could perhaps be balanced as well by the individual as by the State.

### Analysis

- 6.9 In the year from October 2009 – September 2010, Merlin recorded 1621 planning applications as determined. There is no split of minor application types available from Merlin. Key word searches were undertaken but it proved necessary to analyse the application descriptions listed in the weekly lists of these applications. This produces higher numbers by type than the word search which could only identify a matching description. The figures used in this analysis are therefore higher than those produced from the original Merlin key word searches.
- 6.10 Without inspecting and analysing drawings on every file it is not possible to be precise in quantifying the potential extent of any permitted development changes. For example, many of the single storey extensions identified from the descriptions could be large enough to still need permission, even if higher thresholds of permitted development were introduced. Where the description of development indicated a scale of development which would be well above the level of permitted development in the UK jurisdictions, they have not been included in the analysis. However, if the description referred to more than one minor type which could lie below this level, then they have been included in each type. An example of this would be a combined application for a loft conversion and window replacements, which would be included in both types. Thus the totals of the types also exceed the total number of applications identified in the analysis.
- 6.11 So the figures in the analysis give an annual number of applications types which currently need a permit in Jersey, a significant proportion of which might become exempt, depending on what new thresholds might be adopted. Any reductions in applications submitted would be well within these totals depending on the thresholds chosen. They are best seen as a starting point for identifying the most productive areas where increases in permitted development levels could be achieved.
- 6.12 In the year from October 2009 applications in residential curtilages which fell within the above criteria included:
- 127 application descriptions mentioning extensions or single storey extensions (8% of applications)
  - 96 application descriptions mentioning loft (54) or garage (42) conversions to provide additional accommodation for existing dwellings (6% of applications)
  - 83 application descriptions mentioning garages outbuildings sheds and outdoor swimming pools in gardens (5% of applications)
  - 74 application descriptions mentioning new or replacement works to provide windows or doors (5% of applications)
  - 52 application descriptions mentioning new conservatories (3% of applications)
  - 46 applications for satellite dishes were made (3% of applications)

71 application descriptions for first floor or two storey residential extensions were also found.

- 6.13 No applications were identified for industrial or warehousing building extensions which might benefit from increased permitted development levels as introduced in the U K in April 2010.
- 6.14 81 advertisement applications were identified. 35 separate applications for new or improved highway access were found. There were also a significant number of applications for flues and works to chimneys which the Director of Planning is examining in reviewing the wording of the existing General Development Order.
- 6.15 It would be difficult to estimate the numerical impact of proposals to extend permitted development on the basis of the current information available. Therefore, in some of the recommendations which follow, a proposal has been outlined which may well need to be subject to assessment over a "trial period" of continuing express permissions. This would allow cases which would have been permitted under the proposal to be identified by the department in reports. The Minister, department, elected representatives and other interested parties would then be able to refine the proposals and be aware of their impact before an Order is implemented. This would ensure the proposed higher exemption levels would not be likely to cause unacceptable impacts on neighbouring properties, as exempt levels were raised.

### Extending exempt development

#### Dwellinghouse extensions, attached conservatories, and outbuildings

- 6.16 In Jersey single storey extensions not exceeding 25 sq m are permitted development provided no other buildings such as sheds conservatories, garages, greenhouses, have been erected since June 2007 using the 25 sq m permitted development right. The 8% of applications for such extensions which required a permit were therefore either bigger than 25 sq m, or other buildings had used up all or part of the right.
- 6.17 In the UK single and two storey rear and side extensions can be permitted development. Other than in national parks, areas of outstanding national beauty and conservation areas, potential sizes of permitted extension can be significantly larger than in allowed currently in Jersey, depending on the size of the existing dwelling. Furthermore there is no reduction in the size of extension permitted when garages, sheds, greenhouses etc, have been erected in the rear or side gardens. Nor is there any limit on the number of single storey outbuildings for ancillary purposes which can be built, provided less than half the rear garden area remains undeveloped.

#### RECOMMENDATIONS

- 6.18 ***There would be likely to be significant benefits in: allowing free standing single storey outbuildings including sheds, detached garages, greenhouses, freestanding conservatories, and summer houses, all of which would be ancillary to the enjoyment of the dwelling house, to be permitted to the rear of the front elevation of dwellings, subject to standard conditions to protect neighbouring properties, and provided that less than half of the rear garden area remained undeveloped with these ancillary outbuildings, such freestanding single storey outbuildings would not affect the greater extension of permitted development rights suggested below.***
- 6.19 ***The UK permitted development rights for rear and side extensions be considered further (other than for registered historic buildings) subject to a detailed examination of the impact of such levels for residential extensions of one and two storeys on decisions taken over a three month period. To seek to ensure that high standards of design are achieved for rear and side extensions, it would be possible under Jersey law to make such extensions permitted development if they***

***met the requirements of the proposed residential design guide and were designed and fully supervised by a member of the RICS or AJA.***

**6.20** ***After a trial period had assessed the success of RICS or AJA supervision a permanent scheme could then be introduced, if the Minister is satisfied that those levels of exempt development would not cause unacceptable impacts on neighbouring properties, subject to standard conditions to protect neighbouring properties.***

#### **Loft and Roof Conversions**

6.21 In Jersey all loft or garage conversions for extra accommodation for a dwelling need permission. This is because of high parking standards and the requirement for conversions of garages or roof spaces to provide extra parking for the additional bedrooms created. On site parking is an emotive issue in Jersey, but the minor additional pressures put on parking arrangements, as a result of additional living space created, could perhaps be balanced as well by the individual as by the State. Parking standards assume very high levels of car use and could be reviewed as part of the Island's commitment to sustainability, as proposed in the 2009 Island Plan.

6.22 In the UK, garages can be converted to additional living accommodation, unless conditions on the permission under which the dwelling was built require their retention for parking vehicles. Loft conversions (including new windows and dormers to the side and rear) do not require express permission, provided the works finish below the existing ridge line and subject to conditions to deal with impact on neighbouring property.

#### **RECOMMENDATIONS**

**6.23** ***There would be likely to be significant benefits (except for registered historic buildings) in:***

- ***allowing garages to be converted to ancillary residential accommodation subject to closure of any openings in the structure being finished to match the adjoining wall finish of the parent property;***
- ***allowing loft/roof conversions to be converted to ancillary residential accommodation, including the insertion of windows in rear and side slopes, and velux style flush windows in front roof slopes, subject to no alteration to existing roof slopes or ridges or external roofing materials, and subject to standard conditions to protect neighbouring properties.***

**6.24** ***The above measures would be likely to significantly reduce the number of applications (currently 22%) falling into those categories of description, although a large number would still be large enough to require planning applications.***

#### **New or replacement windows or doors**

6.25 Many of the 74 (5%) of applications submitted solely for these works and for other minor works are for alterations affecting the character of registered historic buildings. However a significant number are not and a lot of time and effort is spent on replacement windows for post war extensions to registered buildings which are not part of the intrinsic historic interest. One such file contained over 90 pages dealing with non controversial replacement windows to a 1960's extension of a Building of Local Interest. Minor works to registered historic buildings require an application, but it is not clear why new windows above ground floor level and replacement windows to non historic buildings or modern extensions of historic buildings require an express permission. They do not in UK jurisdictions.

### **RECOMMENDATION**

- 6.26 ***There would be likely to be significant benefits in exempting replacement windows and doors of dwellings above ground floor level, and only requiring applications for replacement windows in the historic elements of registered buildings.***

### **Advertisements**

- 6.27 81 applications for advertisements were received during the year (5%). These included non illuminated adverts, which do not generally appear to be controversial. Currently non illuminated adverts of less than 2 sq m not above 4 m above ground are exempt from applications. These exemptions are broadly similar to those in the U K jurisdictions, except that sizes tend to be smaller and letters larger. The possible extension of categories of advertisement that could receive an automatic consent could be reviewed, but there does not appear to be a strong case for this.

### **Satellite Dishes**

- 6.28 Half of the 46 satellite dish applications were on registered buildings. Whether or not it is possible to identify generic suitable locations for this half with standard conditions in an order, further consideration could be given to seeking to increase exemptions to avoid the other half of applications being caught in the net by standard conditions for permitted development for satellite dishes on the schedule class for non registered buildings.

### **RECOMMENDATION**

- 6.29 ***Further consideration should be given to a possible increase of exemptions to avoid the need for applications for dishes which are not on registered buildings.***

### **New vehicular accesses to a highway**

- 6.30 In Jersey all new vehicular accesses require permission. In the UK only those connecting to the minority of classified roads (A, B or C class roads) require permission. 35 separate applications for new vehicular accesses were made in the last year. It may be that because of the character of Jersey's roads, there is a strong argument for continuing to require applications for all new accesses.

### **RECOMMENDATION**

- 6.31 ***If it is considered desirable to raise exemption levels further, consideration should be given to only requiring applications for new accesses to principal roads.***

### **Other possible exemptions**

- 6.32 The most fruitful areas to reduce the detailed control of minor development are in relation to minor residential development.

- 6.33 However, in addition to the above, consideration was also given to commercial exemptions. In the UK jurisdictions industrial or warehouse buildings can in most cases be extended by 1000 sq m or 25% subject to standard conditions. In Jersey industrial and warehouse buildings can be extended by 20% subject to similar conditions and no material external effect on the external appearance of the undertaking. While the analysis carried out does not suggest any proposals would have been exempted by increasing the threshold, the Director of Planning has suggested the external appearance criterion of the Jersey policy is unnecessary.

### **RECOMMENDATION**

- 6.34 ***The external appearance criterion of the Jersey policy for industrial and warehouse buildings is unnecessary, and should be deleted from the Order.***



## 7. Pre Application Advice

### Introduction

- 7.1 This section deals with the present protocols and arrangements available for pre application advice on proposals, the appropriateness of advice given, and protocols for the involvement of officers, Planning Application Panel (PAP) and the Minister.

### Officer Pre Application Advice

- 7.2 Two types of pre application advice are available from the department's officers. For householder and minor proposals a duty officer is available for a "drop-in" advice service. This avoids the need for customers to make an appointment. More complex proposals need officer preparation to ensure all relevant issues can be dealt with before an appointment is made for a meeting. Supplementary Planning Guidance is available explaining how these two elements of pre application advice operate (Practice Note 1 July 2009). This is included in the development control procedure manual.
- 7.3 The procedure for more complex proposals is well organised. It involves initial information being submitted for a planning technician to check if the drop-in advice service is appropriate or to confirm an appointment is necessary. If a meeting is required, a date is set and, at least one week before the meeting, the proposer is asked to provide more detailed information including outline drawings and a written summary of the proposal. This allows matters to be researched so that appropriate advice, on a properly understood proposal, can be provided at the meeting. The officer will confirm the advice given in writing after the meeting. These arrangements are well thought out and in accordance with best practice elsewhere.
- 7.4 Authorities providing similar levels of advice in the UK increasingly charge for the advice provided on more complex proposals. No charge is currently made for pre application advice in Jersey, although the officer time taken researching a major proposal to provide advice can be considerable, and the possibility of making a charge for proposals involving a large amount of officer resource, is referred to in Practice Note 1.
- 7.5 The "drop in" advice from a duty officer appears to be operating well. However other priorities, including backlogs of processing submitted applications, have meant that appointments for more formal pre application meetings have taken months to materialise. Agents involved in submitting applications described a 6 month wait for a meeting following a request as "not unusual". Officers acknowledged that this could be the case. Some agents advised that, faced with this delay, applications were likely to be submitted without pre application advice, which was not in any party's interest. Pre application advice can be critical to ensuring the community maximises the benefits from development, at the formative stage.
- 7.6 It appears that those promoting major schemes would be willing to consider paying for timely high quality pre application advice. This could provide the resources required to provide such a service. Alternatively, consideration needs to be given to prioritising tasks and releasing resources if the intentions underlying Practice Note 1 are not to be frustrated. It is recommended that additional staff should be appointed to provide this service, which would be funded by charging applicants. Further work is required to identify the level of additional staff resource needed and the appropriate level of charges.
- 7.7 None of those interviewed complained about the quality of pre application advice when it was available. There was no evidence in the sample files inspected of officer pre application advice being inappropriate, although there were inevitably cases where the Panel or Minister reached a different balance of material considerations to initial officer advice. The need for such a balance or check in the system appears to be understood



by those who might otherwise complain. There were no complaints to the Complaints Board on inappropriate pre application advice.

### **RECOMMENDATION**

- 7.8 *Charging should be considered to provide additional resources for major scheme pre application advice, although the level of such charge and resource needs to be determined.***

### **Panel Members and Ministerial Pre application discussions**

- 7.9 Before focussing on pre application advice and members, it is helpful to set out the impact of the changes to Ministerial government on planning in Jersey. The Minister's interest in planning matters has involved him in more detail might have been anticipated. For example, in the last six months, the Minister required to be consulted on, or called in for his decision (following a Ministerial Hearing), in approximately 10% of all applications. In addition he also sought involvement in, or asked to be kept informed about a further 14% of applications. This combined total of 24% approximates to about 420 applications per annum at current levels. Many Ministerial actions involve pre application discussions with developers or interest in concerns raised by residents in the early stages of the planning process, and currently there is an expectation that the Minister will respond to all these.
- 7.10 Expectations of this level of engagement put an enormous and unreasonable pressure on the Minister. No other Minister is expected to become directly involved in such detailed administration. It is of enormous credit to the present Minister that he has been able to shoulder these burdens so willingly.
- 7.11 It is an essential part of the democratic process that members of the public should be able to make their views known to elected members including the Minister and PAP members. People in Jersey take a particularly strong interest in planning issues, and the size and culture of Jersey demand elected members who are highly approachable. Members seek to be helpful to those approaching them to a degree which would not be found in many larger jurisdictions.
- 7.12 Ministerial interventions have undoubtedly achieved high design standards and expectations. The Minister's long term legacy of enhanced vernacular and modern architecture will have been secured through his Design Guidance, the Commission for Architecture, the introduction of the Department Architect, Design Review meetings and by his promotion of excellence in architecture. The achievements are considerable, although the Commission for Architecture needs to be made a full consultee in appropriate pre application and application processes. The Ministerial interventions to achieve this legacy and to fulfil the unreasonable expectations on him have been exhausting and exhaustive. A lesser Minister would have cut back their level of involvement a long time ago.
- 7.13 However this involvement has slowed decision making, complicated lines of communication, and impacted on the functionality of the department. The RSL Committee of Inquiry report referred to independent Ministerial advice where communications broke down. In addition there have been cases where the Minister's initial advice to potential applicants was not conveyed to officers and did not consider all the material considerations which became apparent. The PAP was aware of these considerations and refused permission for applications the Minister had encouraged. This can, and has, created a very difficult situation which must be avoided in future.
- 7.14 Some described the department as bordering on the dysfunctional as a result of pressures and resources, poor case management referred to in the Process Review section, and complexities from ministerial interventions. However this situation is not a product of these interventions. The problems of dysfunctionality within the department

were highlighted, before Ministerial government was introduced, in the Shepley report of 2005.

- 7.15 A review of this nature provides an opportunity to reflect on patterns which have developed over time, and can provide the Minister with the broad picture for him to decide what changes might be appropriate, possibly with the States Assembly if they are major. It is clear that Ministerial interventions have been made in order to be helpful and implement the objectives of the Island Plan. Having considered the issues raised, the Minister proposes to focus in future on the much smaller proportion of called in applications and those he specifically asks to be consulted upon.
- 7.16 The Minister explained that he thought that his successor should not have to be involved in dealing with the large number of applications that he had been drawn into, during his time as Minister. He requested the production of a draft protocol which safeguards Ministerial involvement in the early stages of major proposal pre application discussions and promotion, and to decide major applications affecting the Island.
- 7.17 In all British Isles planning systems there is a potential risk of a decision maker having pre determined themselves at pre application stages. Member engagement at pre application stages therefore needs careful management. If the Minister, Assistant Minister or PAP Members are involved in pre application discussions and making decisions on subsequent applications, there needs to be a very carefully structured process in accordance with a clear protocol, so that they can be protected against any risk or suggestion of predetermination or bias when making decisions. The principles of such protocols need to include:
- A clear indication in meetings, and notes of meetings, that any Members are not making or pre-empting decisions on applications;
  - Officer presence to ensure public notes of meetings are produced and actions or negotiations following meetings are implemented by officers;
  - A need for all Members to indicate that they have been involved with pre application discussions and not predetermined their position when determining an application, or to recognise that they are conflicted and withdraw.

#### **Planning Applications Panel pre application matters**

- 7.18 There was no indication from discussions that the PAP Members, individually or collectively, give pre application advice. The PAP sometimes indicates, when refusing an application on detailed grounds, how a revised proposal might become acceptable (when not opposed to the principle of the development). This is done after the decision is made in an attempt to be helpful. However PAP Members are well aware of the dangers of being the decision maker but giving the appearance of bias or predetermination. Offering an opinion on proposals prior to an application being submitted would risk this. The PAP Code of Conduct makes it clear that pre application meetings with prospective applicants require a degree of formality, and should be left to officers, in most circumstances.
- 7.19 The PAP Code does indicate that, exceptionally, the Minister or Assistant Minister may ask that a pre application meeting includes a PAP Member. However, this does not currently appear to happen. If the position that PAP were not to engage in pre applications were to be formalised, this would reinforce the PAP as the decision-making body on most controversial, or major, planning applications; maintaining its impartiality and the ability to balance material planning considerations, without risk that views expressed in pre application discussions might lead to bias or predetermination on its part. The PAP role is discussed in more detail in the next section of the report.

### Ministerial pre application role

- 7.20 The Minister seeks to be constructive and helpful to all those who approach him on planning matters including those who are seeking pre application advice.
- 7.21 The Minister's view when discussing the brief for this report sought ministerial involvement in many fewer applications than has been the case in recent years. However, he wants to retain the ability for early Ministerial pre application engagement with significant proposals. Because early engagement with emerging proposals offers the greatest opportunity to mould development to the wider interests of Jersey, this is an area where the Minister's influence is appropriately focussed. It is suggested that the Minister uses reserve powers exceptionally but asks the PAP to determine most applications other than major departures from the Island Plan and other major schemes of Island wide significance, and those where he has published or recorded pre application guidance. The Minister would be expected to explain the reasons for the use of the reserve call in powers by way of a Ministerial Decision which would be public and ensure that the reasons were clear. This would reduce pressures and expectations on future ministers and leave the Minister unencumbered by the need to avoid expressing firm views at the pre application stage.
- 7.22 To avoid the risk of the Minister being pressed to give an early view on development when engaging in pre application discussions, before all the essential consultations have been drawn together, the next section recommends inclusive transparent templates and structures and a code to properly support the Minister in this role. These will also help to minimise the risk of Ministerial advice not being understood by officers, and of advice not taking account of all the issues. They will ensure Ministerial involvement is properly recorded. If the Ministerial pre application part of the Code is also systematically applied to any other cases a Minister is drawn into, this would ensure that communication breakdowns should not occur. To assist in changing expectations the proposed Code makes it clear that the Minister would only be expected to engage in pre application discussions on minor applications if asked to do so by the Chief Executive Officer, Director or by an Assistant Director. This ensures that the Minister will
- not become unnecessarily involved in minor proposals diverting him from more pressing matters,
  - only have a pre application meeting with an officer present, to protect the Minister from any misunderstanding over what has been said and improve communications, and
  - always have appropriate advice available when first involved in any pre application meeting.

### **RECOMMENDATIONS**

- 7.23 ***These are set out in the decision making protocol section which follows.***

## 8. Protocols for advice to and involvement of Ministers and Panel Members in decisions and arrangements for appeals

### Introduction

- 8.1 This section deals with protocols for Ministerial and Planning Application Panel (PAP) decision making processes on planning applications and appropriate officer support for the Members and Minister. Previous sections have dealt with consistency of advice to Members and consistency in interpretation of policies, and departures.
- 8.2 Applications can be dealt with as delegated decisions by the officers in the interests of efficiency and good government if they meet the terms of the delegation agreement provided for in Articles of the 2002 Law. This agreement was last updated in March 2010. If a proposal is in accordance with the Island Plan and approved policies, and there are no unresolved outstanding representations, officers can make a delegated decision. Delegation rates in Jersey are relatively low at 86%. Section 4's recommendations include a suggestion that uncontroversial applications with less than three objections (which are in accordance with the Island Plan and approved policies) could be determined by officers with suitable safeguards.
- 8.3 The officers, Chairman of the PAP, or Minister can decide that, because of controversy, political or other representations or concerns, an application should be determined by the PAP. The Minister can also decide to determine applications himself. Ministerial or PAP decisions follow a public hearing.

### PAP protocols

- 8.4 Following the decision to move from a planning committee system to one of Ministerial government, a Code of Conduct for the Planning Applications Panel was adopted early in 2006. This was updated in 2007 to take account of the impending introduction of third party appeals, and the Ministerial Decision (MD) (PE 2006-0012) to introduce a cooling off period if the PAP is predisposed to make a decision substantially different from the officer recommendation or not in accordance with the Island Plan. Under this MD, consideration would be given to the implications of such a decision and the Minister would either deal with the application himself or refer it back to the Panel for decision. In the event, almost all such matters have been constructively referred back to the next PAP, without Ministerial intervention.
- 8.5 The Code has, in most respects, stood the test of time well for the PAP. PAP comprises elected members (Members). Members withdraw if conflicted through acquaintance with any of the interested parties in the interests of good government, in accordance with the Code. They do not always clearly indicate that this is what they are doing and it would be helpful to the public if a clear announcement was made about this. The Code is comprehensive and remains consistent with best practice except with regard to the possible involvement of PAP members in pre application discussions. This part is recommended for deletion, for the reasons set out in the previous section.
- 8.6 Working within this Code the PAP has done a very good job of transparently balancing the material planning considerations on controversial applications. PAP members display a good command of material planning considerations and policy. The Panel meets having visited all appropriate sites on the day before their meeting to appreciate the context of the proposal. The Panel determined 134 applications in the 8 month period from January – August 2010 (a rate of approximately 201 applications pa). The annual rate was similar in 2009. This represented 13% of all application decisions. By comparison the Minister decided 15 applications in this period during Hearings. Thus in 2010 about 86% of applications were delegated. Many UK authorities now have higher levels of delegation in the interests of efficient and speedy decision making allowing

elected members to focus on the more significant applications. This has been discussed in the Process Review section with recommendations to increase the level of delegation.

- 8.7 Compared with delegated decisions, those applications considered by the PAP are the more controversial. They have a full officer report with policy implications, material considerations, details of representations, and a recommendation with conditions and reasons for the recommendation set out. The Process Section of this review has commented on the thoroughness of these reports. The Panel briefly allows any parties against, or for, the development to address it, summarising their principal points. After an opportunity to ask any parties to clarify points at issue, the Panel asks the parties to withdraw to the public seating.
- 8.8 The Panel then openly debates their balance of the material considerations before either agreeing the recommendation or indicating their alternative view. If the latter, the reasons are clarified by the lead officer as necessary and (if the Minister does not intervene) appropriate worked up full conditions or reasons are brought back to the next meeting with a revised report. The public sees a clear decision making trail which is fully minuted by the Greffe on each occasion. The minutes demonstrate the weight the Panel gives to material considerations in balancing its decisions.
- 8.9 The PAP process is transparent and the reasons and logic for its decisions are clear with a good audit trail. Furthermore the 6 or 7 Panel Members balance each other's views and decisions on controversial applications are best taken in the interests of good public administration by a Panel or committee. (The Minister recently commented on this point acknowledging the risks of single point decision making, whilst pointing out the States had vested decision making authority in individual Ministers. (in his comment on States proposition P.132/2010))
- 8.10 The PAP also hears almost all requests for reconsideration of delegated decisions. (RFRs). When an applicant is unhappy with a delegated refusal or particular conditions imposed on a delegated approval, the PAP will hear RFRs. The process is similar to that for applications considered by the Panel. There are no rights of appeal against the planning merits of the decision in Jersey unlike in other jurisdictions. Provision was made for these in the 2002 Law but they were not introduced in 2006 when the Law was brought into effect. There are third party rights of appeal and applicants can appeal to the Royal Court on the reasonableness of a decision. However, the Articles and Protocols of the European Convention of Human Rights require the opportunity for an independent hearing on matters related to decisions on homes and property. Without an independent appeal system in Jersey, the appeals to the Royal Courts seek to meet this requirement.
- 8.11 The PAP RFR hearings function, to some extent, as a surrogate appeal system but only for delegated decisions, not for more controversial decisions. They allow a re-examination of planning merits. They allow brief time for a limited oral summarising of cases to be heard, for, or against referred applications. In the period from April to September 2010, 33 RFRs were heard by the PAP. This was equivalent to 46% of all 72 delegated refusals issued in the same period or 28% of all refusals (119). (This compares to appeal rates in England and Wales equivalent to 33% of all refusals.) Of the 33 RFRs, the Panel reversed the delegated decision in 33% of cases which is also similar to England and Wales appeal cases allowed.
- 8.12 The PAP RFR process appears to be well received by those making representations. They have the opportunity to express their concerns and be listened to, albeit briefly. The process is relatively cost effective as a surrogate for an independent planning merits appeal. The introduction of a cost effective independent planning appeal system would allow planning merits appeals for all application decisions. However, if such a system is not introduced then, in view of the analysis above, the RFR process could be continued

as an alternative, for minor applications, to that of appeals on reasonableness grounds to the Royal Court.

### **RECOMMENDATIONS**

- 8.13** *PAP should be asked to determine most controversial applications. It should be able to make a decision on all applications other than a major proposal of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre application guidance, or any proposal not in accordance with the Island Plan.*
- 8.14** *The Minister should retain reserve powers to determine applications by exception when not in accordance with the Island Plan and the PAP are minded not to accept an officer recommendation (known as the cooling off period) as set out in Ministerial decision PE 2006/0012. (Substantial departures are required by article 12 of the Jersey (Planning and Building) Law 2002 to be subject to a public inquiry after which the Minister would receive a report from the independent inquiry chairperson and issue a written decision.)*
- 8.15** *That training should be provided for any new members of the PAP and for all following the 2009 Island Plan's adoption, and the issue of any new Ministerial guidance (see also recommendation for including staff in such training in the Staff Section)*
- 8.16** *The 2007 PAP Code of Conduct should be amended to omit references to possible PAP discussions with applicants, and to update the site visit procedures section to reflect PAP site visits which now take place before the Panel meetings.*
- 8.17** *Where a Member of PAP is conflicted it will assist the public if the Member explains this when withdrawing from the Panel for that item. This will pass a clear message about standards and behaviour to any public present and ensure that there is no misunderstanding or perceived of lack of interest on the Member's part.*
- 8.18** *If independent planning appeal arrangements are introduced (see below), RFRs should be deleted from the delegation agreement.*

### **Ministerial Protocols**

- 8.19** The Minister is responsible for overseeing planning and environment matters in Jersey, and, as one of a number of ministers responsible to the States Assembly, for the governance of the Island. This imposes a potentially enormous workload on any one individual.
- 8.20** The Minister has therefore established a PAP for more controversial planning and related applications which do not need a Ministerial involvement. He delegates the majority of applications to the officers of his department. Those applications and matters he has "called in" for his determination and those he has stated he wishes to be consulted on can be determined following Ministerial Hearings. This could include RFRs on matters the Minister was consulted on which were subsequently determined by officers. However this happens very infrequently.
- 8.21** Ministerial Hearings of applications are held in public. For the past year the Minister has sat with the Assistant Minister and a Member of the PAP offering him advice. However the Minister makes it clear that any decision is his sole responsibility. The Minister receives a full officer report with policy implications, material considerations, outcomes of consultations, details of representations, and a recommendation with conditions and reasons for the recommendation set out. He briefly allows any parties against or for the development to summarise their principal points, and after clarifying any points at issue, the parties who have spoken are asked to withdraw to the public seating.



- 8.22 The Minister then consults his colleagues “sotto voce”. In other words, not in a way which makes it easy for the public present to follow any exchange of views or understand how the issues are being balanced in the decision. It is not possible to see the weight which is being given to balance the different material considerations. The Minister then either announces a decision, or announces that he will consider the issues further and make a decision by issuing a Ministerial Decision in due course. In either case, unlike a Panel which discusses Members’ views and moves a decision in full open session, it is not possible to fully understand how the Minister has reached his decision. The Minister displays great skill and perspicacity in his role but there is nothing by way of explanation to minute, other than the decision itself, unless the Minister sets out his reasons for reaching the decision fully in each case.
- 8.23 This can inhibit clarity and transparency of decision making and is a consequence of single point decision making. This is particularly important for confidence in the decision-making process on major or controversial proposals. It is also important because Article 19 of the 2002 Law requires the Minister to take into account all material considerations in determining planning applications. Without a discussion or a written decision explanation, it is not possible to see how this requirement has been met where the Minister does not accept the officer recommendation.
- 8.24 The Minister decided 31 decisions at hearings in 2009 and deferred decisions to the Ministerial decision process recorded in Livelink in 12 others. This is only 2% of all decisions. However they are important and are frequently controversial cases. When the Minister determines an application, any pre application engagement he might have had is not always clear to observers
- 8.25 In U K jurisdictions only major proposals of national interest are decided by the Secretary of State (SoS) alone. All others (99.8%) are decided by the local planning authority committee to avoid a single decision maker determining controversial applications. Any decision of the SoS is set out in writing and is very carefully justified, after an independent hearing had reported to the SoS on all the material planning considerations. Where the SoS differs from the independent inspector’s views and recommendations the written decision explains the reasons for doing so. The recommendations which follow suggest a similar approach for major controversial proposals, with all other applications determined by the PAP. The advantage of this is to ensure and demonstrate that a fully considered reasoned transparent decision is made and allow the Minister to focus his resource on promoting developments which implement the Island Plan through appropriate pre application discussions.
- 8.26 The Minister is currently expected to answer questions on detailed matters in the States Assembly and to assist help and advise others, and to carry out all his other ministerial functions. Acceptance of a Ministerial role focussed on pre application discussions on major proposals and reserve powers for major applications would reduce unreasonable expectations on any Minister to become involved in greater and greater detail.
- 8.27 Any role deciding planning applications requires the decision makers to:
- act fairly and openly
  - carefully weigh up all material planning considerations
  - approach each decision with an open mind
  - avoid undue contact with interested parties, and
  - ensure that reasons for decisions are clearly stated.

These are currently incorporated in the PAP code, but not adopted for the Ministerial role.



8.28 The more any Minister becomes involved in decisions on planning applications, whilst steering pre application discussions the greater the risks of challenge to his or her ultimate decision making role on grounds of bias or pre-determination. Consideration has been given to that the PAP becomes the body determining all major and minor controversial applications, that Ministerial resources should focus on the vital pre application role on major sites, whilst only exercising reserve powers to determine major planning applications which depart from the policies of the Island Plan. However, as advised by the Minister and confirmed by discussion with Members there is an expectation by Members that the Minister should determine major proposals of Island wide significance, including those not in accordance with the Island Plan. As there is an inevitable tension between strongly expressed pre application engagement by the decision maker and the risk of bias or pre-determination failing to take account of the Article 19 requirement to demonstrate all material considerations have been taken account, the recommendations which follow seek to

- Ensure that a Minister only determines applications of Island significance by exceptional use of his reserve “call in” powers and publishes his reasons for considering the application to be of such significance, and
- Ensure Ministerial pre application involvement is structured with officer support in all cases and leads to officers recording and publishing Ministerial guidance or advice to ensure this is transparent and that a Minister has not become conflicted if he or she is the decision maker

#### Pre application engagement

8.29 The Minister is empowered to publish guidance or orders. These can deal with categories of development or how a site is developed. Systematic development of this Ministerial power in a publicly transparent and inclusive way could greatly assist the integrity of the planning process

8.30 Master plans, planning and design briefs and other guidance adopted by the Minister for all major sites promoted for development through the Island Plan, with appropriate officer and Commission for Architecture involvement and with inclusive public consultation, would provide a more systematic tool to assist a Minister in a promotional guidance role. This could then be fully supported by officers from the initial pre application contact point on. Even on smaller controversial sites a scaled down version of a brief could be produced in consultation with interested parties. The adoption of these masterplans and briefs within the framework of the Island Plan, as Ministerial guidance, following public consultation, would ensure the Minister could set the agenda for the PAP to consider most resulting applications within an adopted detailed implementation framework.

8.31 A framework which seeks to identify issues of concern and address them in emerging development proposals would be particularly pertinent to the context of planning in Jersey. The approach adopted for the North St Helier Master Plan is an illustration of one such approach. If departmental resources were too stretched to cover all the necessary guidance work (as they have been in the past), a developer could be invited to appoint urban designers, in whom the department has confidence, to develop the guidance to a brief agreed by the Minister. Westminster Council has useful experience of briefing consultants funded by the developer to promote major development in this way.

8.32 The 2007 Environment Scrutiny Panel report, provided an analysis of briefs prepared and their relationship to Island Plan policies on housing densities. However the recommendations that follow are intended to ensure a more inclusive and accountable approach to masterplans or briefs encapsulated in Ministerial guidance or Orders.

8.33 Waverley Borough Council in Surrey has developed such a pre application approach. For larger sites it uses public **planning forums** to structure an opportunity for all those

who have an interest in a proposed development to be engaged in an open discussion. The forums are part of a range of pre application advice for which the authority charges. Waverley had used the forums for over 20 major developments since 2005. The planning forums create a means by which councillors the public and stakeholders can be kept informed and identify issues associated with a development without risk of Members pre determining their decisions.

- 8.34 After a developer approaches the Council, with initial ideas, councillors, consultees including Parish & Town Councils, residents groups and amenity societies, are invited to a forum.
- 8.35 The Council Chair explains the forum purpose and gets officers to set out the planning policy background and the developer is then invited to explain his or her emerging proposals. Following this, spokespeople for the parties attending explain their views. The planning officer produces a note of the issues and coordinates any negotiations following the forum. Complex proposals with significant changes may be taken to a series of forum meetings as they evolve. As the development scheme is worked up into detail, further forum meetings will be held if necessary.
- 8.36 Forums do not have answers to every issue raised. They are not intended to commit Members or the authority to a view, or to be an alternative to the planning application process. However by identifying issues, the risk of delay in determining a subsequent planning application is significantly reduced, and community benefits can be maximised.

#### **Key features of a Waverley style forum approach to pre-application engagement**

An early transparent public forum engagement on proposals avoids mistrust, and ensures a proactive approach

The authority chairs the public planning forum and explains member roles. This also minimises the risk of consultation becoming promotion of a proposal

Engagement of stakeholders and the community allows early identification of issues and priorities. This sets up an opportunity to work on these issues during pre-application discussions and minimises the risk of misunderstanding or delay when an application is submitted

Developer interests welcome the opportunity for more effective early engagement removing elements of uncertainty for the developer and improving the quality of decisions

The public and consultees hear other parties' views and better understand the development process and the balance of material considerations members have to consider

The presentations made to the forum along with the questions asked are available for viewing on the Waverley website, helping to disseminate the information further

Lower levels of objection are generally received to an application than would have been expected, after extensive forum discussion has taken place

- 8.37 Waverley have reported that not only has the quality of enhanced development that was sought been achieved, but the levels of unconstructive public scepticism are significantly reduced. Such an effect would be very positive in the cauldron of public interest in planning in Jersey
- 8.38 The Minister could chair and manage such forums to promote development needed to implement the Island Plan in an inclusive way and identify his or her priorities without having to be over concerned at their role when having to take account of all material considerations if determining by a Hearing a subsequent planning application of Island wide significance. He would have a full report, including pre application guidance recorded, on the planning merits to consider before issuing a decision. Conflicts of role would thus be minimised. The Minister would not be isolated as a decision maker and would be supported by others because initial discussion on the merits of such major proposals and decisions would be transparent to interested parties. To ensure the balance of material considerations is clear at a Hearing the Minister needs to ask the officer presenting to clearly describe all material considerations for the benefit of those attending. He then needs a full and open audible discussion with the other two Members to ensure the rationale of any decision is clear to all.
- 8.39 These proposals would allow the Minister freedom to promote appropriate development implementing the Island Plan and Ministerial priorities in a transparent way at a pre-application stage, without risk of challenges of pre determination. In addition the more structured Ministerial guidance or Orders suggested for major proposals would leave the Minister in a position to influence development proposals, and to still, exceptionally, decide applications of Island significance. If the Minister was conflicted or lobbied to the point where he felt a personal interest made it inappropriate for him to determine an application of Island wide significance, he could ask the Assistant Minister or PAP to determine the application, taking account of Ministerial guidance, at a hearing. A template for a Ministerial Code of Conduct to reflect the proposals below is set out at Annex

#### *RECOMMENDATIONS*

**8.40 *Planning and Environment Minister roles in guiding pre application discussions on major schemes and promoting development to implement the Island Plan for the benefit of Jersey can be vital. Departmental staff resources need to be harnessed to supporting the Minister in this role. To avoid unstructured approaches and promote transparent inclusive pre application discussions we commend to the Minister that for major sites***

- ***inclusive ministerial guidance is developed through masterplans, planning and development briefs***
- ***initial pre application meetings should always involve officers and the Minister, in order that the Minister always has appropriate officer advice available when first involved in any pre application meeting (even if this means arranging a later meeting)***
- ***a Ministerial guidance output is published following forums or other appropriate consultation, for guidance of PAP, the public, and developers, and***
- ***the Minister needs to refer other enquiries for minor development to the officers to avoid getting drawn into such extensive involvement as previously and reduce the unreasonable expectations on the Minister's time on minor matters.***
- ***To assist the Minister in changing expectations the proposed Code needs to make it clear that the Minister would only be expected to engage in pre***

***application discussions on minor applications if asked to do so by the Chief Executive Officer, Director or by an Assistant Director.***

**8.41 *Planning and Environment Ministers should determine major proposals of Island wide significance, or a significant proposal on which the Minister has published or recorded Ministerial pre application guidance, or a major or substantial proposal not in accordance with the Island Plan.***

**8.42 *All other non delegated decisions should be made by the PAP***

**8.43 *The principles of a Ministerial Protocol or Code needed to give effect to the above are set out in a draft template in Annex F. They require:***

- ***A clear indication in pre application meetings and notes of meetings that the Minister is not making or pre-empting decisions on applications.***
- ***Officer presence in all pre application meetings to ensure public notes of meetings are produced and actions or negotiations following meetings are understood and implemented by officers.***
- ***An indication at any Hearing that any statement of ministerial guidance, or other pre application advice has been given***
- ***an indication that a Minister has not predetermined their position when determining an application, or recognition of being conflicted and withdrawal.***

**8.44 *The Commission for Architecture's role should be recognised and built in to pre application and application process as a full consultee, to ensure appropriate weight is given to its recommendations***

#### **RFRs process and appeals**

8.45 At present there is no Request For Reconsideration referral mechanism against decisions of the PAP or Minister. This looks strange, as uncontroversial application decisions can be referred but not more major ones. With the Minister's recommended reserve decision-maker role would this not at least imply he might be expected to adjudicate on RFRs on PAP decisions? Human Rights property protocols and natural justice considerations suggest that an independent hearing of the planning merits, would add value. If RFR requests can be made about decisions on non controversial applications how could this not be a consideration on the more controversial decisions taken by the PAP? The emphasis on the Minister's high level adjudication role would create the potential to consider requests for his reconsideration of decisions if there remained no independent appeal system.

8.46 This analysis suggests that the Minister might hear referrals on PAP cases (with Ministerial decisions open to appeal in the Royal Court. Alternatively, an independent right of appeal on the planning merits of decisions needs to be introduced for applicants. This logic leads back to the preferable alternative of independent appeals which are able to review the planning merit arguments on any planning application decision.

#### **Appeals**

8.47 At present the Minister or Panel hear referrals of delegated decisions where no hearing has taken place. This adjudication role could be passed to the PAP as they have well developed review processes. However they do not comprise an independent review of the planning merits of a case.

8.48 PAP provides a quasi hearing on delegated decisions by RFRs which appears to work well reviewing planning merits of a decision. They appear to be appreciated by first and third parties engaging in the RFR (and thus avoiding the alternative of a Royal Court appeal). The PAP hearing may not be full enough to meet the Human Rights (Jersey)

Act and European Convention (HRA) requirement for a fair hearing in the way that an independent appeal process would, but it nevertheless provides a useful informal hearing process. The legal view is that the appeal to the Royal Court meets the HRA requirement. An independent appeal process could better consider the planning merits of an appeal as the Court is not in a position to consider planning merits; only the reasonableness of the decision. Challenges to the Minister's, or the PAP's, decisions have to be heard by the Royal Court. There is also an opportunity to raise issues of administrative or procedural error with the Complaints Board. However this has no expertise to determine matters of planning merits nor was it set up for this purpose.

- 8.49 The 2005 Shepley report recommendation for an independent appeal commission was not accepted.
- 8.50 Representatives of the judiciary interviewed, felt the existing system was fit for purpose. They explained the reasons why the independent commission had not been introduced in 2006. They explained that the cheaper modified procedure was used in most cases to keep the risk of costs down. The reasons previously given for not introducing independent appeals were the cost, estimated possibly at £600,000, and the desire to retain decision-making in Jersey.
- 8.51 Applicants, agents, amenity groups, members and planning and environment officers interviewed, unanimously supported the introduction of an independent appeal system. Its value was felt to be not just in resolving disputes fairly and effectively related to all types of applications. Its existence would be likely to add to public confidence in the robustness and availability of the system to all. Its existence would pervade the whole system even when not being used. The knowledge that it may be used is taken into account by all parties.
- 8.52 They argued that such a system could provide a check or balance, without the level of costs which had previously been estimated, and which would allow the planning merits of the case to be independently reviewed. This was judged to be particularly important in an Island such as Jersey. Indeed, interviewees proffered the view that the value of an independent appeal process was such that agents and architects thought it might be feasible to charge a fee for the extra service. First and third party appeals to the Royal Court would be unaffected and remain, but would essentially deal with points of law.
- 8.53 The existence of an open, fair and impartial appeal system was judged by the 2005 Shepley report to be essential to the operation of the Jersey planning system. Since then third party appeals have been introduced, which stay permits granted until such appeals are resolved. However, there is no appeal available to applicants on the planning merits of refusals or conditions imposed by the States.
- 8.54 Jersey is now unique in the British Isles in not having an independent planning merits based appeal process. Appeal rates in other jurisdictions would lead to an expectation that between 90 and 100 appeals would be made in Jersey each year,. However the number dealt with by the Royal Court is about one tenth of this level. This suggests that a combination of the fear of cost of court action combined with the lack of an independent planning merits examination is suppressing up to 90% of potential appeals.
- 8.55 Guernsey recently established an independent appeal body to hear appeals. They are heard by a panel of independent professionals and jurats to review the planning merits of decisions. This panel is drawn exclusively from within the Channel Islands, and has avoided the level of costs previously of concern.
- 8.56 There is a certain irony in having an advanced third party appeal system compared to the rest of the British Isles (which the Scots and English governments are proposing)

without an applicants' appeal system. As outlined above in para 8.52 the opportunity for minor application delegated refusals to be re-examined by the RFR system, but not the more controversial proposals, also seems strange.

- 8.57 Appeals to the Royal Courts can be made on the alleged unreasonableness of the decision to refuse an application or impose conditions. The Royal Court is not currently constituted as an environmental court, nor has it established such a court or panel. Its test is whether a decision was unreasonable having regard to all the circumstances of the case. This is a different test to the examination of the balance of planning merits involved in an independent appeal hearing.
- 8.58 The Royal Court appeal process is felt by many to be un-affordable, notwithstanding that most cases are heard by the modified procedure, in order to minimise costs. The level of appeals to the Royal Court is about one tenth of the rate of appeal in the UK jurisdictions. An average of 9 appeals per annum has been made to the Royal Court each year. Appeal rates in the England and Wales would lead to an expectation of about 90 appeals per annum for the level of applications received. Thus it appears that a majority of potential appellants are deterred from exercising their rights of appeal.
- 8.59 To assist confidence in the planning system and ensure normal rights are available to all, it is recommended that an independent appeal system is introduced. Development interests have argued strongly that having no right of appeal against a non determination even after the passage of years is not reasonable. This issue should also be reviewed if a planning merits appeals procedure, which appears to require legislation, was introduced. This procedure could either be established as an independent body as previously recommended or as a panel of the Royal Court utilising appropriate RICS, RTPI or RIBA adjudicators.
- 8.60 If an independent appeal commission is established the PAP RFR process for delegated refusals and certain conditions should be removed from the delegation scheme and other guidelines and advice to avoid duplication and over commitment of limited department resources.
- 8.61 If no independent appeal commission is introduced, then the PAP RFR process should continue for delegated items, and the existing inability to be able to challenge a PAP decision other than in the Royal Court will continue.

#### **RECOMMENDATION**

- 8.62 ***Promote legislative amendments to introduce appeals into planning merits and failure to determine an application through an independent appeals commission or environmental branch/panel of the Royal Court, and consider appropriate fees to offset the costs.***

## 9. Resource issues

- 9.1 During the course of the PIP a great deal of information was gathered about staffing and resource issues from both interviews and observation.
- 9.2 The concerns relating to consistency of decision-making across the teams highlighted communication problems within the department, so operating procedures were studied in detail and the various methods of communicating were also observed.
- 9.3 It is considered that a great many of these issues arise from the resources available and the way in which staff are managed on a day to day basis.

### Office accommodation

- 9.4 The building at South Hill is a very difficult building to operate in effectively.
- 9.5 The visitor's first impression to the offices is not good. The siting of the reception area on the 2<sup>nd</sup> floor is less than ideal and the absence of a reliable lift access from ground floor level is unacceptable. A high level of callers both via telephone and in person at the reception desk were observed throughout the PIP. It was clear that, on numerous occasions, the reception area available was not sufficient to deal with the number of visitors.
- 9.6 The DC Teams are housed in small rooms, which are cramped and cluttered. There seemed to be little interaction between the Central and Rural Teams, although interaction between members of the same team was regular and seemed to provide good peer support.
- 9.7 The physical split of accommodation between the Development Control Teams and the Appeals and Enforcement Teams is considered to be extremely unhelpful; although the Appeals Team argued that they required a quiet environment to prepare affidavits and thus did not wish to work in closer proximity to other colleagues. Both they and the Enforcement Team explained that they tried to ensure that they visited the Development Control offices at least once every day to keep in contact. The Enforcement Team would welcome being further integrated within the mainstream Development Control team function, although they highlighted the importance of ensuring security for their data, which contains police and criminal evidence records and information on protected informants.
- 9.8 A further issue with accommodation relates to the physical separation from the Policy Team and the Historic Buildings Team. It is considered that co-location in one building would significantly help to build a stronger overall planning team and would give greater ownership throughout the department to the Island Plan. Such ownership and proximity to the Policy Team would, in time, raise the profile of policy issues with individual Development Control Team members and highlight the need for a consistent application of policy considerations.

### **RECOMMENDATIONS**

- 9.9 ***If possible, the long talked about move to more purpose built accommodation for the entire Planning Team should be made as soon as possible. The accommodation should if possible be more open plan and should enable at least all Development Control Team members to be together on one floor (including enforcement and appeals staff).***
- 9.10 ***It is recognised that both enforcement and appeals staff have special requirements (see above) and so these staff should either have interview rooms and quiet space available or be housed in separate offices to allow confidential***



**discussions. Lockable storage space for enforcement records needs to be provided.**

**9.11 The Policy Team with the Historic Building Team should be accommodated as close to the Development Control Team as possible to allow a much closer dialogue to develop between the teams**

**9.12 A significantly larger reception area with small interview rooms should be made available for personal callers to the department**

### **Information systems**

9.13 The development control database system is called “Merlin” within the department but it is actually an MVM system which was originally purchased for building control purposes. It has been in use, within the department, since approx 2000 and has undergone several upgrades during the 10 years since then.

9.14 The system is used by all members of the Development Control Teams and currently provides a central information register for all planning applications and can produce all standard and non standard letters as well as officer reports, recommendations, conditions and permits for successful applications.

9.15 It produces the weekly application lists and invoices for planning fees

9.16 It provides some statistics for monitoring purposes via a separate system of Crystal reports but during the PIP it became clear that these were very inflexible and any new reports have to be agreed with the IT department and then implemented via the MVM contract. Changing management information requirements cannot be provided without a great deal of programming.

9.17 There is no facility to link the current system to the website to allow for planning applications detail, including plans, state of consultations and progress, objections and officer reports to be available on line for public viewing. This means that anyone wishing to see the details of an application must visit the planning offices.

9.18 Similarly there is currently no facility to make planning applications online.

9.19 In England the e-Government improvement programme undertaken between 2000-2005 encouraged local authorities to undertake work in this area on the basis that all services should be available online by the end of 2005. One of the drivers for this project was that an overall saving to the organisations and users could be achieved.

9.20 In interviewing most departmental users of the system, other identified problems with the current system included:

- Difficulties of inputting policy areas in the context of the Jersey Plan to provide ongoing data to the Policy Team
- Invoice numbering system is not reliable for the purposes of financial audit trail and separate records are being kept by the Applications Manager
- The financial totals in Merlin have to be manually checked against the States Income system
- The system cannot maintain a record of communications via e-mail or telecoms
- If the system crashes (as it did for some time in April 2010) then officers have to produce Word documents to continue to operate and these cannot be incorporated within the Merlin system at a later stage
- Credit cards payments for fees cannot be accepted on-line
- No integration of enforcement activity data can be accessed on individual sites

- Importing Third References from the previous development management system “Amos”

9.21 In addition the PIP team directly observed significant issues relating to the inaccurate overlays from the GIS database and sites in the Historic Buildings register (see section on screening in “Processes” above). Information providing integrated planning histories and constraints is something that would be available on all reasonably modern DC systems and such a lack is directly affecting productivity throughout the department.

9.22 The conclusion reached is that the existing system is not fit for purpose as a 21<sup>st</sup> century information system to provide an integrated database for the department as a whole as well as a web-based public information system. This is not intended as a criticism of the IT section who may not have appreciated that resources could be made available for an entirely new system and have recently been attempting to arrange some upgrades to the current system.

### **RECOMMENDATIONS**

**9.23 *Take immediate advantage of the States IT investment money that is available to purchase a new purpose built system rather than continuing to customise the Merlin system This will be more cost effective in the long run.***

**9.24 *Write a detailed specification for such a system prior to purchase covering all areas within the department which overlap with the development control process***

**9.25 *Include a secure module for protected enforcement records which should not be made available via the website***

**9.26 *Ensure that any new system fully and accurately integrates the data layers for GIS, zones, water table, flood risk and historic buildings***

**9.27 *Any system purchased should have the facility for bespoke reports to be easily generated to provide accurate figures for monitoring purposes***

**9.28 *A small team should identify and visit a selection of local authorities in England to look at their use of various IT and web based services before deciding which system to purchase (Note: POS could assist in identifying appropriate local authorities to visit)***

### **Policy support for development control**

9.29 Both Policy and Development Control Team members identified the need for a closer functional working relationship.

9.30 If the Minister’s role becomes more focussed around structured pre applications involvement (as suggested in the Pre applications advice Section above) it is suggested that Policy Team resources could be usefully focussed on assisting with Ministerial supplementary guidance such as site briefs and masterplans as well as other supplementary planning guidance. Such a role would be a natural evolution of the policy role following the adoption of the 2009 Jersey Plan and support in these areas will be an essential component in allowing the Minister’s role to change.

## 10. Staff resources

- 10.1 Staff working practices and resources were highlighted in interviews where the perception of the development control function was described by several interviewees as bordering on the “dysfunctional”. This is not a new criticism - the problems of dysfunctionality within the department were highlighted in the Shepley report of 2005.
- 10.2 Across all the teams some unnecessary work is being carried out but most of this occurs as a result of poor communication links within the Development Control Team and the inadequacy of the IT system (as described in the Process section). At the moment it is difficult to quantify how much of a saving in terms of staff resources could be made should an integrated planning information system be introduced.
- 10.3 A short study analysing incoming telephone calls to the department and visitors to the reception desk would give a better idea of the scale of savings that might be made should an integrated online development control system be introduced.
- 10.4 The current high level of callers both via telephone and in person to the reception desk was observed throughout the PIP. At the moment, even though a duty officer rota is already in place to deal with such personal callers, it was evident that, on many occasions, this provision was not sufficient to deal with the number of visitors.

### General staffing levels

- 10.5 The number of applications received during 2009 was 1901. It would appear that the complement of professional staff (12 development control full time equivalents plus 2 appeals officers for the Jersey Royal Courts including third party appeals) is about right to handle the level of applications and appeals currently being received, given the poor IT systems in use. (The Planning Service benchmark v1.5 (July 2006) of the Planning Advisory Service in England and Wales refers to the maximum caseload for all DC staff to be 150 applications.) However, this does not allow for the additional time spent on applications which have Ministerial involvement.
- 10.6 As stated in the previous section, during 2009 the Minister was involved in just under a quarter of all applications to different degrees, and, additionally, with pre application discussions, and offering informal advice to many who contact him. The additional support work for staff which is generated by this is not quantified.
- 10.7 The Minister decided 31 decisions at hearings in 2009 and deferred decisions to the Ministerial decision process recorded in Live Link in 12 other cases. With PAP cases including 33 RFRs this is a rate of over 250 cases pa being dealt with by non delegated decisions. Such a low level of delegation to officers results in substantial additional work for the case officers.
- 10.8 The low level of delegation in Jersey (currently 86%) means that instead of writing up 10% of cases for a hearing or committee (broadly comparable with the UK), in Jersey work equivalent to an extra 40% of normal report work is required. 4% more applications have to be written up at an estimated 4 hours per time. An extra 80 applications would equate to about 80 days (about half an FTE) by the time interruptions, down time, etc have occurred.
- 10.9 Furthermore, an additional staff resource is needed to ensure an effective pre application service can be provided which could be funded by charging appropriate fees for the service (see Section 7 above)

### **The Development Control Teams**

- 10.10 It is not clear if the small teams that currently operate within the department are the most efficient pattern of working. Certainly the names are misleading as all three teams deal with “rural” applications. It would greatly assist consistency of policy interpretation and conditions if they worked more flexibly as one team, with the appeals officers, when new accommodation is available.
- 10.11 It is understood that each team currently has a weekly meeting to discuss applications although it is not clear whether this is primarily to discuss the allocation of applications or merits/problems. These meetings obviously fulfil a very useful purpose and should continue but it may also be helpful for the whole Development Control Team to meet together on a regular basis to reinforce messages about consistency between the teams.
- 10.12 At the moment the Central Team is operating with one vacancy, with one of the senior planners standing in as the Acting Principal Planner because of the long term secondment of the Assistant Director, Performance and Operations. He is continuing to carry a substantial amount of his previous caseload as well as having taken on those cases that would normally fall to the Principal Planner. In addition the Asst Senior Planner in this team is also spending a considerable amount of time managing the Support Team. This workload pressure has led to the Central Team being supported currently by consultant planners on an ad hoc basis.
- 10.13 In addition one of the longest serving members of the Rural Team has just retired and it is understood that a replacement is to be appointed at a more junior level.
- 10.14 This coupled with the departure of the Director of Planning, which will result in the deletion of a senior post within the department, will lead to a serious loss of senior planning and management expertise and a wealth of local knowledge. It is strongly suggested that this expertise needs to be captured over the coming months.
- 10.15 If the Appeals Team were more closely integrated with the Development Control Team then it is considered that their particular expertise could be utilised to assist in clearing conditions and recommendations, particularly in respect of the enforceability of conditions.

### **Support Team**

- 10.16 The Support Team exists to seek to progress the more straightforward applications without them being delayed by more major proposals. The backlog of untouched applications observed in the Support Team has been referred to in the section on Process. The Support Team currently consists of two part time planners and one full time planner, plus a part time technician who deals with some of the screening for the team. It is hoped that the revised levels of exempt development will cut the number of these types of applications being received so that the backlog situation no longer occurs. However, through observation and file review, the amount of time currently spent on the detailed negotiation of these applications is excessive and unless levels of exempt development are increased or allocations to them are reviewed, it seems likely that further resource will be necessary within this team.

### **Applications and Screening**

- 10.17 At the moment the Applications Team Manager and her team report directly to the Asst Director, Development Control but it would be helpful to remove responsibility for the administrative function from him and allow him to concentrate on managing the professional teams, acting as a conduit for the Minister and PAP, leading on major applications and engaging with Design Reviews and the Commission for Architecture.
- 10.18 In addition, as outlined in the process section, the technicians are currently part of the individual teams but it is considered that there would be significant advantages in the

same manager supervising all of the technicians to ensure consistent screening as the differing levels of performance are currently seriously affecting the public perception of the development control service (refer to Process section for detail of issues)

### **Delegation within the Department**

- 10.19 It is clear that the Asst Director, Development Control thrives on case work and is very active in ministerial interventions. As a result he tends to delegate less to the team leaders than one would normally expect of an Assistant Director. This has resulted in the existing team leaders taking a lower management profile than would have been expected.
- 10.20 One of the side effects of this lack of delegation has been that the Asst Director has not had any time for some of the more strategic managerial functions normally associated with such a role. These include:
- Writing guidance notes
  - Reviewing and preparing a new set of standard conditions
  - The enforcement policy
  - Supervising the production of better management information and monitoring performance
- 10.21 As discussed in the “Process” section, it is considered essential that the tasks highlighted in the previous paragraph are completed as a matter of urgency; not only to streamline the existing system but in the light of new team members being incorporated into the Development Control Team. The Director of Planning advised that he proposed to complete the General Development Order review which would also logically take forward the proposed permitted development level increases.
- 10.22 Symptomatic of this lack of delegation is that the Asst Director continues to drive the minibus for PAP Members on site visit days. It is understood that there are some restrictions as to who might be available to undertake this role but finding an alternative driver would allow the Asst Director to spend substantially more time engaging with the PAP Members in a more focussed manner.

### **Mentoring**

- 10.23 The situation facing the development control staff in Jersey (and indeed all planning staff working for the States) is that there is very little opportunity to develop a career or seek promotion without leaving the Island. Junior staff morale can, and has, also been affected by ministerial interventions.
- 10.24 Because of this unique situation it is particularly important to provide proper mentoring for younger members of the team and support for the entire team who have to get to grips with the extraordinary level of public and political interest in planning in Jersey, and adapt to new techniques in isolation. (Environmental Impact Assessments were one area flagged up as an example).
- 10.25 It is suggested that more formalised networking opportunities with the staff on Guernsey, Alderney and possibly the Isle of Man, or on the mainland near connecting ports and airports, could be encouraged, perhaps leading to short term job swap opportunities.
- 10.26 More informal involvement with peers in the Planning Officers Society and the RTPI SW Region could also be encouraged. Both organisations despatch regular electronic bulletins updating on new techniques.
- 10.27 POS also provides an opportunity for interaction of specific topic group areas such as development management both electronically via the website and bulletins but also by

regular quarterly free to attend meetings. It would be possible to arrange for one of their meetings to look specifically at pre application discussions or planning obligations, allowing members of staff to discuss informally around a table rather than via a formal conference situation.

### Training

- 10.28 Jersey appears to have a very positive approach towards training with several Development Control Team officers having undertaken the Jersey Modern Managers' course. In addition, staff members all reported enthusiastically about training events attended via TCPSS and the RTPI Conference Series.
- 10.29 In addition the Appeals Team have started to arrange an annual in-house seminar to feed back lessons from the appeals undertaken in the previous twelve months. It is suggested that this should be set up on a more frequent basis to ensure legal rulings are picked up quickly to avoid costly errors.
- 10.30 This type of in-house seminar could also be usefully introduced in respect of the enforcement process.
- 10.31 It is suggested that more in-house training sessions should be introduced during the year to tackle particular areas where problems and inconsistencies have arisen. Topics that could be tackled, on a more cost effective basis, in this way include:
- Use of standard conditions (once the standard conditions have been revised)
  - Planning obligations
  - Negotiating percentage for art contributions
  - Pre application discussions
- 10.32 The need for further formal training for PAP Members in respect of the 2009 Island Plan was identified in the previous section on Protocols. It is suggested that such training would be of even greater benefit if the development control case officers were trained at the same time. Joint training on this basis would also be useful in the light of any new Ministerial guidance.
- 10.33 One area where training does not appear to have been given a priority is in the use of the Merlin system where no formalised training sessions have been provided. The problems with incomplete inputting of information which have been identified in previous sections may in part be attributable to this lack of training.

### Staff morale

- 10.34 It was evident that although staff are under significant professional pressure and are struggling in various areas, there is a sense of "camaraderie" between the officers, that they are all facing the same problems. If some of the professional pressures can be resolved then it is considered that a strong and positive team structure could be developed.
- 10.35 One of the most illuminating techniques used during the PIP was "shadowing" a technician for a morning. Sitting within the team whilst it was going about its everyday business and listening to calls made and taken, seeing systems malfunction and facing aggressive and unhappy applicants gave a much clearer picture of the conditions and pressures that the teams are working under.
- 10.36 It is understood that the Chief Executive Officer has on occasion spent time going "back to the floor" with the teams. The feedback is that this interest has been valued and it is strongly recommended that this should continue. However, it may be more worthwhile to undertake this in a less formal way (perhaps on a "dress down" day) and just



observing what is happening – rather than participating in what has been described as “an extended team briefing”.

- 10.37 The half yearly bulletin written within the department is a helpful tool to support staff and regular informal “team building” and social events such as those described in the bulletin are to be encouraged.

### **RECOMMENDATIONS**

- 10.38 ***Undertake a month’s study to quantify the number of calls and personal visits to the South Hill reception relating to planning applications***
- 10.39 ***Undertake a month’s study within the DC Team to quantify the additional time being spent on applications subject to Ministerial interventions***
- 10.40 ***Review the levels of delegation to allow those applications capable of being determined by officers when there are fewer than three outstanding representations; and the officers have responded to and shown how they have balanced those representations in their decision (not necessarily resolved these representations)***
- 10.41 ***Amalgamate teams into one generic Development Control Team when they move to new accommodation to ensure more consistency and in the meantime introduce regular cross team meetings to reinforce messages about consistency***
- 10.42 ***Resolve the situation regarding officers “acting up” as a matter of urgency (referred to in 10.11)***
- 10.43 ***Ask the Director of Planning to take the following issues forward before his departure:***
- ***Writing guidance notes***
  - ***Updating and reviewing standard conditions and reasons***
  - ***Revision of GDO with increased levels of exempt development***
  - ***Enforcement policy***
- 10.44 ***Identify a team leader to take day to day managerial responsibility for validation, registration and new IT including all of the technicians and the Applications Team, to ensure consistency of screening and increase efficiency, with the other team leader responsible for case management progression***
- 10.45 ***Consider further how resources can be found to organise the production of better management information and monitor performance, and implement a modern planning application management IT system as outlined in the previous section. This needs to be by one or both of the Assistant Directors (Development Control or Performance and Operations) in view of its high priority***
- 10.46 ***Increase the delegation of the management of cases from the Assistant Director to permanent Team Leaders***
- 10.47 ***Arrange more formalised networking opportunities with staff on Guernsey, Alderney and the Isle of Man and explore the opportunities for short term job swaps***
- 10.48 ***Encourage more involvement by staff with peers in POS and the RTPi SW Region***



- 10.49** *Explore the opportunities for staff to participate in the POS Development Management Committee and for specific issues that are raising concerns to be informally discussed at such meetings with planners from England*
- 10.50** *Formalise arrangements for a regular seminar when the Appeals Team can feed back lessons to the Development Control case officers*
- 10.51** *Provide in-house training sessions to tackle issues where problems and inconsistencies have arisen*
- 10.52** *Provide joint training for staff and PAP Members on the 2009 Island Plan, once it has been formally adopted, and other Ministerial guidance that is published*
- 10.53** *Ensure complete formal training is provided for new IT system for all case officers, administrators and technicians*
- 10.54** *Continue with the “back to the floor” initiative and develop it further*
- 10.55** *Continue to encourage staff team building and social events*

## Support documentation

### Annex A

#### Formal interviews undertaken

##### **Planning & Environment Department**

Freddie Cohen, Minister, Planning & Environment  
Robert Duhamel, Assistant Minister, Planning & Environment  
Andrew Scate, Chief Executive Officer  
Peter Thorne, Director of Planning  
Peter le Gresley, Asst Director – Development Control  
Richard Glover, Acting Asst Director – Performance and Operations  
Kevin Pilley, Asst Director - Policy & Projects  
Willie Peggle, Director of Environment (as a consultee)  
Tracey Ingle, Principal Historic Buildings Advisor and Jayne Fawdry, Historic Buildings Officer (as consultees)  
David Cox, Department Architect  
John Nicholson, Acting Principal Planner, Central Team  
Andy Townsend, Principal Planner, Rural Team  
Kelly Johnson, Asst Senior Planner & Team Leader, Support Team  
Roy Webster, Principal Planner and Jonathan Gladwin, Senior Planner – Appeals  
Jerry Bolton, Enforcement Officer  
Rebekah Porter, Applications Manager  
Simone Glendewar, Planning Technician  
Alistair Coates, Senior Planner (on holiday during the workshops)

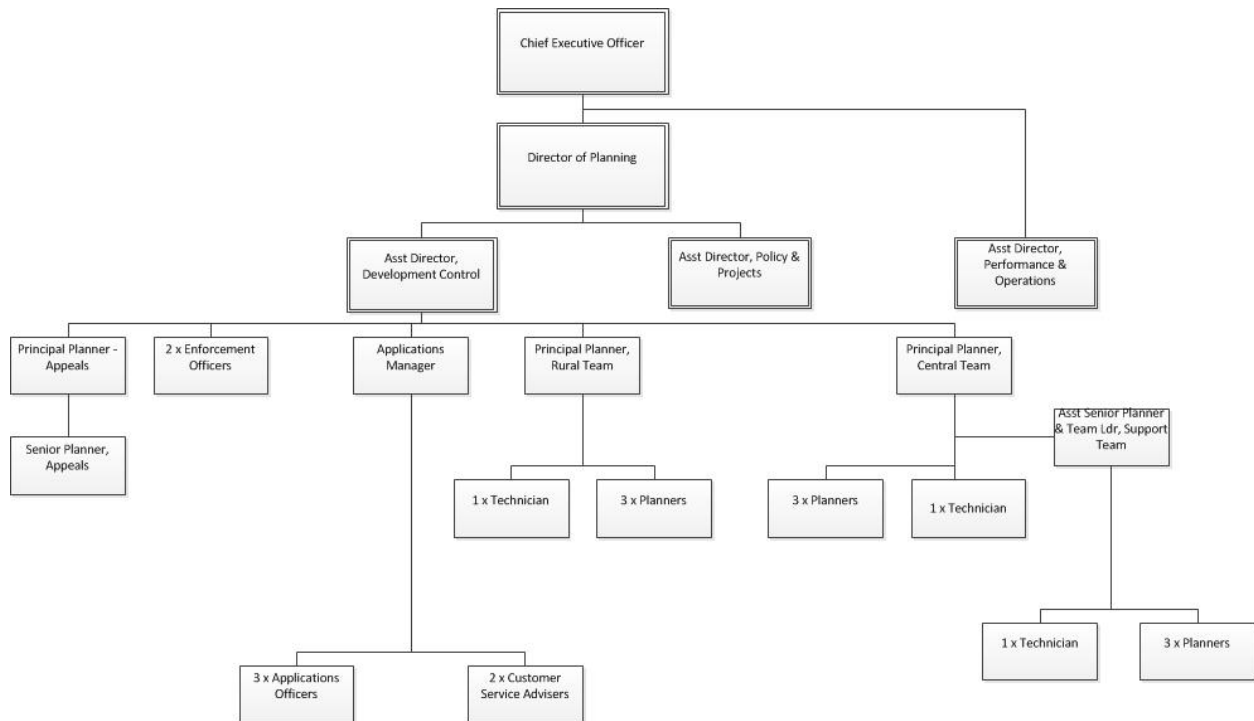
2 discussion workshops for all other planning team members present on site

In addition the following individuals were interviewed:

Connetable Peter Haining, PAP member  
Deputy Collin Egre, PAP member  
Deputy Le Herissier  
Duncan Mills, Legal Adviser, States of Jersey  
John Wheeler, Master of the Royal Court  
Paul Matthews, Deputy Judicial Greffier  
Ian Clarkson (States Greffe) Clerk to the Committee of Inquiry into Reg's Skips Ltd  
Paul Harding, Association of Jersey Architects  
Michael Stein and Stuart Fell, MS Planning  
Roger Norman and Barry le Beuvant, Agents  
Charles Alluto, President, National Trust for Jersey  
Margaret Holland-Prior, St Aubin's Residents Association  
Diane Webber, St Aubin's Residents Association  
Anthony Gibb, St Martins Conservation Society

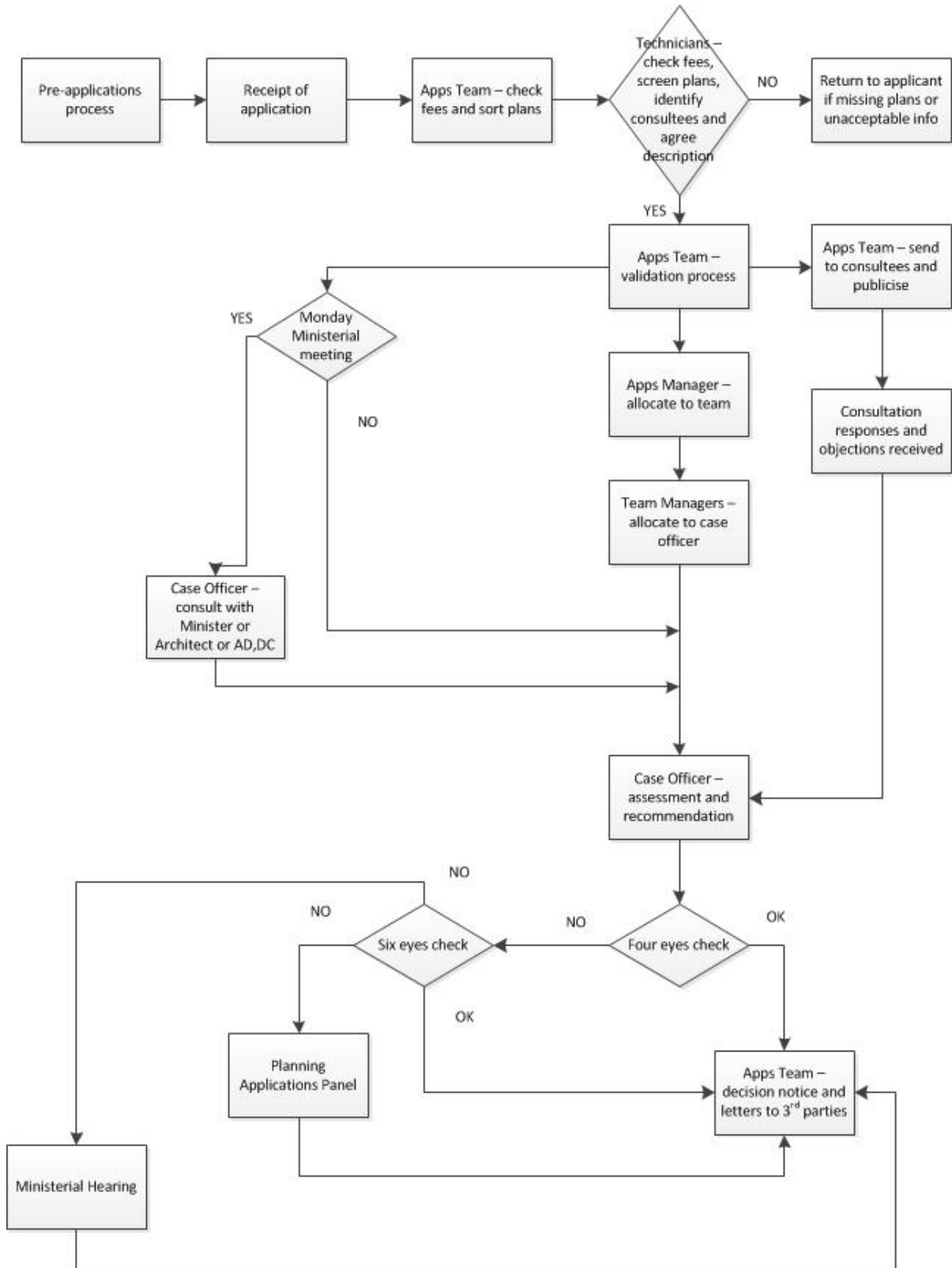
A meeting was also held with members of the Committee of Inquiry into Reg's Skips Limited

# Annex B



Structure of the current Development Control Section

# Annex C



**SUMMARY OF PLANNING APPLICATION PROCESS**

## Annex D

### Screening statistics (7 May -11 October 2010)

947 applications in total received for screening

309 applications showing on list as having been returned as incomplete

Screened by	Total number screened	Number returned as incomplete	Number successful	Number shown "with no result"	% age returned
Gemma Hamon	546	214	323	9	39 %
Simone Glendewar	281	78	168	35	28 %
Rebecca Hampson	103	12	89	2	12%
<i>Derek Smyth</i>	2	0	2	0	0
<i>John Nicholson</i>	3	0	3	0	0
<i>Marion Jones</i>	3	2	1	0	33%
<i>Lawrence Davies</i>	2	1	1	0	50%
<i>Peter Le Gresley</i>	2	0	2	0	0
<i>RH/SG</i>	2	2	0	0	100%
<i>Not screened</i>	3	0	0	3	
<b>TOTALS</b>	<b>947</b>	<b>309</b>	<b>589</b>	<b>49</b>	<b>33 %</b>

LCD/01.11.10

## Annex E

### Suggested headings for revised Development Control Manual

#### Introduction

- What is the function of the manual
- What sort of reference material is contained in it

#### The Department

- Functions
- Organisation chart
- PAP – membership, code of conduct
- Minister – code of conduct

#### The Jersey Law

##### The Policy Framework

- The Island Plan
- Policies and Zones
- General Development Order
- Supplementary Planning Guidance
- Other Policy Statements
- Published Ministerial guidance for major development sites

#### Pre application advice

- Protocol including recording of discussions

#### Application forms – screening, validation and registration

##### Fees

- Calculation of appropriate rate
- Cash handling - protocols

#### The application process –in detail

- Consultations – external and internal
- Advertising arrangements and site notices
- Site visits by officers
- File forms
- Environmental Impact Assessment procedure
- Planning obligation agreements
- Percentage for Art
- Design considerations
- Standard Conditions and reasons – cases where non standard conditions might be used/enforceability of non standard conditions
- Legal advice
- Delegation levels and processes
- Call ins and referrals
- Officer reports – for delegated decisions and PAP/Ministerial Hearings/format
- PAP site visits - protocol
- Panel/Hearing presentation – protocols for meetings

- Decision notices and permits
- Ministerial decision making process – Live Link

#### Enforcement

- Breaches of Conditions and enforcement of same
- Enforcement law and practice
- Enforcement powers and prosecutions
- Confidentiality and recording of information

#### Appeals

- The law
- Request for reconsideration
- Appeals – Royal Court (full or modified)/Scrutiny Panel
- Processes and time limits

#### IT system

- Training manual

#### Monitoring

- Targets

#### Miscellaneous administrative processes



## Annex F

### Template for Code of Conduct for Minister in Pre Application and Application determination

#### **Pre Application Role**

The Minister should only be involved in pre application discussions and guidance on major proposals or proposals of Island wide significance, unless requested to become involved by the officers. All pre applications with Ministerial involvement should, in every case:

- be with officers present
- be by appointment to allow time for preparation
- be with ministerial guidance, officer note of advice and/or conclusions sent to proposer and recorded on file
- avoid lobbying and explain the Minister will not be able to determine an application on which lobbying has occurred
- include a statement in the note of the pre application discussion that the Minister has not made or pre-empted any decision on the application
- include a statement in the hearing report of the Minister's recorded pre-application advice or guidance and that the Minister has not pre-determined him or herself on the application

If either of the last two bullet points cannot be included then the Minister is conflicted and should not determine the application.

The Minister should pass requests for advice or representations on minor proposals to the case officer without comment

If pre application discussion and guidance is of the following categories, either

- A substantial or major departure, or
- A proposal of island wide significance

The Minister will publish guidance and make it publicly available as soon thereafter as possible, following planning forums or other inclusive public consultation

If pre application discussions or guidance are offered on lesser applications, the officers will record that advice and ensure it is publicly available when any ensuing application is submitted, and incorporated in the officer report to a PAP or Ministerial Hearing.

#### **Potential Interests and Pre application and Application Stages**

If there is

- a direct or indirect financial interest or a prejudicial interest, or
- where the Minister has been lobbied, or
- has been subject to personal approaches or personal interests he or she would not be comfortable disclosing,

the Minister should regard him/herself as conflicted on receipt of the application and not determine the application, to ensure public misconceptions of undue influence do not arise.

If the Minister is conflicted the PAP or Asst Minister, subject to PAP Code of Conduct, will be responsible for determining the decision.

#### **Application Determination**

The Minister should only use call in powers exceptionally. The exceptions will normally be:

- Substantial departures from the Island Plan

- Proposals of Island wide significance
- Proposals where there is published ministerial guidance or recorded pre application advice for major proposals

In all cases when the Minister does decide to use call in procedures, the reasons for the intervention will be publicly recorded, and any proposed “call in” will be discussed with the officers prior to the Minister using reserve call in powers.

All applications determined by the Minister will be determined after a Public Inquiry or Ministerial Hearing with the Minister supported by at least 2 Members. The Members at a Ministerial Hearing need to allow a full explanation of all material considerations to be given by the presenting officer, followed by a full audible debate to assist all those present to see how material considerations are being balanced and a decision is made.

Full reasons for a decision should normally be given in writing, after the Hearing, as part of the public record of the decision.

Where the Minister does not propose to follow officer recommendations then the decision should be deferred to ensure a full record of considerations and professional advice on appropriate enforceable conditions or reasons can be given to the Minister and considered at a further Hearing or in a subsequent written Ministerial decision.

#### **Footnote**

Whereas prior to October 2010 the Minister became involved to varying degrees in 24% of all applications the Minister has indicated that he will only become involved in applications where he has called in the application using his reserve powers or formally requested to be consulted.