

# POS Enterprises

## **FINAL REPORT**

**States of Jersey**

**DEVELOPMENT CONTROL – HEALTH CHECK**

**August 2019**

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## 1 Introduction to main findings and recommendations

- 1.1 POS Enterprises, the operational arm of the Planning Officers Society, was appointed by the States of Jersey to undertake a review of its Development Control Service.
- 1.2 Throughout the process the staff have been helpful, open and constructive in their comments. The consultants wish to highlight this and thank all involved for their positive attitude to the entire review process.
- 1.3 Throughout this report the term “planning authority” or “the authority” should be treated as an accepted term used across town planning to refer to the planning service generally.
- 1.4 During the course of the review both positive and negative factors of the authority’s performance came to light. Both have been highlighted, and recommendations provided throughout the report where there is scope for improvement. In some cases the recommendations are specific; others the authority will want to explore in more detail. All the recommendations are made with the aim of improving the service and tackling historic and current difficulties which have been identified.
- 1.5 POS Enterprises has undertaken two previous reviews which focussed on political involvement in the planning function and rights of appeal. The Review Team found that the relevant recommendations from those reviews had been acted upon and that the actions taken by the States were working well. All those involved saw the positive benefits of the measures that had been introduced. The States is to be commended for these significant changes.
- 1.6 However, there are still areas where improvement is necessary for the Development Control service to operate at a level appropriate to its importance in the future development of the Island. It was disappointing to find that a number of the issues, which had been identified in previous reviews, had not been addressed.
- 1.7 The current review identified a number of areas, which in the opinion of the Review Team, should be the focus for the authority, and recommendations are included for consideration. There are recommendations throughout the report where there is room for improvement and these are flagged up separately at the end of each Section. Following consideration of the report, it is recommended that the authority should prepare an action plan with clear priorities and timescales, in consultation with the staff.

### Priorities for Development Control

- 1.8 There are two main areas which the Review Team considers should be priorities for Development Management. Firstly, it should review its performance management process to establish a clear set of prioritised performance criteria.
- 1.9 Secondly, and closely allied to the first finding, is that there is an urgent need to clarify the management responsibilities in development control. Neither the Director or the Principal Planner manage effectively and performance

management information is not readily available. Both also carry a caseload – the Principal Planner has significant number of cases and in this respect acts as ‘senior professional’ rather than a manager. The conflicts which arise between dealing with major applications, managing both team and personal workloads and performance, and managing staff create competing priorities which are difficult to reconcile. The planning service needs to be much clearer on where the responsibilities lie which will involve restructuring and/or revising roles.

## 2 Terms of reference

### Issues to be addressed

2.4 The Review Team was asked to undertake a thorough health check of the Development Control function based against the two previous POS Enterprises reviews of 2010 and 2013. The team was particularly asked to focus on the following:

- A brief resume of the key points of previous reviews and how the department has evolved to meet those recommendations
- **Compliance** – is compliance proportionate and does the States new approach set the right tone? Has it learned from past experiences?
- Is the service sufficiently geared to enabling business and the economy, whilst protecting interests of acknowledged importance as set out in the Island Plan?
- **Customer experience** – does the service meet with customer expectations? Is it accessible and transparent? Does it deliver acceptable quality? Is the voice of the customer considered in relation to service changes and how is customer feedback used to shape them?
- **Performance** – is it up to the mark with comparable services elsewhere having regard to speed, accessibility, transparency and quality of decisions?
- **Resources** – is the service sufficiently resourced to meet customer needs, in terms of caseloads and also skill sets. Are resources used to their best advantage? Are there areas where additional skills sets are required? Is the process of seeking external advice from consultees comprehensive and appropriate? How is external advice weighed and used in the determination process? Are the mechanisms in place to engage consultees fit-for-purpose and used appropriately?
- **Complexity and consistency** – is the planning system in general “fit for purpose”? Does it achieve an appropriate level of control for the community? Is it impenetrable and too remote? Is it regulating the right things? Is it consistent in that regulation?
- **Appeals** – how is the new system bedding in? How robust are the decisions of the service when tested at appeal? How do Inspectors rate the performance of the department’s officers? Are we learning from appeal decisions? Should we move towards an appeal panel approach, rather than just one inspector?
- **Pre-application service, fee structure and performance agreements** – Should Jersey develop and simplify its system in this regard? Should it develop a multi-disciplinary approach for pre-application advice for major projects?
- **Policy** – is the planning policy framework, provided by the Island Plan being used comprehensively or do officers just apply a narrow range of “common” policies? Is there evidence that planning policies are applied with rigour, having regard to the purposes of the policies? Do planning policies get used consistently across decision-making, with specific reference to Green Zone and other countryside protection policies. What impact is the current policy framework having on decision-making?
- Should consideration be given to a **combined “built environment regulation” service**, incorporating building standards, to enable regulation to follow the customer/site?

- Has the planning service and other stakeholders (such as consultees), sufficiently prepared for **digital change** to fully maximise the benefits of the Digitally Integrated Planning Process system (DiPP) soon to be implemented.
- **Implementation** – are conditions used appropriately? To what extent are conditions monitored and are they of value? How is the system of delivering planning obligation agreements working?

### 3 Methodology

3.4 Two POS Enterprises consultants (the Review Team) visited Jersey for ten days in March and April 2019, to interview members of the department, States of Jersey politicians, senior staff and applicants, agents and other users of the development control system. The Review Team also undertook documentary research and reviewed performance statistics and data. The Review was undertaken at a point in time and is considered to be an accurate reflection of the situation in March/April 2019. It does not take into account any organisational, system or procedural changes which may have occurred subsequently.

3.5 The review has been undertaken using four main techniques:

#### **Interviews and workshops**

3.6 A series of interviews were held on a one-to-one basis and workshops were held with small groups of people with related responsibilities.

3.7 A full list of those interviewed is contained at Annex A.

3.8 Throughout the process all interviewees were completely open and frank about their experience on the basis that no comments or information used within the report would be attributed.

3.9 Discussions covered the following areas:

#### **Documentation and process review**

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

#### **Statistical analysis**

3.11 Reports were made available relating to the processing of applications from receipt to decision and appeal processes. These provided current case load figures, invalidated applications and pre-application workload, committee call-ins, as well as statistics relating to numbers and types of application received.

#### **Observation**

3.9 The Review Team also observed the meeting of the Planning Committee held on Thursday 4 April.



## 4 Context

### Past reviews

4.1 POSe has undertaken 2 previous reviews of planning in Jersey. In 2010 POSe were called in to examine concerns about the lack of consistency in development control decision making and the need to provide a more streamlined and cost-effective service. This included political involvement in planning decisions and the lack of an appeal process. The 2013 review followed up on the changes that had been made in establishing clear protocols for ministerial decision-making and the decision to set up an independent planning appeals system, and was more focussed on planning policy and the role and effectiveness of the Island Plan.

4.2 As a result of the past reviews major and significant changes have been made. A clear process for ministerial decision making and involvement is in place which has improved the perception and integrity of the planning function. An independent appeals process is fully functioning. These and other changes should not be undervalued. However, many of the concerns identified in both 2010 and 2013 still exist to a greater or lesser extent, and are still barriers to an effective and efficient service. The management of the Development Control function remains a cause for concern.

### One Jersey – re-structure

4.3 Following the appointment of a new Chief Executive who took up post in January 2018 the structure of government services in Jersey has been completely re-organised. The implications of this for the organisation are still being felt but there are underlying themes and objectives which will guide and influence the future structure and operation of Development Control. These include:

- Establishing a long-term strategic approach to the future of Jersey which will set the context for planning, environmental and economic policy
- Increased customer focus
- A strong corporate centre with integrated financial control
- Increased emphasis on governance, performance and accountability with regular benchmarking, monitoring and reporting
- Flexible and cross-cutting approach to delivery of Island objectives
- Delivery of processes and services through digital systems

4.4 In organisational terms the immediate impact has been to group development control within the Regulation Directorate of the Department of Growth, Housing and Environment. The Planning Policy function is now in the Strategy and Innovation Directorate of the Department of Strategic Policy, Performance and Population. The merits of separating the policy making and development control functions are outside the remit of this review, but it is relevant to comment upon the risks and benefits this poses for planning decision making.

### Finance

4.5 The Development Control service is self-financing in that income from fees covers the costs of the service and departmental overheads, except for central costs which are included in the overall departmental budget. Fees have been set at a level to achieve cost recovery, which has attracted criticism from some

service users. Major items of capital expenditure, such as the cost of the new digitised planning application system, are also financed from central funds. In recent years the service has over-achieved on cost recovery. Surpluses have been used towards, eg. agency staff in some instances, but this has been subject to the agreement of the Service Director and Director General.

- 4.6 In general the service has been in a relatively comfortable position financially. This is not to say that there have not been pressures to reduce costs, but this has not been as severe as, for example, in most English planning authorities where budgets have been set centrally to impose often significant cost savings. The impact of having to regularly find savings has been to require authorities to review their services and explore more efficient and cost-effective methods. This is not always beneficial and there are many examples of the impact of service reductions across the UK; but having to rigorously re-examine service provision to meet financial targets does impose a discipline not apparent in development control in Jersey.

#### Culture change

- 4.7 The objectivity of decision making in planning is a matter that is fiercely guarded by planners and rightly so. This was one of the issues that was addressed in the 2010 and 2013 reviews in the context of political influence in decisions. It is particularly important in the Jersey environment where the States is law maker and decision taker. The rules and guidance in respect of political involvement and the introduction of an independent appeals process have been major improvements to be applauded.
- 4.8 However, Planning is a part of the overall machinery of government. The States has aspirations and objectives for the Island which are already expressed in the Island Plan and which will be captured in the Plan review. As with any plan the planner's role is in weighing up and balancing the policies and coming to a recommendation or decision. The paragraphs set out below under 'DC to DM' explore the move towards planners taking a more positive, enabling approach to development, to encourage and support 'the right development in the right place'. A more positive approach to planning is possible without compromising professional integrity through early involvement, direction and advice to identify solutions as well as problems. The Review Team heard criticism both from within Government and from applicants that this was not always the case at present and that planners had been seen as a negative rather than positive force. It is inevitable that accusations of negativity arise where applications are refused, but there seemed some substance to the concerns in this case.
- 4.9 The Review Team heard repeated concerns about a small number of cases where there were accusations about entrenched and negative attitudes towards developments and developers. It was not within the terms of reference to examine the merits of these cases, but it was apparent that there were a number of 'cause celebre' cases, sometimes relatively minor, which influenced opinion. Whatever their planning merits, they had had a significant influence on external views of the authority. This comment, however, needs to be set against a generally robust decision-making process and a good success rate at appeal.

### Digitisation

- 4.10 Virtually all organisations in both the public and private sectors throughout the UK (and most parts of the world) are moving further and further towards electronic web-based services. This is mainly driven in the quest for efficiency but also in extending and improving access to services. Planning services throughout the UK are increasingly operating digital web-based systems, many now working exclusively in this way.
- 4.11 Jersey development control is some way behind most authorities throughout the UK in this respect. In the near future, with the introduction of the DiPP systems, it will be possible to work in a paperless environment, with remote and flexible working and 'hot-desking' offices. There are risks and concerns in moving in this direction which will need to be addressed and managed, but the direction of travel is inevitable and needs to be accepted and embraced by staff, management and service users.

### Performance monitoring and management

- 4.12 The absence of any rigorous performance management and monitoring was one of the first issues that was apparent to the Review Team. This is dealt with in detail in Section 10 of the report. Performance management is an essential part of an efficient and effective service. Agreement about what standards and targets are meaningful and appropriate is always open to question, and planners across the UK have been arguing about how to measure outcomes in planning for many years, even now without any real consensus.
- 4.13 However, without performance standards and measurement the service, the States and the public has no objective way of assessing how well the service performs. It has been made clear by the States that performance management will feature much higher in its priorities in the future and this will involve the service taking these matters much more seriously than it does currently. The systems to measure performance are in place and reports are produced. However, these are not monitored, disseminated or acted upon when they should be used to drive the business. Primarily this will be a function of management but the culture needs to extend through to individual members of staff to emphasise that they need to take personal responsibility for their own performance.

### DC to DM – enabling

- 4.14 Over recent years in England the whole thrust of Spatial Planning (Town and Country Planning as it used to be called) has moved towards being proactive rather than reactive, creative rather than regulatory and this applies equally in respect of dealing with planning applications as with policy. Development Control is being replaced by Development Management and the majority of Local Planning Authorities are moving towards such an approach.
- 4.15 In the Review Team's experience what constitutes development management as opposed to development control is not concisely and precisely set out anywhere but it is helpfully summed up in the phrase 'right development, right time and right place'. As far as development management is concerned this means focussing on, and managing, the whole development from pre-application through

processing and decision to delivery and monitoring and acting as an enabler for development rather than as a regulator.

- 4.16 It follows therefore that as much effort should go into pre-application as to processing applications. It is at this stage that there is the most opportunity to influence what an applicant will formally propose. On average 9 out of 10 applications will be approved and, in addition, a third of appeals are allowed. It follows that development management is therefore not just a 'yes' or 'no' – it is more often a 'yes' but the question is – how good can it be made so that the development fits in with what the authority needs? How can value be added? It is likely that greater change can be achieved at pre-application stage rather than after applicants have firmed up their proposals to be included in the formal submission of an application.
- 4.17 A flexible approach to case management would enable officers to spend more time on proactive pre-application work in partnership with others in a formalised and systematic 'whole development team approach' which would mean that many issues would be resolved before a formal application was submitted. Such a team could involve other disciplines such as heritage highways, education, property etc. In other good practice examples (see Croydon example attached at Annex C) a slightly different approach has also proved effective. However, it is vital that a clear internal view is carried forward into the application stage. Understanding the State's wider objectives and how developments can contribute towards them can set a context within which proposals and applications can be managed. Especially on the larger schemes, proactive policy work should sit alongside development management negotiation.
- 4.18 It is also appropriate to find an effective way to involve Elected Members in pre-application work so that they have an awareness of developments in the pipeline and an early opportunity to understand the issues and the possibilities involved. To understand the parameters of the members' role, and the opportunities and pitfalls of such an approach, training in pre-application engagement is essential. Elected members' involvement should be set out in clear protocols, alongside the standard of service that applicants should expect. In this way early member involvement can be achieved without prejudicing future decision making.

#### Island Plan

- 4.19 Planning policy is not a part of the brief for this Review, but as the Island Plan, SPGs and development briefs set the policy context for development control decision making its impact must be taken into account. The Island Plan is to be reviewed imminently, to a challenging timescale, and as the statutory plan will have a major influence on development of Jersey in the future. The current plan (2011, reviewed in 2014) is encyclopaedic in nature with an exhaustive range of policies. The Review Team heard from the DC staff that the number of policies was a cause of concern in their work as using the right policies and giving them the right weight in their assessments was sometimes challenging for them. The Team also heard that DC tended to rely on a relatively small number of tried and tested policies, such as the Green Zone and Heritage policies.
- 4.20 This raises a number of questions

- Are there too many policies in the Plan?
- Should there be more policy guidance as to overarching policy objectives to guide decision making?
- What opportunity will there be for DC involvement in the new Island Plan to provide a DC perspective?
- What will be the impact of the structural separation of policy and DC on decision making and policy formulation?

4.21 Concerns were also expressed about the lack of up to date SPG and the lack DC involvement in their review. Parking standards was a particular issue which was no longer fit for purpose and offered no guidance or support for day to day decision making.

#### **Closer working with Building Control and Land Regulation**

4.22 Both Building Control and Land Regulation have an impact on development – how and where it is permitted and constructed. Throughout the UK there have been discussions over many years about the relationship between Planning and Building Regulations and how they could be exercised in a more coordinated manner. Government and local reviews have resulted in very limited change, foundering on 2 key points – the different legislative frameworks and in England the different agencies involved. The concept of a single development permission has been found wanting on a number of issues – planning permission is often sought to test the options rather than for a specific construction, the necessity to engage different skills and expense at an initial stage, and the timescales for determination are some examples. However, there is scope for closer internal working on, eg. compliance and administration. The opening up of the market in England to Approved Inspectors has made closer working problematic but this would not be the case in Jersey.

4.23 The control of the use of agricultural land is peculiar to Jersey. It is governed by statute which controls the occupation, use and retention of agricultural land. There is an overlap with planning control in that the change of use of agricultural land to another use requires both planning permission and the grant of permission by Land Control. In some cases the agreement of the Lands Control section cannot be sought until after planning permission has been granted.

4.24 There appears a prima facie case for closer working to avoid duplication, potential confusion and protracted time scales. While any moves towards a single consent regime would require change to primary regulation, there certainly seems a case for reviewing how closer working could be achieved. Joint working at both pre-application and application stage so that applicants have greater clarity on the overall policy position and all relevant considerations would present a joined-up States approach for the benefit of applicants and the public.

#### **Office locations**

4.25 The question of office accommodation has been an issue for many years with several abortive initiatives to bring the States offices together in whole or in part. The Development Control Section has always been remote from the majority of the States functions which has reinforced a sense of separateness from the corporate identity. Following the discovery of asbestos in the South Hill offices all

the professional staff were moved out to the La Collette building (again somewhat remote) while the Technical support officers remained. The physical split between the 2 functions has exacerbated an already existing communication problem between the two. There is an urgent need to bring them back together. With the prospect of relocating it is inevitable that working practices will change, aided by the introduction of the new DIP system already mentioned above.

**NOTE:** since the Review was completed it is understood that the majority of the regulation teams have moved to a single office in the Parade, St Helier at the end of July and the TSOs are now seated together alongside the case officers.

#### **Recruitment**

- 4.26 Recruitment remains a difficult issue in Jersey, particularly for professional staff. For experienced planners working in UK authorities taking a permanent position in Jersey inevitably involves relocation which reduces its attractiveness, particularly for those with partners in employment and families to consider. The residential qualifications can also be a barrier. Short term and temporary contracts can be attractive to usually younger and less experienced staff without the same ties but are not a universal solution. Recruiting Jersey residents has provided a core of staff, both professional and technical but limits competition and the ability to draw on experience and working practices elsewhere. This is not just a planning problem and any innovative solutions are likely to be as a result of corporate initiatives. In the interim a 'grow your own' approach of recruiting at entry level and training technical staff is a partial solution. In the context of these constraints, training, with a particular emphasis on increasing awareness and understanding of developments and best practice elsewhere, should be a high priority.

## 5 Initial appraisal

### Strengths and weaknesses

5.4 The Review Team has undertaken a SWOT analysis of the planning service and its operation and has identified the following issues. These are dealt with at greater length elsewhere in the report:

### 5.2 Strengths

- Experienced professional staff
- Strong peer support within teams
- Appeal system working well
- Open and transparent Committee system
- Improvements in compliance and growing confidence of the team
- Good officer performance at Committee
- Funding of service from fees provides level of financial certainty

### Weaknesses

- Poor performance against business plan targets
- Lack of performance management
- Absence of strategic direction from development control management
- Lack of clarity around managerial roles
- Location and separation of accommodation
- Separation from Support Team and TSOs
- System resilience a risk
- TSO resilience a risk
- Poor departmental communications
- Lack of trust and respect between administrative and professional staff
- Pre-application system and performance poor
- Committee quorum a risk
- Public speaking arrangements need tightening
- Duty Planner system is resource hungry
- Poor image in development community
- Evidence of inflexible policy approach

### Opportunities for the future

- Introduction of DiPP system (notwithstanding the difficulties in getting it delivered)
- Re-structuring
- Move to development management approach
- Experienced staff
- Introduction of properly resourced pre-application system with charging
- New Island Plan
- Greater use of compliance skills and service in the future
- Potential for closer working between development and building control functions

### Threats

- Uncertainties about re-structuring
- Risks around split from policy
- Political uncertainties, eg. role of Minister and ministerial decision making
- Implementation of DiPP without adequate recognition of staff resourcing, training needs and dealing with technical issues
- External concerns about role of heritage in decision making
- Limited recruitment options

## 6 What does good look like?

6.1 The Terms of Reference call for the Review Team to review the Development Control service against developing thought and practice in other planning authorities. This can never be an exact science if only because of the recent pace of change in legislative and new guidance coming from the UK government, something which shows no signs of abating. Nevertheless, the Review Team would suggest that good should include:

- an up to date Island plan, reflecting corporate objectives, to be put in place at the earliest opportunity;
- A clearly expressed policy towards the use of Planning Obligation Agreements setting out when they will be required, for what purpose and the necessary mechanisms to ensure delivery
- a pre-applications service including PPAs and charges, a protocol for involving States Members on significant cases and MOUs with key consultees;
- an efficient proactive development management service that meets all statutory targets and offers good customer care and consistent planning advice, using up to date technology and delivering, enabling, monitoring and enforcing quality outcomes;
- a proactive approach to implementation including masterplans and/or development briefs for significant sites, regeneration schemes and proactive care for the historic environment;
- a valued, motivated and skilled officer corps, working as an integrated planning service with appropriate performance management systems and training opportunities;
- an effective scheme of delegation, mandatory training for States Members especially those sitting on the Planning Committee, clear and transparent Committee procedures with clear co-ordinated professional planning advice available to Members.;
- A resilient, secure and customer friendly IT system that provides for electronic application processing, flexible and remote working
- adequate resources to deliver all of the above.

## 7 Policy framework

### Island Plan

- 7.1 The Island Plan was approved in 2011 and the subject of a limited number of revisions in 2014, in particular to provide for the need for affordable housing. It is a substantial document, running to over 400 pages and with 76 policies. The States have recognised the need for a new plan, and it is the intention to produce this within a tight timescale. The review is necessary to produce policies which can reconcile the objectives of protecting the environment landscape and heritage of the Island while recognising the pressures for accommodating the increasing population and vibrant economy. Increasing housing delivery and at the same time confining development to the built-up areas, in particular St Helier, is just one of the policy conundrums which the Plan must try to resolve. It will be important that the Island Plan review ensures that there is alignment of States policies such as the Housing, Economic Development and Tourism strategies as well as Environment and Heritage to provide a clear and firm basis for future planning decisions.
- 7.2 The potential conflict between development pressures and environmental protection are particularly acute in an island situation. The Development Control Section has found itself at the centre of this debate and the current policy context does not always give sufficient guidance. This can and has resulted in controversial cases where applicants and/or objectors feel that the correct balance between policies has not been reached, and complaints about the partiality of officers. The Review Team's brief did not extend to examining particular cases, but the Team would suggest that the Plan should have a clearer focus and the review should look closely at the balance between conflicting objectives to ensure that the policies are realistic and deliverable through the development control process. A meaningful input from the development control staff into the Plan review would help achieve this.
- 7.3 The Review Team were also concerned that there was no plan monitoring, reporting and review system in place which did not allow for development control decision making to be considered in the light of plan delivery.

### Supplementary Planning Guidance (SPG)

- 7.4 The Planning Policy Unit is very small (only 4 officers) which severely restricted the production of Supplementary Planning Guidance. The Island Plan promoted the production of 19 SPG documents, an unrealistic target, and the team was trying to take forward work on a broad front, with the result that few were ever completed. The Review Team were pointed to the promised SPG on car parking standards which had been outstanding for at least 10 years. The current standards were last revised in 1988 and had been given little if any weight at appeal, to the extent that officers were operating in a policy vacuum in this respect.
- 7.5 Current versions in draft were combining density, space standards and car parking in a comprehensive package. This may well be the right approach but had resulted in further delays which had frustrated development control staff. It had also been confusing to applicants and developers who had little guidance on what standards they should be adopting in their designs. There is a potential risk

that the structural separation of development control and policy could have a detrimental impact on the relationship between the 2 functions, and this needs to be addressed, both by formal liaison processes and stronger informal working practices.

- 7.6 In the immediate future the decision to produce a new Island Plan to a optimistic time table will further reduce the resource available for the preparation of SPG and for policy advice. If this is not to impact on development control decision-making further the States will need to consider bringing in external resources to assist in policy work.

#### **Heritage, Conservation areas and listed buildings**

- 7.7 The Heritage function is now located with Policy in the Strategy and Innovation Directorate. The States outsourced the re-listing of all Listed Buildings to Jersey Heritage and the process was completed in 2018. There is still a service level agreement for new listings and archaeology in place. There are 4028 listings in 4 grades. There are no Conservation Areas on Jersey. This was one of the items that was included as a proposal in the 2011 Jersey Plan, but which has not been progressed and requires a change to the law. There are nevertheless a suite of policies for conservation areas in the plan which cannot be utilised at present. Protection of 'heritage assets' can be achieved through different mechanisms, listing and conservation areas being 2 of the most effective. At present the only option open for buildings in Jersey is listing which has meant that:

- Some buildings, which in England would have been protected through their location in Conservation Areas, have been listed (grade 4 listed buildings are characterised by their contribution to townscape, landscape or group value rather than their individual intrinsic qualities)
- Listed buildings are protected by the same policies (Policy HE1 and Policy HE2) which give the same level of protection to all grades (although it should be recognised that a Ministerial Decision [MD-PE-2013-0058] clarifies that internal alterations for grade 4 buildings do not require permission).

- 7.8 From a development control perspective the Review Team heard that the listing and the unequivocal phrasing of heritage policy has caused instances where heritage issues have been given undue weight in considering proposals. The examples cited may be few in number but have nevertheless raised questions about whether 'heritage' is given more priority than other policy considerations in determining planning applications.

#### **Master planning**

- 7.11 Master planning and site briefs are an important mechanism in implementing planning policy through the development control process. They are produced by the Policy Team, but as with the Island Plan and SPG their production is impaired by the lack of resources. The Review Team heard that sites such as Jersey Gas and the Esplanade were being held up awaiting briefs/masterplans. The Development Control Section is having to deal with developers anxious to proceed in advance of clear guidance, which produces delay and tension. As with the Island Plan and SPG the Review Team questioned whether additional resource should be brought in (there may be the opportunity for contributions

from developers or landowners) and whether in the future this would sit better with the DC function than with policy in the context of a more pro-active development management approach.

## **SECTION 7 RECOMMENDATIONS**

### **Paragraph 7.2**

*That the Island Plan Review takes account of the policy conflicts which have had an adverse impact on development control decision making to ensure that policies are realistic and deliverable.*

### **Paragraphs 7.1- 7.3**

*That there is an ongoing involvement from development control officers in the Island Plan review*

### **Paragraph 7.5**

*That the preparation of SPG is prioritised, timetabled and resourced with the necessity of providing up to date guidance on DC decision making as the key criteria*

### **Paragraph 7.5**

*That the establishment of practices and procedures to ensure a strong working relationship between DC and Policy is developed and implemented*

### **Paragraph 7.7**

*That the necessary legislation to introduce conservation areas should be put in place as a priority, including provisions that changes to grade 4 listed buildings in conservation areas should be dealt with in respect of their impact on the conservation area.*

### **Paragraphs 7.7 – 7.8**

*That the Island Plan Review carefully considers what discretion and flexibility there should be in the protection of different grades of listed buildings*

### **Paragraph 7.11**

*That consideration is given to how best to resource masterplans and the preparation of briefs to ensure that they are produced in a more timely fashion.*

## 8 Politics

### Ministerial role

- 8.1 One of the major elements of the 2010 Performance Improvement Programme report related to the role and behaviour of politicians involved in the decision-making process and the way that Ministerial government had impacted on planning in Jersey. The report included a draft protocol and a Ministerial Code of Conduct was formally adopted in December 2011 as Ministerial Decision PE-2011-120. This code provides clear guidance on the processes to be followed for Ministerial discussions and how any advice should be formally recorded.
- 8.2 Following the adoption of the independent planning appeals system in 2014 the Minister's role has been further curtailed to
- Participating in broad early pre-application discussions on major sites of Island significance
  - Making final decisions on planning appeals based on recommendations from the Planning Inspector
  - The calling of public inquiries on sites of Island-wide significance and making the final decisions on the basis of the Inspector's final report
  - Proposing and promoting the Island Plan through the States government

These roles will be looked at separately in this section.

### Pre-application involvement by Minister

- 8.3 Following the One Jersey re-structuring of the last 18 months the Minister's portfolio is no longer the remit of one department but has been spread across four separate departments in diverse locations and it is clear that this is not only making the Minister's oversight role more difficult but is also causing more disconnection from the planning function than was previously the case.
- 8.4 The Minister no longer has an office base within the planning locations and there are no longer regular meetings in the planning department when the Minister would have expected to be briefed on new proposals. This is also making it more difficult to ensure that case officers are aware of any pre-application discussions that the Minister may have been involved in.

### Appeals and transparency of decision-making

- 8.5 Following the introduction of the independent appeals system (discussed in more detail in Section 13) it was expected that this would have a significant impact on the role of the Minister within the planning decision-making process.
- 8.6 As the final arbiter, the Minister now receives all inspectors' reports on appeal hearings with their recommendations, and the Minister is then responsible for deciding whether to uphold the Inspector's recommendation or to overturn.
- 8.7 This is a decision that the Minister makes on his own and the Review Team initially had some concerns about how the Minister comes to his conclusions, particularly as comments were received from applicants and agents about "decisions behind closed doors" which were viewed with suspicion.

- 8.8 The Review Team was pleased to learn that in fact arrangements had been put in place for impartial professional advice from a member of the Planning Policy team to be provided to the Minister at the time when he makes his decision. Until recently these meetings had been attended and formally minuted by the Greffe officer responsible for the appeals system. However, the Review Team is aware that, in recent months, these meetings have taken place without attendance by staff from the Greffe. The Review Team is concerned that the inevitable lack of formal minuting of the meetings between the Minister and his advisor by a third party, puts the professional integrity of both Minister and Officer at risk and it is strongly recommended that the attendance of the Greffe officer at all such meetings, should be re-instated with immediate effect.

#### **Sites of Island wide significance**

- 8.9 The Minister is still responsible for calling in applications of Island wide significance and therefore subject to public inquiry and is still responsible receiving the reports and recommendations of the Inquiry Inspector and for making the formal decision, much in the way that the Secretary of State does in the English system.

#### **Pre-determination of Minister**

- 8.10 The Review Team have some concerns about the existing arrangements in Jersey Law where a Minister may have previously commented on an application which he is ultimately required to make a decision about.
- 8.11 In the case of appeal decisions, such decisions are routinely passed down to the Assistant Minister for action. The Assistant Minister receives information on all appeal cases via weekly emails so is aware of what cases are coming up for decision. Since his appointment in 2018, the Assistant Minister has made three decisions on behalf of the Minister. This is an appropriate process in these circumstances.
- 8.12 However, in the case of Inquiries into Sites of Island wide significance the situation is less satisfactory and the recent hospital decision has highlighted this issue. Prior to becoming a States Member, the current Minister had made public representations about the hospital site and as a result was very uncomfortable about having to make the decision relating to this application. Having taken legal advice it became clear that because of the way that the Jersey Law is currently drafted there was no alternative way for a decision to be made. It is suggested that this element of the Jersey Law needs to be reviewed to protect the Minister in the event of such a situation arising in the future.  
Options for a fall-back position in the event of such a situation occurring again might include amending the law to allow for passing such a decision to either an Assistant Minister, an alternative Minister or the Chief Minister.
- 8.13 Alternatively, it may be worth exploring a variant of the UK Government's Nationally Significant Infrastructure Project (NSIP) scheme which now takes decisions in respect of decisions, relating to airports, ports, windfarms, etc. The NSIP regime takes major infrastructure projects (as defined by set criteria) outside of the normal planning procedures and they are considered through a process overseen by a nationally appointed panel of examiners. The examiners must consult all of the relevant bodies, including the local planning authority,

whose role becomes that of a consultee. The relevant development plans remain a major factor in the decision, but national rather than local factors are also taken into account. The Jersey situation is not strictly comparable as national and local authority are the same, but a system which puts such decisions in to the hands of the States rather than the Planning Committee and Minister could avoid some of the potential conflicts of interest that have arisen in the past. More detail about how the NSIP regime works in England and Wales is included at Annex D.

#### Planning Committee papers

8.14 The Review Team were impressed with the Department's use of an app called "Board Packs" which has been purchased so that all members of the Planning Committee can access their committee papers directly on either tablets or laptops. This will have made a significant saving on direct costs of printing, particularly in respect of colour copying, which was a concern noted during previous reviews.

8.15 However, the way in which members of the public can access papers is much less user-friendly. The planning committee agenda is available on the website and simply provides a link to the individual application file of public documents for each item. Consequently, the Review Team spent well over an hour downloading the necessary officer reports and site plans from the portal for a single meeting, particularly as, on this occasion, two of the links provided on the agenda were actually to the wrong applications and had to be corrected. Downloading in this way also highlighted some issues with the labelling of files, particularly in the case of RFRs items being considered at the meeting where there were two separate officer reports on the system (one for the delegated decision and a fuller one for the committee) and the labelling did not indicate which was which. In the Review Team's opinion the public should have a simple and straightforward method of seeing the whole agenda for all meetings and the current arrangements are not transparent or accessible. It is recommended that further consideration should be given to the way in which public access to the committee agenda is provided.

#### Planning Committee

8.16 The Review Team observed the meeting of the Planning Committee held on 4 April 2019. The Review Team was pleased to observe that the Committee has continued to mature in terms of its understanding and debating of cases over the ten years since POS Enterprises were first invited to observe the, then, Planning Applications Panel.

8.17 The meeting observed was well-tempered, efficiently managed and chaired and, in particular, the case of one highly technical item was well managed and debated. The Review Team were impressed with the process whereby each member rehearsed their conclusions before a vote was taken.

8.18 The room in which the meeting was held was a much better layout than the previous accommodation, benefiting from natural light and a significantly larger screen for presentations.

8.19 The agenda for the meeting observed was lengthy with a large number of RFR cases and it was unfortunate that several members of the committee were unable

to attend the meeting. As a result, because of pre-determination and parish representation issues, there were two items where only three members of the committee were involved in the discussion of the items and responsible for the decisions that were made. Although it is understood that, under the constitution, decisions made by such a small number are quorate, it is an issue of concern and it may be that the overall size of the committee or the quorum should be reviewed to ensure that a sufficient number of members are available to make decisions.

- 8.20 The Review Team has also noted that the agenda for the meeting held in May 2019 was unacceptably lengthy with 11 applications for decision as well as one Decision Confirmation and 3 RFRs. Such a large agenda seems to be the rarity rather than the “norm” but the Review Team would recommend that such a workload for a single meeting is unacceptably high and should be avoided at all costs, whether by adding in an additional meeting or, by better forward planning of meeting agendas.

#### Public speaking at Committee

- 8.20 The current protocols for the committee as circulated at the meetings is rather loose. It only allows public speaking rights at the invitation of the chair, although in practice it appears this discretion is never exercised and anyone who wishes to speak is allowed to do so. It also states that the Chair will ask for a single representative to put forward collective views where groups have similar issues. This didn’t happen at the meeting the Review Team attended.
- 8.21 It was apparent at the meeting that the chair and committee members encouraged public speaking and were anxious to hear the views of those attending. In practice this worked well. Nobody could complain that they were not given the opportunity to voice their views or that their opinions were not taken seriously. However, the protocol should reflect the practice. There is always the danger that decisions can be questioned if, for example, multiple objectors are all allowed to speak contrary to the provisions of the protocol.
- 8.22 At the meeting the Review Team attended the Chair allowed multiple speakers both for and against applications, all being allowed up to 5 minutes of speaking time. The Review Team noted that these speaking slots were timed but the Chair allowed considerable flexibility with one of three supporters for an application being allowed to speak for over 9 minutes.
- 8.23 Such discretion contributes to the non-adversarial nature of proceedings but does inevitably lead to much longer meetings and could be called into question in any further appeal proceedings. The Review Team would also recommend that a single 5-minute slot should be sufficient for either supporters or applicants rather than allowing multiple 5 minute contributions on each side.

#### Requests for re-consideration

- 8.24 In 2010 the, then, PAP heard almost all requests for re-consideration of delegated decisions (RFRs), where the applicant was unhappy with a delegated refusal or particular conditions that had been imposed on a delegated approval.

- 8.25 At that time the Review Team commented that the RFR hearings functions to some extent as a surrogate appeal system, albeit only for delegated decisions. In 2013 when agreeing the new independent appeals system, the States also agreed an amendment which retained the option of an RFR by first parties only to the Planning Committee in respect of delegated refusals or imposed conditions on a delegated approval.
- 8.26 The 2013 Review report refers to 78 RFRs being lodged for consideration during the previous year. With the introduction of the appeals system in 2014 it seems that this number had fallen by 2015 to a total of 21 of which only 4 requests were upheld. However, the number of RFRs has increased again over the last three years with a total of 34 being taken to Planning Committee in 2018 with 11 being upheld.

**Table 1 - Number of RFRs heard by Planning Committee**

RFRs	2019 to date	2018	2017	2016	2015
Dismissed		23	34	24	17
Upheld		11	11	10	4
TOTAL	11	34	45	34	21

Whilst appreciating the States wished to retain the RFR system the Review Team have some concerns about the continued use of RFRs, which were retained primarily to assist individual applicants who did not wish to go through the cost of an appeal. However, the figures show that a significant number of RFRs relate to major applications. In 2017 28 out of 45 RFRs were for major applications. The Review Team is conscious that for each RFR an additional fuller, officer report currently has to be produced and in fact this means that more work is being undertaken for RFRs than for regular Committee decision items.

## **SECTION 8 RECOMMENDATIONS**

### **Para 8.4**

***The Department should proactively seek opportunities for regular meetings with the Minister not only for briefings from officers but also to ensure feedback of discussions that the Minister may have had separately. Such meetings to be formally minuted.***

### **Para 8.8**

***The attendance of a Greffe officer to minute all meetings of the independent adviser with the Minister relating to appeal decisions should be reinstated with immediate effect.***

### **Paras 8.12-8.13**

***Review the element of the Jersey Law to protect the Minister in the event of a pre-determination situation arising in the future, providing a formal designated fall back***

*position in law. Alternatively, consider and develop an alternative review system for Sites of Island wide significance.*

**Para 8.15**

*Review the way in which members of the public can access committee papers to provide simple and user-friendly access.*

**Para 8.19**

*Review the overall size of the planning committee or the quorum, to ensure that a sufficient number of members are always available to make decisions.*

**Para 8.20**

*Agree a maximum number of applications for any Planning Committee agenda to ensure the workload of every meeting remains at an acceptable length.*

**Para 8.23**

*Review the protocol for public speaking to ensure that the provisions and the practice are consistent*

## 9 Case work

### Pre-application advice service

- 9.1 The current publicised pre-application service is provided free to all applicants. It offers a response for either major or minor applications within 6 weeks. At the time of the Review Team's visit to Jersey it became clear that the system was not functioning properly with 77 outstanding pre-application requests over the advertised time limit.
- 9.2 Despite the fact that the overall caseload of applications has fallen the Review Team heard that case officers were too busy with applications to deal with the level of pre-apps being received. While some officers saw the provision of pre-application advice as more important than others, nowhere was it given the same priority as dealing with current applications. In the Review Team's opinion, positive engagement in pre-application discussions should ensure that all substantive problems have been resolved before a formal application is received and this should then facilitate a smoother and, potentially, quicker passage through the decision-making process.
- 9.3 Some agents interviewed actually admitted that because of the poor response rate (often 13-16 weeks turnaround) they no longer attempt to have pre-application discussions and in the light of the second "free go" they often informally regard the first application as the pre-application phase. This could go some way to explain the fall in numbers of pre-application requests from 518 in 2014 to 229 in 2018.
- 9.4 The Review Team is aware that there is a wish to implement a system of charging for pre-application engagement, to cover the costs of this service. In the Review Team's view the introduction of pre-application advice fees would be very unlikely to succeed whilst the existing pre-application advice service is held in such low repute. The agents interviewed were quite clear that clients would willingly pay for a pre-application advice service but only if it was guaranteed to be meaningful and timely.
- 9.5 The Review Team would recommend that any system introduced must demonstrate a dedicated well managed resource with clearly agreed time targets for advice to be provided. It is suggested that the fee levels and time periods would need careful examination to allow charges to be set at a level where the service covers its costs and there are differing models of provision which could be introduced such as a dedicated pre-application advice team.
- 9.6 In addition the Review Team learned that there is currently no regular checking or monitoring of the pre-application advice being given by case officers and this raises concerns about the quality and consistency across the authority of the advice that is being provided.
- 9.7 It may also be helpful to review the guidance currently provided to applicants and agents regarding pre-application advice. The Review Team heard from some interviewees that requesting focussed advice on specific points of concern is currently much more likely to receive a helpful and quicker response than looking for general advice.

- 9.8 The Review Team would also suggest that in the case of the largest major applications a cross department development team approach would be helpful in any charged system. (see Para 4.16 and Annex C).
- 9.9 The Review Team would also suggest that the possibility of introducing Planning Performance Agreements (PPAs) should be explored further.
- 9.10 Planning performance agreements are a formal agreement which sets out a programme for determination which both the authority and the applicant should comply with, and often involves the applicant paying for any additional resources the authority might need to process the application. They are usually used for large scale developments which require additional skills or expertise and/or officer time to deal with them in a timely manner.
- 9.11 In the experience of the Review Team, many English authorities are now using PPAs extensively on major applications, in many cases to build on the pre-application engagement between developers, applicants, consultees, the community and elected members. The added benefit of such an approach is the income that can be derived from such agreements, which can enable a development management service to bolster its resources and provide added resilience. This could be particularly useful in the light of other expected developments
- 9.12 The use of PPAs does not have to be a complicated process that requires significant legal input. Many authorities provide a simplified approach. For example, Cotswold District Council publish an outline on their website. See Annex E for further information.
- 9.13 It is worth noting that using such an approach can also assist in the development of stronger and better liaison with external consultees, particularly where their own resources are also under pressure, ie. the highways authority.

**Validation process – a “nose to tail” process**

- 9.14 Because of a lack of trained staff the validation process appears to have been split down into bite sized chunks with individual members of the TSO team responsible for individual elements of the process. This is an emergency response to ensure the system keeps moving but such an approach inevitably leads to delays where files are left sitting between the elements of the process and it is not going to be a long-term solution.
- 9.15 In the Review Team's view such fragmentation also leads to a high risk of elements of the process being missed – or delayed, and also means that there is a dangerously low level of resilience in the operation of processes with each member of staff only able to cover their own particular area of responsibility. Most efficient registration/validation teams in authorities of a similar size would be expecting to move all applications through the registration process within 2-3 days at an absolute maximum.
- 9.16 The Review Team would recommend that, in the longer term, the authority move towards a “nose to tail” approach with individual members of staff being responsible for an entire application from receipt to handover to a case officer.

- 9.17 This would also mean that if there were issues when the application was allocated to a case officer it would be easier to check what had happened and the TSO could be involved in rectifying the problems. It is hoped that issues will also be easier to resolve once the entire department is sited in one office. Having viewed the DiPP system it is expected that there will be less of these problems in the future as there are failsafes built in the system to avoid missing documents, etc.
- 9.18 Adopting this approach will be a significant challenge for the entire development control team and most particularly, the TSO staff. There will be a need for a well-structured and resourced training programme to ensure a phased approach is adopted to implement this transformation in service delivery. Staff will need to be appropriately supported through this process with advice and assistance and it is recommended that some case officers should be involved in the training of elements where the most difficulties have arisen (ie. neighbourhood notifications, scaling, fees, consultees).

### Redaction

- 9.19 As a result of GDPR compliance the States of Jersey have produced a new set of guidelines for the redaction of personal data which can no longer be viewed on the website. This issue has also been the subject of concerns in England with the English Planning Advisory Service issuing interim advice last year about the level of redaction required. Their formal guidance is in the final stages of preparation with publication due before the end of July and links will be forwarded to the Group Director as soon as they become available.
- 9.20 It is clear, however, from the examples provided that not only is the States policy significantly more risk averse than in England but that in addition the TSO team have erred on the side of caution to an unnecessary level. The Review Team were shown examples of mock up artwork for advertising signboards that were completely blacked out, as well as the redaction of a set of children's play equipment (without any children in the photograph). Agents have also complained that their names and addresses have been redacted even though they have authorised that they are happy for them to be shown.
- 9.21 This extremely cautious approach to redaction has led to yet more tension between the case officers and the TSOs. Even though case officers have the opportunity to override and un-redact they appear unprepared to do so because of past experience.
- 9.22 It is recommended that the PAS good practice guidance is reviewed by a group of both TSOs and case officers, alongside the States Data Protection team, to agree jointly what should become the best practice for the planning portal/website and that time should be allowed for redaction training to ensure all members of the TSO are confident of the parameters they should be working within.

### Fees

- 9.23 Planning application fees have been set at a level to recover costs at a general level and it is the case that application income does usually cover the costs of the Development Control Service on an annual basis, excluding central costs

such as accommodation etc. The current fee levels are higher than the equivalent in the UK, as the table below shows.

**Table 2 Fee rate comparisons**

<i>Category</i>	<i>Jersey</i>	<i>England</i>
House extension 50sqm	£270	£206
New House 100sqm	£540	£462
10 new dwellings @100sqm	£9,900	£4,620
50 new dwellings @100sqm	£49,500	£22,859
Maximum fee	£222,995	£300,000

9.24 The higher maximum fee in England reflects the fact that there are many more very large-scale developments in England. At every other level the Jersey fees are higher than the UK, but the debate about fees and full cost recovery continues in England and these fees may well rise, if only in some authorities with high levels of performance.

9.25 As in the previous POS Enterprises reviews fee levels remain a matter of concern for applicants, particularly when ‘applications take forever to determine’. There continue to be criticisms that the fee structure is unduly complicated and difficult to calculate, resulting in disagreements about the correct fee. One agent interviewed freely admitted that he had a “100% record of wrongly calculating fees”. While the Review Team is of the opinion that fee levels are a matter for the States (but should not be set to make a surplus), there is an argument that high fees should result in high levels of service. The Review Team is aware that suggestions have been made to seek to simplify the fee structure but these have not been pursued.

#### **Planning Obligation Agreements (POA)**

9.26 Planning Obligation Agreements (POAs) were introduced through Article 25 of the Planning and Building Law 2002. The 2017 SPG ‘Planning Obligation Agreements’ states that they were introduced as a mechanism for securing affordable housing but in practice they have rarely been used for this purpose. The use of POAs was limited between 2003 and 2010 as the table below shows, but since then there has been a steady increase in their usage.

**Table 3 Use of POAs 2003-2018**

<i>2003-10</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
26	10	12	11	25	15	22	14	28

9.27 The legal basis for the use of POAs is clearly set out in the SPG:

- They must be necessary to make unacceptable development acceptable in planning terms, such that permission would not be granted without the POA in place

- They must be directly related to the development
  - They must be fairly and reasonably related in scale and kind to the proposed development
- 9.28 From the examples seen by the Review Team and from the responses at interview it appears that the majority of POAs relate to transport and highway contributions. Both officers and developers highlighted the requests from Transportation Officers for the provision of bus shelters. The SPG has 2 schedules setting out the range and scale of likely contributions for transport and highways, as well as other likely requirements. POAs for affordable housing are limited in number and scope because of the policy position and because it is not possible legally to transfer ownership of land through a POA.
- 9.29 For the Review Team three questions arose from the use of POAs. Firstly, whether the contributions requested fully satisfied the legal tests in every case. It appeared from comments received that demands for items such as bus shelters were being made as a routine reaction rather than as a result of an examination of the specific case. As an example, the Review Team was quoted cases where bus shelters being required for sites which were not currently on bus routes or where there was no pavement to accommodate them.
- 9.30 Secondly, in comparison with the use of planning obligations in English authorities the range of infrastructure requirements involved seems very limited. With the likely increase in population on Jersey and the additional demands that this will place on infrastructure, contributions to such matters as school places, medical facilities and affordable housing could also be considered. However, it is likely that any move in this direction would be resisted by developers and landowners, and would involve greater use of viability assessments.
- 9.31 The third concern was the monitoring of agreements. There is no systematic monitoring system in place in development control, which means funds may not be being used for the purposes for which they are being collected, or developers are not providing the infrastructure required by obligations. Without monitoring there is no check on what is being provided other than individual officers following up their own cases on an ad hoc basis. To meet the POA tests set out above developments should not be given permission without the obligations, which means that where the POA is not implemented the logical conclusion is that the development is unacceptable in planning terms.
- 9.32 The Review Team were told that the Legal Greffe had been spending considerable time identifying and tracking individual POAs which had been brought to their attention and had now set up quarterly monitoring meetings to track progress. There seemed no clear responsibility for monitoring, interrogating and ensuring implementation of POAs. Identifying the responsibility and establishing a fit for purpose monitoring system should be a priority.
- 9.33 An improved approach to Pre-application discussions would allow the identification of POA requirements much earlier in the process, so that applicants and the legal officers would be aware of what is likely to be involved and when.

### Viability Assessments

- 9.34 Evidenced evaluation of viability is infrequently a consideration for planning applications, whereas this is not the case in England. Where it does arise, there is no policy or guidance to assist in how it is dealt with. Applicants and developers have expressed concerns about unduly onerous planning and/or heritage requirements rendering development unviable, but there is no open process for producing or assessing evidence. It therefore remains largely untested. The rise in viability considerations on the mainland is because planning mechanisms are increasingly used to secure infrastructure and planning policy benefits, particularly affordable housing. The extent of benefits to be secured is frequently contested and viability evidence is often central to these arguments. National and local policy now requires viability evidence to be presented in a prescribed format and available publicly unless there are compelling reasons otherwise, and commercial confidentiality is not normally considered sufficient justification.
- 9.35 Should Jersey move further towards the use of POAs to secure planning objectives it is likely that there will be more responses from applicants concerned about the impact on viability. Where this is the case, or applicants raise other concerns about the impact on viability, they should be required to produce evidence to support their case. In these circumstances policy and guidance about how viability should be addressed would provide a firmer basis for negotiation and should be included in the Island Plan review. There are many examples in England from national policy and guidance in the NPPF and NPPG through to local planning authority local plan policy and SPG.

### Jersey Infrastructure Levy (JIL)

- 9.36 The use of POAs as outlined above is one method of securing infrastructure and planning policy objectives arising from the impact of development. An alternative is some form of infrastructure levy, such as the English Community Infrastructure Levy (CIL). A previous attempt to introduce a levy in Jersey was not accepted by the States members. The advantage of an infrastructure levy over POAs is that it can be designed to spread the load over a wide range of developments, big and small, and pick up contributions on an incremental basis, whereas POAs are normally only secured for a small number of the larger scale developments.
- 9.37 As with POAs, the need to fund infrastructure is likely to become more of an issue as pressures from population increase grow in the future, and from this perspective it may be an opportune time to reconsider whether to introduce a form of levy. The introduction of a levy will meet resistance from agents, developers and landowners which is to be expected. At CIL examinations in England and Wales the most important criteria is the impact (both positive and negative) on the delivery of the local plan, and objections about viability would need to be based on evidence. The CIL regulations have been amended on a number of occasions to deal with issues arising from what was a new initiative, and if Jersey were to consider a levy further there are lessons to be learnt from the English experience.

### Balancing considerations in decision making

- 9.38 Both of the POS Enterprises 2010 and 2103 Reviews and the 2005 Shepley Report looked in some depth at the balance struck between heritage and environmental considerations on the one hand and economic factors on the

other. The interviews conducted in the current review suggest little has changed in the opinions of participants in the planning process. An additional pressure has now exacerbated the argument, which is the pressure for housing which could increase targets from 400 to around 700 a year through the review of the Island Plan.

- 9.39 The Review Team heard the view expressed by developers and agents that Heritage and Green Zone policies were given priority and in effect had a power of veto over other policies. Industry representatives recognised that environmental protection and heritage were very important in safeguarding Jersey's outstanding physical assets, but that on occasions the 'easy' decision was taken when there were other important factors which should have carried more weight, including the significant changes in the agricultural industry over the past 10 years.
- 9.40 More than one example was presented to the Review Team of the difficulties of providing residential accommodation for agricultural workers. Such development was contrary to policy in the Green Zone, but within the developable areas such accommodation was prohibitively expensive and would be poorly located involving additional and unnecessary journeys to work. It appeared to the Review Team that there was a policy 'clash' involved which fell on the Development Control officers to deal with and which should be resolved, one way or the other, through an in depth and realistic debate around the policies themselves. In the meantime it was left to officers and politicians to decide individual applications and the Green Zone policies were usually given precedence.
- 9.41 The Review Team also heard that the concerns raised in 2005, 2010 and 2013 about heritage designations and policies had not gone away. The 2013 report stated
- 'Heritage and Amenity group representatives stressed the importance of looking after the Island heritage and supported both the extent and detail of the Island Plan heritage designations and policies. However, development industry representatives felt the heritage approach was over developed and over detailed and inhibited the development of commercial proposals to meet the State's economic objectives'*
- 9.42 Little has changed and both sides were still quoting examples which had been raised in earlier reviews. There is a clear perception that the Heritage Officer's views are given undue weight, to the extent that both officers and members of the Planning Committee accept them without challenge. This is reinforced by the presence of the Heritage Officer at Planning Committee, a privilege not accorded to other consultees. It is the Review Team's view that heritage advice is a planning consideration that should be taken into account in the drafting of officer reports, along with the views of other consultees. This is where the arguments should be rehearsed and the merits of competing policy weighed and there should be no need for the Heritage Officer at Committee except where the Director of Planning feels that the complexities of the case are such to warrant that level of specialist expertise. Consideration should also be given to the relocation of the heritage advisory role back into the DC service.

### GDPO and permitted development

- 9.44 Both the 2010 and the 2013 reports highlighted the level of detailed control by the planning system compared to mainland jurisdictions. Some changes have been made, in 2013 and in 2016, but there is still a considerable amount of small-scale development which is subject to full planning control. It is for the States to determine what should require planning permission and the driving forces for the many moves to extend permitted development in England are not comparable with the Jersey situation. What is allowed, without the need for permission, must strike a balance between community and political opinion, development that could have real rather than perceived visual or environmental impact, and the rights of the individual.
- 9.45 Comments to the Review Team suggest that permitted development rights could stand a complete review, to make them more consistent and understandable and to decide what development merits the time and expense involved in preparing applications and processing them. The Review Team agree with this assessment. A factor that should be taken into account is that householder applications for items such as fences for example can involve planning officers and indeed politicians in making judgements in what can become neighbour disputes rather than planning issues.

### Conditions

- 9.46 A new list of standard conditions was drafted following the comments in 2013 Report. However, from the cases examined by the Review Team and the comments made by interviewees there are still concerns about the use of conditions. As with POAs, conditions are attached to permissions to make them acceptable in planning terms – they should be unacceptable and not granted without them. There is an understandable tendency for authorities to adopt a ‘belt and braces’ approach to conditions – this is not confined to Jersey by any means – which results in a long list of conditions which often add nothing to the decision. The English Planning Inspectorate (PINS) adopt a much more succinct approach and it is worth examining some of their decisions (and Jersey appeals). Discharging pre-commencement conditions is sometimes not required prior to development starting and can impose delays unnecessarily. Many applications require only standard conditions which can be used across the board which can save staff time and a more consistent approach. The Review Team heard that a list of standard conditions had been produced but there appeared to be little consistency in their use with officers often preferring to use their own versions.
- 9.47 The Review Team were of the opinion that the use of conditions could be improved by:
- Restricting the use of pre-commencement conditions to those which are really necessary at this early stage
  - Establishing the use of standard conditions to address the majority of requirements
  - Reducing the number of conditions by only imposing those which are necessary and which satisfy the tests

### **Role of Jersey Architecture Commission (JAC)**

- 9.48 The Jersey Architecture Commission is a panel of architects appointed by the Minister which reviews development proposals that are submitted to it for comment. 3 members of the Commission sit as a panel every 6-8 weeks, one of whom must be Jersey based. Comments received about the JAC were generally very positive. It offers a good sounding board and provides constructive advice. Referral can be from architects and developers at a pre-application state, or through development control post submission. The Review Team's only comment would be that there could be set criteria requiring major schemes or schemes in sensitive locations to be submitted at pre-application stage.

### **Consultees**

- 9.49 The Review Team were not made aware of any major concerns regarding consultee responses except in two specific areas. One of these areas related to issues of heritage/listed building consultations and these are dealt with separately in paras 9.38-9.42 above.
- 9.50 The second area raised related to Environment Department consultations. In the 2013 Report (para 6.40) the Review Team noted that the front-loading of biodiversity consultations at pre-application stage had been identified as being particularly important to ensure that any necessary surveys could be completed in a timely fashion to avoid subsequent delays in decision-making. The 2013 Review suggested that regular presentations/liaison with the Head of Natural Environment would provide some resilience in the process but the Review Team have heard that there are still inconsistencies of approach around habitats, etc. and that environmental consultation comments are occasionally left out of officer reports. It is suggested that regular meetings of case officers and the Environment team be re-introduced to try and resolve these inconsistencies.

### **Consistency of decisions**

- 9.51 The Review Team was made aware of some concerns about inconsistencies in delegated decisions and also officer recommendations to Planning Committee. In discussion with case officers it was not clear who was responsible for monitoring consistency of approach within the overall team on a day to day basis. The Pod Leaders were responsible for signing off delegated decisions and officer reports in their own teams but there didn't seem to be a cross department monitoring to ensure consistency. Examples provided to the Review Team included inconsistencies in the treatment of driveways onto the road out of Gorey. In the Review Team's experience issues of consistency should be monitored by team leaders and ultimately by the overall development control manager to ensure a consistent approach across all recommendations and decision making.
- 9.52 Paras 9.38-9.42 above deal with balancing considerations in decision-making. The Review Team also heard examples of where different officers had different interpretations of Green Zone policy. Within this study there was not the opportunity to follow these up in detail but there was a clear perception that some officers took a harder line than others. This suggests the need for more internal discussion and guidance on how the policies should be applied.

**Appeals work**

- 9.53 The Review Team understand that all of the casework element of appeals work is headed up by the Principal Planner (Appeals) whilst all administration involved in the appeals process is dealt with by an officer in the Greffe.
- 9.54 The Principal Planner (Appeals) will work with individual case officers to a greater or lesser extent based on their own level of experience and confidence.
- 9.55 The case officer will prepare a short appeal statement to back up the full case officer report and this is provided to the Greffe as soon as possible after the appeal has been lodged. The Principal Planner (Appeals) will then attend the appeal hearing and present the case as well as answering questions raised by the Inspector.
- 9.56 The Review Team is aware that the Principal Planner (Appeals) reports back informally to the Planning Committee about the results of recent appeal decisions on the same day as the Committee site visit. Given the success rate of appeals it might be helpful to disseminate such information on a wider basis through a formal regular report to the Planning Committee meeting (say once a quarter).

**SECTION 9 RECOMMENDATIONS**

**Paras 9.5-9.7**

***The Pre-application process should be re-defined, with clear criteria, requirements and performance standards, and consideration should be given to charging***

**Para 9.8**

***Consideration to be given to introducing a cross department development team approach for the largest major applications***

**Paras 9.9-9.13**

***Explore the possibility of introducing Planning Performance Agreements for complex major applications***

**Para 9.16**

***Move the TSOs towards a “nose to tail” approach with individual members of staff being responsible for an entire application from receipt to handover to a case officer.***

**Para 9.18**

***Support TSO team through change in working with a structured and well resourced training programme involving some case officers to advise in areas where the most difficulties have arisen***

**Para 9.22**

***Review PAS good practice guidance on redaction when published and for a group of TSOs, case officers and States Data Protection team to agree future best practice constraints for the planning portal/website.***

**Para 9.32**

***Clarify responsibility for monitoring POAs with a view to setting up a robust monitoring system***

**Para 9.35**

***Identify the need for policy and guidance on viability in the review of the Island Plan.***

**Para 9.36-9.37**

***Reconsider the introduction of a Jersey infrastructure levy***

**Paras 9.38-9.42**

***That consideration is given to the transfer of the role of Heritage advice to development control into the Development Control Department***

**Paras 9.38-9.42**

***That attendance of the Heritage Officer at the Planning Committee should be at the discretion of the Director of Planning.***

**Paras 9.44-9.45**

***Instigate a comprehensive review of the GPDO***

**Paras 9.46-9.47**

***Review the use of conditions***

**Para 9.50**

***Re-introduce regular meetings between case officers and the Natural Environment team to resolve inconsistencies in approach to environment issues, such as habitats, etc.***

**Para 9.51**

***Development control managers to regularly review case decisions to pro-actively monitor inconsistencies in approach to decisions across teams.***

**Para 9.52**

***Instigate regular internal discussion and guidance sessions on how policies should be applied to ensure consistency of approach***

**Para 9.56**

***Disseminate results of appeals decisions on a wider basis through a formal regular report (perhaps quarterly) to the Planning Committee.***

## 10 Performance

### Development Control Performance

- 10.1 The Service's performance in determining planning applications is a focus for measuring its success. Business Plan targets have not been set formally for 2019 as the whole business planning process is under review as part of the overall organisational change. However, targets have been in place for many years (at least since 2014) and have remained the same over that period:

- DC1: numbers of applications dealt with within timescales,
- DC2: numbers of pre-app enquiries dealt with within timescales,
- DC3: number of enforcement cases successfully resolved and the
- DC4: successful defence of Department and Committee decisions

These targets have not been superseded and performance should be measured against them.

- 10.2 Speed of decision making cannot and does not reveal a complete picture of the development control function but it is well established as a key performance indicator both within Jersey and across the United Kingdom. There is a continuing debate amongst planners, rehearsed in the Jersey interviews, about the balance between speed and quality. In a well-managed and resourced planning service there is no reason why speed should be at the expense of poor decision-making. There are many examples across English authorities where both are achieved. What is essential for the development control service to improve its development control performance in respect of its business plan targets is a knowledge and understanding of current performance and a commitment to improvement. Both elements were absent in Jersey.

### Performance against Business Plan Targets - DC 1: Number of planning applications dealt with within timescales

- 10.3 The targets for dealing with planning applications are to determine 85% of minor applications within 8 weeks and 85% of major applications within 13 weeks. For the last complete year 2018 the performance figures were 70% for minor applications and 52% for major applications. These figures have declined consistently and noticeably for the past 5 years. At the same time the number of applications has remained stable, with a slight dip in 2016, and the number of staff in development control has been consistent.
- 10.4 There are no exactly comparable authorities against which to benchmark performance. Other island authorities (Guernsey, Isle of Man) are much smaller and have different systems. English authorities work with slightly different legislation and definitions but do have similar time targets for both minor and major applications. While not strictly comparable it is notable that the 2018 Jersey performance would have ranked 335<sup>th</sup> out of 339 authorities in England for minors and 337<sup>th</sup> for majors. (MHCLG Planning Statistics live tables P151 and P 153)
- 10.5 There is no apparent explanation for this continuing decline in performance levels in terms of workload, resources or changes in processes.

**Table 4: Performance against DC1 Targets 2014-2018**

	2014		2015		2016		2017		2018	
	total	%	total	%	Total	%	Total	%	total	%
<b>MINOR</b>	1057	98	980	94	988	88	1073	79	1026	70
<b>MAJOR</b>	482	86	520	80	361	72	369	61	352	52

- 10.6 When the issue of the decline in performance against the DC1 target was raised with staff it soon became apparent that monitoring and reporting of performance figures was virtually non-existent. Managers were of the view that there was little interest in them and that the service ‘was now more interested in achieving a successful outcome’ than in meeting targets. Case officers had rarely if ever seen any performance figures in recent years and assumed that they had been dropped in favour of negotiating and approving applications ‘which was what the applicants wanted’.
- 10.7 Changing the service’s approach would be acceptable if (i) it had been a conscious and deliberate decision with a clear audit trail and (ii) there were monitoring processes in place to evidence whether it was working. Neither was the case. There was also no evidence that it had been successful. If applications were taking longer to ensure a successful outcome it should result in more applications being approved. The percentage of applications approved in 2014 when performance was at its peak was 88.6 % whereas for 2018 84.6% were approved, lower than any year except 2016 (84.1%). Over the 5 years 2014-2018 the approval rate had varied between 84.1% and 88.6%.
- 10.8 It was clear to the Review Team that managers in Development Control had downgraded performance as an issue over a period of years. Performance reports were not requested, discussed or reported. Politicians had not been made aware of performance and their lack of awareness was taken as a lack of interest and therefore a tacit agreement to their low priority. There had not been any formal reporting process to members, either Planning Committee or the Minister. There had been a lack of corporate interest in performance management, certainly within planning, and whereas government scrutiny has been a driving force in England this has been absent in Jersey. This is not going to be the case in the future. Whereas government set targets and scrutiny have been a driving force in England this has not been the case in Jersey. What it indicated to the Review Team was that it reflected an overall lack of positive management in Development Control.
- 10.9 The pattern is also reflected in DC2 pre-application inquiries. The target for minor applications is to issue advice within 6 weeks for 85% of cases. In 2014 96% were dealt with, but this figure has now declined to 44%. For major cases performance has been more consistent ranging from a maximum 59% in 2017 to a low of 52% in 2018. After a peak of 518 requests for advice in 2014, the number of requests has stabilised between 268 and 229 which was the figure for 2018.

**Performance against Business Plan Targets - DC2: Number of pre-app enquiries dealt with within timescales**

- 10.10 The pattern is also reflected in DC2 pre-application inquiries. The target for minor applications is to issue advice within 6 weeks for 85% of cases. In 2014 96% were dealt with, but this figure has now declined to 44%. For major cases performance has been more consistent ranging from a maximum 59% in 2017 to a low of 52% in 2018. After a peak of 518 requests for advice in 2014, the number of requests has stabilised between 268 and 229 which was the figure for 2018. The issue of pre-apps is discussed further in paras 9.1-9.13. Pre-apps have important roles to play in influencing proposals early in the process to deliver positive outcomes and as such could form the basis of a quality performance measure – the proportion of pre-app cases that are granted permission compared with non-pre-app cases.

**Table 5: Performance against DC2 Targets 2014-2018**

	2014		2015		2016		2017		2018	
	total	%	total	%	total	%	total	%	total	%
<b>MINOR</b>	289	96	54	85	98	72	89	56	57	44
<b>MAJOR</b>	219	55	180	57	166	71	147	59	164	52

**Performance against Business Plan Targets - DC3: Number of enforcement cases successfully resolved**

- 10.11 The targets for enforcement are that 85% of cases should (i) be inspected within the target time of (?) (ii) be resolved with no formal action and (iii) be resolved within 5 weeks of receipt. Figures for enforcement have only been recorded since 2017 and these are shown in table (?) below, although there are question marks against the quality of the recording. Section 11 of the report deals in more detail with enforcement issues which have been the subject of 2 internal reviews and changes in staffing and structures. As far as this section is concerned, it should be noted that there have been changes to the enforcement regime, and in the future performance measures will need to be put in place which represent the States objectives and are recorded and measured more rigorously.

**Table 6: Performance against DC3 Targets 2017-2018**

	2017	2018
Total cases	287	275
Initial inspection within target	100%	37%
Resolved with no formal action	95%	95%
Resolved within 5 weeks	56%	30%

**Performance against Business Plan Targets - DC4: Successful defence of Department and Committee decisions**

- 10.12 The independent appeals system was setup in 2014. How it has worked in practice is covered in detail in Section 13 of this report. The performance target is for 66% of appeals to be dismissed. Overall this has been achieved every year since the new appeal system was introduced, although the figure for 2018 was the lowest of the 4 years. With appeals and reviews it is difficult to identify particular reasons for any fluctuations. It is worth noting that the percentage of major appeals that were upheld over the 4 years period was 43% (25 from 58)

against an overall total figure for all applications of 29% (33 from 112). The major applications are likely to be the more controversial and will usually be cases dealt with at the Planning Committee. With the information available to the Review Team it has not been possible to identify how many appeals were upheld where the Committee went against officer advice, but this may be an exercise which the Department could undertake to see whether there is any correlation or emerging pattern.

**Table 7: Successful defence of Departmental and Committee decisions 2015-2018**

		2015		2016		2017		2018	
		No	%	No	%	No	%	No	%
<b>Reviews</b>	Dismissed	17	80	24	70	34	75	23	67
	Upheld	4		10		11		11	
	Total	21		34		45		34	
<b>Appeals</b>	Dismissed	4	80	36	69	20	74	18	64
	Upheld	1		16		7		10	
	Total	5		52		27		28	
<b>Total</b>	Dismissed	21	80	60	70	54	75	41	66
	Upheld	5		26		18		21	
	total	26		86		72		62	

## **SECTION 10 RECOMMENDATIONS**

### **Para 10.1**

***Confirm role and importance of Business Plan Performance Targets***

### **Para 10.6**

***Ensure that monthly performance statistics are available to all staff in Development Control***

### **Para 10.8**

***Monthly performance monitoring should be a priority item for Development Control Management Meetings***

### **Para 10.8**

***Responsibility for managing performance should clarified***

### **Para 10.8**

***Regular (at least quarterly) reports on performance should be available to Departmental Management, the Corporate Centre, Planning Committee and the Minister.***

### **Para 10.10**

***Consider options for introducing a quality performance measure, such as comparative success of applications which have gone through the pre-application process.***

## 11 Development Control Management and Structure

### Casework team management

- 11.01 The management of the professional staff and responsibilities in Development Control rests with the Director of Planning. Below the Director there are 2 teams, the Planning Applications Team and the Compliance Team. The Compliance team is headed by a Senior Planner and is responsible for all enforcement matters. This function is dealt with in more detail in Section 12. The Planning Applications team has 2 Principal Planners, one for applications and one for appeals. Case officers are arranged into 'Pods' each with a senior planner, planners and trainee planners. An organisation chart is attached at Annex B.
- 11.02 It became apparent in the course of the Review that management responsibilities were somewhat blurred in many respects. Both Principal and Senior Planners saw themselves primarily as senior case officers, with heavy professional caseloads and dealing with the more complex cases, rather than as managers. There was little recognition of the need or responsibility to manage performance. The view that they were 'one big team of case officers managed by the Director' was commonly held as an appropriate description. The ambiguity about 'management' was reinforced by the lack of up to date or indeed any job descriptions or formal role definition. The structure chart does not identify line management responsibility.
- 11.03 In such a situation it is inevitable that informal roles and processes are adopted to enable the group to function. The Principal Planner (Applications) allocates cases to case officers via the Senior Planners, but this did not happen on a regular basis and the criteria for allocation was not always apparent. Caseload information for individual officers was not readily available to guide allocation. There was no systematic check on progress of applications to facilitate caseload management (or indeed performance).
- 11.04 Informal arrangements such as this can and do work up to a point, but are heavily dependent on the knowledge, expertise and commitment of the staff. The Review Team heard that morale was increasingly low and this in itself would be a significant factor in poor performance, even if actively managed. Many factors could be contributing to dissatisfaction – there was a clear feeling amongst staff at all levels that they were not engaged with the changes that were happening both at Corporate and Departmental level, many of which they were unhappy with. On-going disputes about pay and accommodation were also live issues. However, the lack of management and clarity about responsibilities are negative factors which reinforce problems and mitigate against finding positive solutions.
- 11.05 On a more positive note it was clear that the casework staff have a real respect for the professional abilities of their senior officers, who were accessible and helpful in a mentoring capacity. There was a supportive group identity based on trust which is a major asset and has helped maintain a level of professionalism and commitment. The authority may wish to consider whether the designation of 'Trainee Planner' needs reviewing. Officers designated as such were planners with several years' experience and the term trainee undervalued their contribution.

**Technical Support: Management:**

- 11.06 Technical support is an essential part of the functioning of the Development Control function. The professional and technical elements of the processing of applications should be seen as a single entity working with a single purpose. This is not the case in Jersey. Technical support is under separate management and works out of a separate (and currently physically separated) office. From the interviews and discussions undertaken it soon became apparent that there was a lack of communication between the professional staff and technical support and little respect between them. This was degenerating into a ‘blame culture’. This is not an acceptable situation in any circumstances, but has particular implications when the department is implementing a new IT system which will change working methods. Doubts about the DiPP system from the professional staff were reinforced by the perception that it was being imposed on them.
- 11.07 Section 15 looks at the technical processes in more detail. In respect of management there is an urgent need to bring the professional and technical support functions together, working under one manager in one office.

**Structural concerns**

- 11.08 The Review Team’s opinion is that Development Control would function more effectively
- With the Technical Support Team as a part of the section and operating as an integrated element of the process under one overall manager
  - If there were clearly defined managers for planning applications, appeals, compliance and technical support, each with a primary function of managing their area to meet defined performance and quality standards
  - The structure of the planning applications team is formalised and the function of ‘Pods’ is better defined so that line management and functional responsibilities are clarified
- 11.09 There are different approaches to the role of the Pods, all of which have merits and concerns.
- They could operate on an area basis, with one team responsible for St Helier and one or two teams dealing with the remaining parts of the Island. This would have the benefits of continuity of local knowledge and expertise but may be seen as establishing a ‘pecking order’ with one team having the most complex and interesting workload.
  - Having Pods based on scale and complexity of application is another alternative. (eg major and minor applications). This can be very effective in improving performance with teams of officers concentrating on dealing with the more straightforward applications in an efficient and timely manner, while another deals with the more complex larger cases. Here again this can be interpreted as having a senior and junior team with some officers consigned to dealing just with routine applications.
  - A third alternative is to operate with all teams having the same roles and responsibilities, much as they do at the moment. This can be effective, but it does need more active management in terms of balancing workloads, allocation of applications, and managing staff performance.

- 11.10 Any of these options could work for Jersey. There would be merit in considering the major and minor option at the present time, at least as an interim measure to improve performance back towards meeting the business plan standards. The danger of maintaining current arrangements is that it would signal 'no change' when there is an urgent need for more rigorous and active management. It would have to be accompanied by clarity of management responsibilities and reporting lines with procedures and processes in place that ensured the responsibilities are taken seriously as a means to improvement.
- 11.11 Whatever structure is adopted, case load management should be a priority. Dealing with applications should be seen as a single process, in which all concerned have interdependent roles. Validation, allocation, monitoring and signing off arrangements need to be far more efficient and effective. All officers have a part in this – technical support, managers and case officers all need to be working together with the overall objective of securing good planning decisions in an efficient, timely and customer friendly manner. It should not be acceptable to identify errors and ascribe blame without making efforts to remedy the situation. The applicant is not being served by applications being sent backwards and forwards or sitting on the system waiting to be allocated. The culture of finding solutions rather than identifying problems needs to be ingrained across the whole of development control.

## **SECTION 11 RECOMMENDATIONS**

### **Para 11.02**

***The current roles of Director of Planning and Principal Planning Officer should be clearly defined as managers without a caseload (subject to any changes proposed in the new Regulation Structure)***

### **Para 11.06**

***The Development Control Team and the Technical Support should be brought together under the Director of Planning***

### **Para 11.11**

***Options for the structure of the planning casework team should be reviewed, to meet clear criteria including improving performance and more effective line management.***

## 12 Compliance

### Historic issues

- 12.1 When the Review Team visited the department in 2013 the then Deputy Chief Officer for the Department of the Environment was halfway through a separate review of the, then, Planning & Building Enforcement System, which was finalised and published in January 2014. The report made a series of 27 recommendations to streamline the service and make it fit for purpose. In 2017 the report's author commenced a review to identify which recommendations still required implementation. The conclusions of that review are shown below in full:

*“Clearly work has been done to address the recommendations made in the 2014 report. Progress has however been hampered by operational priorities distracting from the delivery of the recommendations and in some cases technical hold ups have also caused delay.*

*Where the recommendations have not been completed, the likelihood of delivering those elements where we have stated Q4 2017 as a deadline should be either completed by this date or, where appropriate, re-deadlined. Where the latter is the case a date should be agreed with the CEO and firm priority should be placed on this work to ensure that the wider recommendations can, in the majority, be closed out quickly.*

*Almost three years have passed since the publishing of the original report. Because of hold ups, some of the recommendations have been completed in ways that may work operationally but differ from the stated outcome of the original recommendation. It is therefore recommended that this report is discussed between the DDC and the CEO to ensure that “local fixes” accord with Departmental requirements. Where they do, this should be recorded and where they do not, an agreed solution should be found, a deadline placed against completion, the completion recorded and the CEO should review that completion is to Departmental satisfaction.”*

- 12.2 By the time this review had completed in 2017, the Enforcement Team had been renamed “Compliance Team” and the team members themselves had also changed. In response to the third recommendation in the 2017 review, as well as a further series of complaints, investigations and court cases involving members of the previous enforcement team, the Director of Planning and the Principal Planner (TSO) undertook further analysis of the team's work as now configured and provided a final report in July 2018.
- 12.3 The current Review Team were requested to consider whether compliance as it is currently being operated is proportionate and sets the right tone, as well as seeking re-assurances that the compliance service has learned from past experiences.

### Operational matters

- 12.4 The compliance team consists of two staff and the Review Team heard that a further team member had recently been appointed and was due to commence work with the team at the beginning of May 2019. The Senior Planner - Compliance currently still holds a small caseload of major applications (circa 6 cases) which are being dealt with alongside the compliance work. Both of the existing team are qualified planners who are familiar with the Jersey systems and local area.
- 12.5 The Planner/Compliance Officer is now enrolled on a BTEC course on Investigative Skills, alongside trading standards team members. This requires attendance at regular two-day course modules in Guernsey and covers such topics as evidence gathering. In addition, the postholder, following some bespoke Investigation Training, is assisting the States Employment Board in the investigation of up to three cases a year.

### Workload

- 12.6 In 2018, 264 compliance complaints were received by the Department and 12 Enforcement Notices were served, of which only 3 are still outstanding.
- 12.7 At the start of 2019 the team had a workload of around 120 outstanding complaints, although many of these had been initially actioned, and there were 2 ongoing prosecutions. At this time, the Senior Planner - Compliance was holding a planning case load of 23 applications. Since this time his planning case load has significantly decreased.
- 12.8 During 2018 a new system of logging all compliance complaints was introduced and the TSOs have now taken over responsibility for undertaking this work. In addition, the TSO team are now handling all caravan and trailer permit work, which was previously undertaken by the Compliance Team.

### Policies

- 12.9 The Compliance Process guide was completely reviewed, updated and published during 2018.
- 12.10 The SPG relating to compliance was also updated ready for Ministerial sign off but following recent changes as a result of Government reform it has been decided not to adopt the revised guidance at this time.

### Processes

- 12.11 The Compliance Team's stated policy is to seek to resolve complaints speedily and without legal action and they are successful in around 90% of cases at the current time.
- 12.12 Recently the Compliance Team have only prosecuted a handful of cases each year although it is understood that there is a determination and will within the States Government to take tougher action in the future.
- 12.13 An agreed pro-forma, for the Legal Services Department, is now used when commencing enforcement action. This is already saving time and ensuring clarity

of thought and approach. It is also understood that on occasion the Greffe will now assist in drafting the wording for Enforcement Notices.

- 12.14 The team are also trying to work more closely with rangers from environmental services where there are compliance issues around trees and wildlife.

### Monitoring and reporting

- 12.15 The published deadlines for response are as follows:

Level	Priority	Definition	Site Inspection	Decision within
1	Immediate	Serious harm to health or safety  All dangerous building allegations  Significant harm to registered buildings, Sites of Special Interest or protected trees	1 working day	5 working days
2	High	Significant public concern  Possible harm to health or safety  Serious harm to the character or amenity of a building or land  Strategic or political implications	3 working days	10 working days
3	Medium	Possible harm to neighbour amenity  Unauthorised adverts, etc	10 working days	20 working days
4	Low	No clear breach apparent  Vexatious complaint  Planning permission likely to be given	20 working days	40 working days

- 12.16 The Review Team understand that because of the existing workload these deadlines are not currently being adhered to although the Compliance Team did confirm that they are still responding in a timely fashion to priority cases.

- 12.17 The Compliance Team are now providing a regular report/bulletin of cases and outcomes although the Review Team is not entirely clear who the audience is for these reports.

### The current position

- 12.18 The Review Team's view is that replacing the previous team members with qualified planners with knowledge of the Island planning system is a significant advance, not only in terms of understanding of the issues and technicalities involved but also in ensuring an efficient and professional attitude to both complainants and site owners, which does not always seem to have been the case previously. The current Compliance Team are approaching compliance in a very positive fashion and are keen to gain the additional skills that will really assist them in investigative work and in managing formal interviews where it is

through that breaches may have occurred. This enthusiasm should be encouraged and facilitated.

- 12.19 With a third team member in place and less time being spent on planning case work by the Senior Planner - Compliance it should be possible to take control of, and reduce, the outstanding caseload so that the published targets can be achieved.

## **SECTION 12 RECOMMENDATIONS**

### **Paras 12.16 and 12.19**

***Remove remaining planning cases from the Senior Planner – Compliance as soon as possible***

### **Paras 12.16 and 12.19**

***Make all efforts to reduce the outstanding caseload so that the published targets can be achieved within a six-month period***

### **Para 12.18**

***Encourage the development of skills required for compliance team members through appropriate training provision and external opportunities similar to the work with the States Employment Board referred to in para 12.5 above.***

## 13 Appeals

*“The independent appeals system has transformed the planning system on the Island”*

- 13.1 An Independent appeals system in Jersey was put in place following recommendations from the 2010 PIP Review and the Regs Skips Committee of Inquiry. The aim was to provide an appeals system that was open to all and didn't penalise by lack of income.
- 13.2 Various options were considered, including a tribunal system similar to that in place in Guernsey but the States finally agreed to set up a permanent panel of inspectors, all of whom are currently from off Island but who have now become familiar with the Island, Jersey Law and the Island Plan.
- 13.3 An individual Inspector currently reviews the appeal papers, makes a site visit, hears the appeal and produces a report which will make a recommendation which is provided to the Minister who is responsible for making the final decision. (see Section 8 for commentary about Ministerial involvement in this process)
- 13.4 The appeal system is administered as part of the Tribunal Services within the Judicial Greffe and they are responsible for all elements relating to receipt of an appeal, administration and logistics relating to the holding of the appeal hearing including appointment of an inspector from the panel, collating documentation for the Inspector and all parties involved in the appeal, arranging site visits, managing the appeal hearing on the day, receiving the Inspector's report and recommendation and minuting and disseminating the Minister's appeal decision.

### Review of first five years

- 13.5 When the new appeal system was introduced it was expected that the overall number of appeals would be significantly higher than has been the case and therefore a team of 8 Inspectors were appointed. All of the inspectors currently involved are experienced Inspectors who have been or are, working for the Planning Inspectorate of England & Wales.
- 13.6 Appellants have 28 days in which to appeal a decision and the cost is around £1,200 which is significantly more affordable than the Royal Courts system. The Greffe work to a target of 13-18 weeks to process an appeal from start to finish. In 2017 hearings were dealt with in average of 16 weeks with written representations being dealt with in an average of around 14 weeks.
- 13.7 Appeals are grouped together to take place in one week each month although in 2018 there were 3 months when no appeals were heard.
- 13.8 Overall feedback from appellants is that the appeals system is customer focussed and that they have had a fair hearing even if the final decision goes against them. Feedback from the Inspectors is also positive in respect of administration, paperwork and arrangements for the appeals.

### Number of appeals and outcomes

- 13.9 As noted in para 12.5 above the number of appeals was originally expected to be significantly higher than has been the case. According to figures provided by the Greffe, since the appeals system was introduced there have been 170 cases taken to the Greffe. Of these, 31 cases were either invalid or not proceeded with by the appellant. A further 48 cases were dealt with by written representations leaving 90 cases which were dealt with by an Inspector at public hearings.
- 13.10 Out of the 139 total cases taken through the appeal system, only 50 were bought forward by third parties. Of these 50 cases, 13 third party appeals were upheld (26%) and 2 were partially upheld by the Minister and 4 cases are still awaiting determination.
- 13.11 Of the other 89 cases 21 appeals were upheld (23.5%), with a further 1 appeal being partially upheld leaving 6 cases still awaiting final determination by the Minister.

### Written representations

- 13.12 The appeals system currently allows for the use of written representation appeals where there no third parties or objectors representations have been received. The Review Team heard from all those involved in the process and the widespread view, except amongst applicants, was that there were too many hearings and that many of the cases could have been satisfactorily dealt with by the use of written representations. The Review Team suggest that the use of written representations should be encouraged and that the Law regarding the qualification for written reps may need to be reviewed.

### Lessons from the first four years

- 13.13 It was inevitable that the appeals system would take some time to be firmly established but it appeared to the Review Team that there had been remarkably few problems with its introduction.
- 13.14 The Review Team did hear that initially there were issues around Inspector site visits but these have been resolved by the Greffe Officer now arranging these and being in attendance throughout.
- 13.15 More importantly there have been some cases where the definition of a 3<sup>rd</sup> party has been open to misinterpretation, particularly in respect of distance from a development and it may be appropriate to review and clarify this definition.
- 13.16 Finally it is understood that there has been an issue around the 21 day period specified in the law, which means that the order relating to this is having to be re-drafted currently.

### The Future - Inspector versus Tribunal

- 13.17 The Review Team is aware that there have been concerns about the role of the Minister in making the final decision on individual appeals relating to and following the issues described in paras 8.10-8.12 above.
- 13.18 When the appeals system was introduced, the agreement to leave the final decision in the hands of the Minister was primarily due to unease amongst States

Members that an independent Inspector from off Island would otherwise be making the final decision on Island matters. Indeed, the Review Team heard that the current panel of Inspectors would also be uneasy about taking the final decisions for the same reason.

- 13.19 The issues surrounding essential involvement of the Minister or Assistant Minister in all final decisions of this nature, regardless of any previous connection they may have had to the case has led the Minister to request that the idea of a Planning Tribunal should be revisited. Such a Tribunal would not only be responsible for hearing the appeals but also make the final decision, rather than simply a recommendation.
- 13.20 The most common option for a tribunal would be for a panel of three (one inspector and two Island professionals) to sit as a tribunal together to hear all appeals and come to a binding decision.
- 13.21 Over the relatively short period that the Appeals system has been in place, the overwhelming view from participants is that it is working very well. The Review Team agree with this and feel that it is too soon for any significant changes to be made and that there are options to overcome the relatively minor issues that have been raised.
- 13.22 Concerns that even minor cases are the subject of hearings – the process could be amended (as in England) such that the appellant or the authority can request a hearing but that the default is written representations and it is for the Inspector to decide whether a hearing is warranted.
- 13.23 Concerns about the final decision resting with the Minister – as described above, the system was established in this way so that the decision would not rest with a paid inspector with no attachment to Jersey. As it stands, when the Minister feels that he or she has an interest in the case or has previously indicated an opinion, the case can be referred to the Deputy Minister and this has happened on a number of occasions. Rather than re-vamping a system that is working well, a relatively modest change would be that the Minister could indicate when the appeal is lodged that the final decision is delegated to the Inspector. The alternative would be that all cases should be delegated to the inspectors, except when the Minister “recovers” the case for the final decision.

## **SECTION 13 RECOMMENDATIONS**

### **Para 13.12**

***The Review Team suggest that the use of written representations should be encouraged and that the Law regarding qualification for written reps may need to be reviewed along the lines referred to in para 13.22 above***

### **Para 13.23**

***Rather than a wholesale review of the appeals system consider more modest changes where either, the Minister could indicate when the appeal is lodged that the final decision is delegated to the Inspector, or that all cases should be delegated to the inspectors, except when the Minister “recovers” the case for the final decision.***

## 14 Customer experience

### Customer centre

- 14.1 Historically, a small team of administrative/reception staff had always handled customer queries and callers at South Hill for all the services within that building. During previous visits the Review Team had noted that this team had been able to deal with many straightforward queries which related to applications, without the need to involve a case officer.
- 14.2 In 2018, the States decided to set up a single central customer services centre in St Helier. The Review Team visited the customer centre in 2019 and noted that although the building sees a great many customers during the day, the separate section which has been set apart for planning and building control inquiries is well laid out and sits a considerable distance away from the busy and noisy entrance area.
- 14.3 The 2 staff members, who had previously handled customer queries, were transferred into this centre and all queries, personal callers and initial telephone queries relating to planning are channelled through this building. A duty planning officer, is also required on a rota basis to be sited in the customer centre, to answer technical customer enquiries.
- 14.4 The Review Team noted that terminals were available for members of the public to view and comment on current applications and also to view older archived electronic applications and decisions. However, it emerged that the public can order historic files which are not yet available electronically, to be made available at the customer services centre for consultation. This not only means the files must be located and transported to the customer services centre but because of GDPR requirements, the file must be “gutted” first to remove any documents, names or addresses which might cause privacy issues. The cost of providing this service is extremely high and is discussed further in Section 15 because it cannot be dealt with in any other way until the back-scanning project is completed.

### Customer services staff

- 14.5 The Review Team discussed with the Customer Centre team how development control queries were dealt with and whether this was significantly different to other services. The aim of the customer centre that the receptionist/first stage contacts should be generalists who can assist with the use of computer monitors and arrange for more specialist advice to be made available. Only one of the two staff who were moved across to the centre remains in post and her specific knowledge in respect of the development control process is largely unused in the new arrangements. The Customer Centre Manager is very aware of the tensions that this can create and has been at pains to accommodate development control’s specific requirements but it was also clear to the Review Team that should the remaining staff member leave then the replacement provided would be a generalist with no specific planning knowledge.

- 14.6 The Review Team has significant experience of customer service or "One stop shop" centres in England and the approach taken in Jersey is similar. The only difference in many cases is that the customer centre is usually within the main civic offices and so expert advice can be sought closer at hand than is currently the case in Jersey.

#### **Duty officers**

- 14.7 When the customer service Centre was originally set up it was agreed that there would be a full-time duty case officer located within the centre. Following a review of customer demand for planning assistance the duty officer role has been reduced to half the day with variations during the week between morning and afternoon availability. A duty Building Control Officer is available whenever there is no case officer present to cover initial inquiries.
- 14.8 Case officers have expressed some concerns about the basic level of questions that they are now being asked to respond to when acting as duty officer and the number of enquiries which require technical assistance remains very low. However, it was also clear that the public welcomed a centrally located centre, although parking was an issue.
- 14.9 The Review Team also heard that agents have now discovered that having a duty planner available in this way provides a good opportunity to see a case officer if they have queries or issues regarding current applications. One agent commented that as they could find out exactly which case officer would be available on each day that using the Customer Service centre was "easier than going through the pre-application process".

#### **Telephones**

- 14.10 The generic customer call centre for the States of Jersey is based in the same building and the call centre operators take initial queries about development control. However, many of these are then forwarded immediately to either the TSO team, or to a specific case officer if the caller has a case reference/case officer name.
- 14.11 It appears though that many calls passed through to the case officers are not answered and there is often no response to messages that have been left. This has led to an increase in follow up calls from irate customers that are having to be dealt with at Customer Services or TSO level. The Review Team is not aware of any corporate targets in respect of responding to phone calls but it may be worth considering formalising such an approach when the team moves to a new combined office location.

#### **Complaints**

- 14.12 The Review Team was provided with substantial information from both applicants and agents regarding complaints about case handling, and is aware that one applicant has actually specified that 3 current staff members should not be allowed to work on their applications.
- 14.13 On an island the size of Jersey it is inevitable that reputations are well known and that perceptions can be formed prior to assessments of individual cases being made. However, the Review Team was provided with evidence of significant

delays in response for no apparent reason which have led to reputational damage to the development control function. If the Department's aim is to positively negotiate and produce a better outcome to an application then such delays in response are not helpful.

- 14.14 Currently complaints escalate through the States standard process culminating in cases being heard by the Complaints Board, or in very rare cases, via a Royal Courts case. The Review Team has heard that most complaints are currently closed before reaching the Complaints Board stage.

#### **Communication updates**

- 14.15 The 2013 report recommended that consideration should be given to set up an annual developer/agent forum or similar customer focus group to provide a regular feedback on the service being provided by the department. Sadly, it appears that this recommendation has not yet been introduced. The Review Team feel strongly that such a regular forum, with an agreed agenda, would still be beneficial, particularly as such meetings can provide an excellent opportunity to disseminate departmental updates on changes to the system, technology and guidance and receive feedback on the same. At the moment this information is provided in monthly updates to consultees and parishes and in 3 monthly updates to the agents and architects list.

### **SECTION 14 RECOMMENDATIONS**

#### **Para 14.11**

***Re-inforce any corporate targets on responding to telephone calls and actively embrace the response elements of the new DiPP system (see paras 15.4-15.5 below)***

#### **Para 14.13**

***Team managers to ensure no there are no unreasonable delays to responses to applicants which result in missed deadlines or unacceptable delays to the determining of applications.***

#### **Para 14.15**

***Consideration should once again be given to setting up an annual developer/agent forum or similar customer focus group to provide a regular feedback on the service being provided by the department and which could also serve as a way to disseminate departmental updates on changes to the system, technology and guidance.***

## 15 IT and digitisation

### Current system

- 15.1 The Department's current planning applications software is a Northgate one, run in conjunction with I@W. When the Review Team visited in 2013, the system had been in place for just over a year and there were still teething problems relating to the production of statistical and performance reports via the Crystal reporting system.
- 15.2 The system has been developed further during the intervening period so that applications are now available to view and comment on online by the public and the system is now hosted on States of Jersey own "cloud" system.
- 15.3 The Review Team was provided with a wide range of well-designed Crystal reports drilling down to individual performance statistics as well as overall departmental statistics relating to number of applications received (see Section 10 for more about the value and use of these reports).

### DiPP

- 15.4 The Department's most recent development has been to appoint contractors to work alongside Northgate to develop a fully digital applications system which will act as a portal to receive applications and which aims to allow all customers of the system (applicants, agents, objectors and general public) to better engage with the development control system. The system will continue to work alongside I@W and Crystal reports will still be available as well as the bespoke Northgate performance software.
- 15.5 One of the drivers for this development has been the request from applicants and agents for a more continuous two-way flow of information throughout the application process.
- 15.6 The DiPP system takes applications through the entire process, including review and appeal stages and the Greffe have been allowed access to case documentation when decisions are appealed.
- 15.7 The DiPP system is currently at beta testing stage and has received very good feedback from the trusted agents who have been invited to use it on a trial basis. The system was demonstrated to the Review Team who consider that there is every indication this has the potential to be a very good responsive system with impressive inter-action capabilities which could significantly improve the service offered by the department.
- 15.8 However, at the moment it is clear to the Review Team that the case officers, in the main, are completely disengaged from the process. There appear to be two main reasons for this disengagement. Firstly, the DiPP development has been led from within the TSO team and the physical separation between that team and the case officers has made the flow of information about the project less immediate. In addition, although the Director of Planning has been involved and made aware of the thought processes behind decisions that have been made, there has been a tendency to present the case officers with system amendments

without any prior discussion with them and at a stage when it is too late for concerns to be incorporated into the design process. This lack of management communication is commented on further in Section 11 above

### Resilience

- 15.9 The Review Team is impressed that the project has moved as far forward as it has without any additional capacity being brought in to the TSO team. However, the Review Team has serious concerns about the resilience of the DiPP project which is currently being developed and managed single-handedly by one member of staff, particularly as it was evident that there was no one else within the team who has the same level of understanding of the back-office system that underpins the DiPP system. Such a reliance on a single person on such a major project must be a substantial risk to the Department and it is recommended that the resiliency of this project is re-inforced as a matter of urgency.
- 15.10 The Review Team has also seen new systems being introduced in a number of authorities in England and appreciates the resource necessary for a successful transition. There will be a need for at least one person working full time, for at least 6 months and perhaps longer, from the point of going live. There will also be a need for a formal user group to be put in place to identify, communicate and resolve teething problems. This has to be composed of officers, at both case officer and TSO level, using the system on a day to day basis.

### 3d digital model of the Island

- 15.11 Alongside DiPP the Department has also been developing an Island-wide 3D digital model. The Review Team consider that this has the potential to be a very powerful tool, for case officers and planning committee as well as members of the public when visioning and assessing applications.
- 15.12 The Review Team did hear some criticism about the quality of digital model which requires some agents to reduce the size and quality of their digital files to insert into the Island Model but this is inevitable as software capabilities improve and the Department will have to ensure that they keep upgrading the Island model software to match.

### Back scanning

- 15.13 Over the past year the TSO team has included a number of additional staff who have been employed to undertake a back scanning project with a view to back scanning all planning application papers before 2012. This work has been progressing well for a relatively small outlay in immediate staff costs against a significant long-term financial saving of both storage space rental and transport movements between archives, offices and the customer service centre.
- 15.14 The Review Team has heard however that this back-scanning project is to be stopped because other back scanning projects have a higher priority. In the Review Team's view slowing down back scanning work is extremely counter-productive, particularly in the light of the digitisation of all other elements of the development control system.

**DC Manual**

- 15.15 The Review Team was impressed by the full set of on line user guides for all elements of the current planning application system and processes which is a truly “living” document and something that had been highlighted as important to develop in previous reviews. However, during discussions it being clear that changes in procedure are agreed in consultation with the Director of Planning and information about amendments does not necessarily cascade down to the case officers. This has led on occasions to previous working practices being continued for some time after changes have been made.

**SECTION 15 RECOMMENDATIONS**

**Para 15.8**

***Continue to positively involve case officers directly in discussions about design of system, even if first attempts fail***

**Para 15.9**

***Re-inforce the resiliency of the DiPP project by providing some dedicated back up resource to the TSO team to assist***

**Para 15.10**

***Make arrangements to second a full-time project leader to the introduction of DiPP for at least 6 months from the time of going live, together with a user group in place.***

**Para 15.12**

***Ensure that the Island model software is regularly updated to keep in step with developments in new technology***

**Para 15.14**

***Review the decision to halt work on the back-scanning project with a more detailed business case for the savings that will be made over a number of years.***

**Para 15.15**

***Ensure all case officers have direct access to information concerning updates to the current planning application system and processes, rather than relying on a cascade notification system***

## 16 Resources and staffing

### Professional staffing

- 16.1 There have been a number of attempts to assess what would be an acceptable workload for development control staff in England but there has never been an official indicator. The only 'benchmark' widely quoted is the Planning Advisory Service's figure of 150 applications per case officer per year which was published at least 15 years ago. This takes no account of the mix of workload and what other duties are expected (eg Pre-apps and appeals) but in the absence of any other measure is still used as a rough guide. More recent work, which the Review Team has seen, was undertaken by the Planning Advisory Service a couple of years ago based on all the benchmarking they had undertaken over several years. This suggests, a more realistic lower figure, in the region of 80-90 cases per officer per year, but crucially this includes both case officers and support staff (although not managers). However, this has never formally been published.
- 16.2 The number of applications determined in Jersey has been relative stable over the past 5 ranging between 1349 in 2016 and 1500 in 2015. The number of full-time development control case officers over the same period has been 12, with occasional periods where vacancies have occurred, indicating an annual workload of between 112 and 125 cases per year. In addition the Principal Planner Applications carries a significant case load and the Director of Planning also deals with some applications. This report has strongly recommended that these posts should be purely management roles in the future and therefore they have not been included in the calculations. On the first measure of 150, this looks reasonable. Adding in the 3 TSOs the annual workload has ranged from 89 to 100 over the past 4 years which would be towards to the top end of the range. TSO staffing is considered in paras 16.5-16.6.
- 16.3 This analysis assumes case officers working full time on their cases and handling their own appeals. In Jersey, the duty planner system eats into the resource available, although officers have the opportunity to deal with their casework at the Customer Services Centre and the number of enquiries they deal with is low. Whether this remains a good use of resources is dealt with in more detail in paras 14.8-14.9. Appeals are largely handled by the Principal Planner Appeals and his team. The 'benchmarks' are purely indicative and in one case very dated, and take no account of the mix of applications dealt with. Overall there does not appear to be a compelling case for additional resources in Development Control.

### Pre application advice and PPAs

- 16.4 The Review Team has commented above on the service currently offered in terms of both quality and performance, neither of which are satisfactory. To re-launch the service, it will be essential deliver advice in a professional, consistent and timely manner. Experience elsewhere has shown that this can be achieved but in almost every instance it is the subject of a separate fee (and sometimes a dedicated resource). The current position is not sustainable and needs addressing. To provide an acceptable service will need additional staff resource – either to provide the service or backfill elsewhere – but which can be funded from charging. Before applicants will pay for such a service they will need reassurance that they will get a considered and helpful response within a set

timescale, and the initial task will be to set realistic standards and devise a fee scale which will cover costs.

#### Technical Support Staffing

- 16.5 The TSO staffing gives more cause for concern both in terms of numbers and deployment. Technical support plays a critical role in the development control process and needs to operate effectively if applications are to be determined in a timely manner. A team of three can be severely disrupted by absences – whether they be controllable (leave, training) or uncontrollable (sickness, maternity leave, resignations). Performance has also been affected by the lack of trust and poor communications between the professional officers and TSOs. The TSO Manager has also been spending a considerable amount of time on the Introduction of the DiPP system and this is likely to continue for the foreseeable future. The situation is further compromised by the way the team works, with each officer responsible for discrete part of the process, and therefore lacking the flexibility to step in when problems arise. This is discussed further in Section 15 above)
- 16.6 In the view of the Review Team, the TSO support needs to be urgently reviewed, with the objectives of increasing the resource and making the team more resilient. The current problems of trust, communications and management referred to earlier should be tackled at the same time.

#### Recruitment and retention

- 16.7 Development control is currently staffed by a mix of permanent officers, many of whom have been in post for many years, and contract planners covering for vacancies. There is currently an embargo on recruiting to permanent posts and some contract staff have been in post for some time. The ongoing pay dispute is another complicating factor.
- 16.8 The Island environment has two important implications for staffing. There is little in the way of alternative employment for planners (although there are some limited opportunities in private sector consultancies) which limits movement and progression, and recruitment from outside is from a more restricted pool than on the mainland. The number of planning professionals already on Jersey is very small and for those off the Island taking a permanent job involves making long term life style and career decisions. This is reflected in the small number of applicants for posts.
- 16.8 Current staff are, in the main of a high quality professionally and this is appreciated by the States and customers. Opportunities for career progression within the States however is very limited and this can be frustrating and the Review Team certainly saw signs of this during the review. The relative isolation also restricts opportunities to see and experience how other authorities operate and bring good practice back to the authority. There were indications of antipathy to change on the basis that “this is the way we do things here”. Jersey is not alone in this respect but the problem is heightened by the island environment.
- 16.9 The general recruitment issues are not going to be resolved within Development Control. Measures can be put in place, however, which can assist. Authorities on the mainland also have difficulties in recruiting planners and many have “grow your own” programmes of recruiting at graduate or school leaver level with a

training programme allowing progression on reaching thresholds. TSOs and administrative appointments can also be a valuable source for planner recruitment with the right environment and encouragement. Designation of posts for those progressing towards professional status needs consideration. The designation as a trainee should reflect exactly that – that the occupant is in a training position with the back up and training opportunities to match. Once a person is qualified and undertaking work at a professional level they should be designated as planners.

- 16.10 While having permanent staff is desirable, temporary contracts also have their benefits. Temporary or contract staff can bring with them valuable experience and expertise from other authorities or the private sector, and can also be potential recruits to permanent posts. Achieving the right balance is the key. Too many temporary appointments bring an instability and lack of local knowledge which can have a negative impact.
- 16.11 Exposure to how other authorities operate through training programmes is dealt with in more detail below. This should include management training which, as has been pointed out, is an area which has been under-rated and neglected, and which could aid retention by giving staff the experience and expertise to fill managerial roles.

### Training

- 16.12 As has been mentioned earlier in this report and in the previous review reports there are particular challenges around budget and time restraints in providing mainstream staff training opportunities in an Island environment. Inevitably many training requirements fall to in-house training provided by peers within the department.
- 16.13 As highlighted in para 9.18 above it is considered essential that all TSOs are fully trained in all aspects of the process so that a “nose to tail” approach to the initial stages of an application’s process can be introduced.
- 16.14 The Review Team also considers it would be worthwhile to programme regular training refreshers for the use of the planning application system to resolve inconsistencies in team members’ approaches to completing fields within the software.
- 16.15 Further regular training sessions should be programmed into the annual calendar for case officers to refresh departmental skills in respect of viability appraisals, the use and detail of POAs, and other topical issues.
- 16.16 Regular monthly update sessions with the Policy Team should also be programmed in advance. These updates will be even more important now that there is not only a physical separation between the teams but also because of the split in departments and will also offer the opportunity for feedback from the case officers to the Policy team about concerns that may be felt in respect of the emerging Island Plan revision.
- 16.17 As described in Section 12 above the department has been happy to support and encourage specialist training for compliance team officers which have been

offered not only on the Island but on Guernsey as well. The skills being offered in this case are very targeted at compliance team members but the Review Team is certain that similar negotiating skills courses can be made available locally for those case officers who will be required to negotiate during formal pre application engagement and PPAs.

## **SECTION 16 RECOMMENDATIONS**

### **Para 16.4**

***Ensure adequate resources are in place (either to provide the service or backfill elsewhere) before any paid for pre-application service is introduced.***

### **Paras 16.5-16.6**

***Urgently review the need for additional TSO resource in both the short term to cover the DiPP transition and longer term to provide additional capacity and resilience.***

### **Para 16.9**

***Consider the introduction of a “grow your own” recruitment programme***

### **Para 16.11**

***Invest in management training for staff to allow them to gain the experience and expertise to fill managerial roles in the future.***

### **Para 16.14**

***Programme regular training refreshers for the planning application software***

### **Para 16.15**

***Programme regular training refreshers for subjects such as viability appraisals, the use and detail of POAs, etc.***

### **Para 16.16**

***Programme regular monthly updates with the Policy Team***

## List of interviews and group meetings undertaken

The following interviews were undertaken by the Review Team:

Andy Scate, Group Director Regulation  
Peter Le Gresley, Director of Planning  
Kelly Whitehead, Principal Planner, Customer & Technical Support Team  
John Nicholson, Principal Planner, Applications  
Andy Townsend, Principal Planner, Appeals

Deputy John Young, Minister for the Environment  
Deputy Gregory Guida, Assistant Minister for the Environment  
Deputy Russell Labey, Chair, Planning Committee  
Deputy Steve Luce

Charlie Parker, Chief Executive  
John Rogers, Director General, Growth, Housing & Environment Directorate  
Dan Housego, Group Director, Economy & Partnerships  
Willie Pegg, Director Natural Environment  
Dr Anuschka Muller, Director, Corporate Planning & Performance  
Steve Skelton, Director, Strategy & Innovation  
Kevin Pilley, Director, Planning Policy and Projects  
Tracey Ingle, Principal Historic Building Adviser  
Nathan Wilczynski, Manager, The Tribunal Service, The Judicial Greffe  
David Hainsworth, Planning Inspector working for the Judicial Greffe  
Duncan Mills, Legal Adviser, The Greffe  
Richard Glover  
Mo Roscouert, Director, Building Control  
Ralph Buchholz, Policy  
Natasha Rault, Policy  
Alistair Coates, Policy  
Victoria Mitchell-Stirrup, Customer Services Manager

Lee Henry, Jersey Development  
Charles Alluto, National Trust  
Roger Hills, Jersey Heritage  
Andrew Morris and Stephanie Steadman, Jersey Chamber of Commerce  
Colin Buesnel, Association of Jersey Architects  
Adrian Huckson, Dandara  
Simon Barrows + 2, Jersey Construction Council  
Tom Binet and R Binet  
David Williams

The Review Team held group meetings with the following:

**Development Control Senior Planners**

Elizabeth Stables, Senior Planner  
Ginny Duffield, Senior Planner  
Jonathan Gladwin, Senior Planner

**Development Control Case Officers**

Andrew Parsons  
Gemma Vasselin  
George Urban  
Lawrence Davies  
Rebecca Hampson  
Richard Greig  
Shee Hwa Chang  
Susie de Gouvais

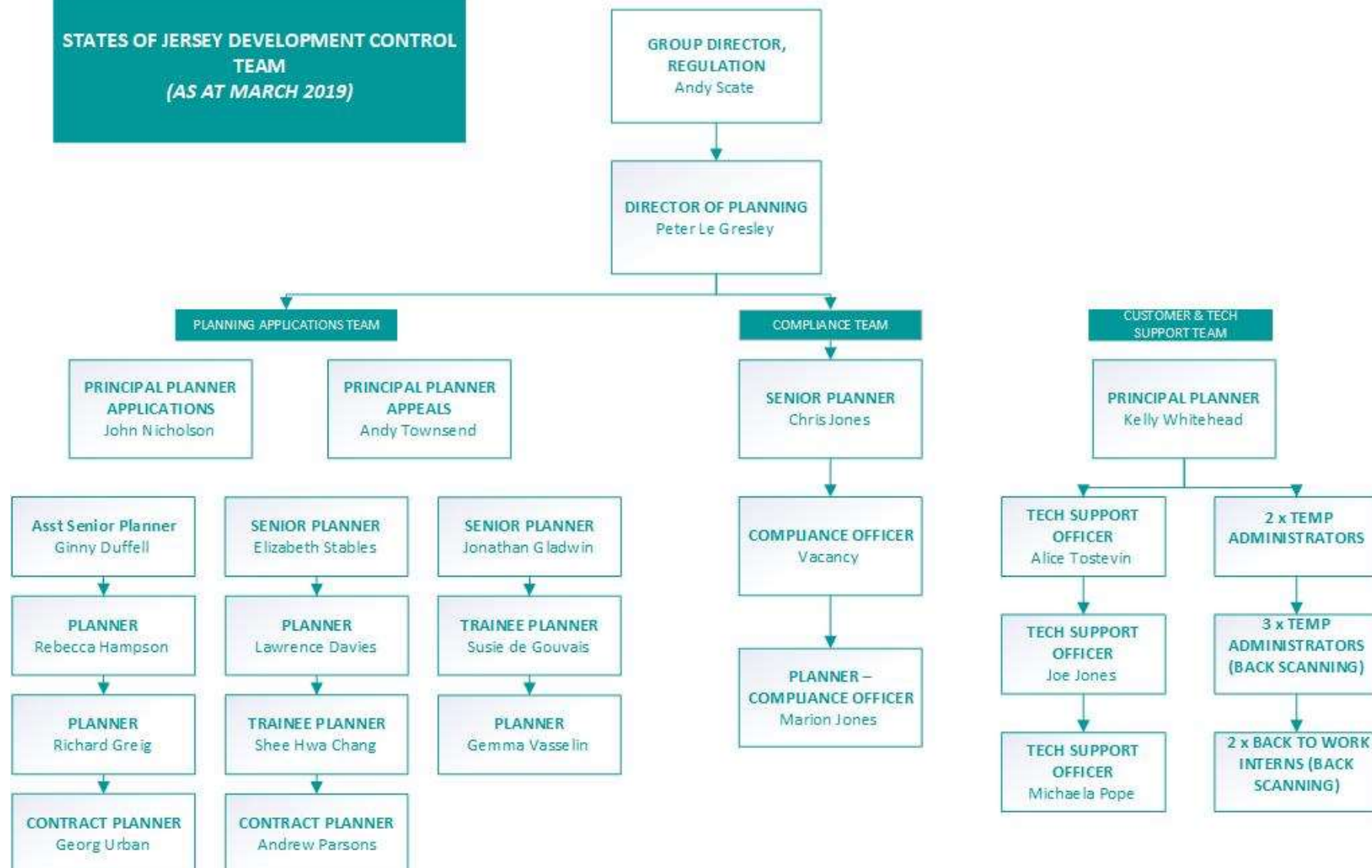
**Technical Support Officers**

Alice Tostevin  
Joe Jones  
Michaela Pope

**Compliance Team**

Chris Jones, Senior Planner  
Marion Jones, Planner – Compliance Officer

**STATES OF JERSEY DEVELOPMENT CONTROL  
TEAM  
(AS AT MARCH 2019)**



## Delivering large scale developments in Croydon

Croydon is a London Borough with sustained and significant levels of projected growth. Mike Kiely, Director of Planning & Building Control, admits that the Borough has, historically, not always handled large-scale developments well. The challenge was to ensure that Croydon could provide an efficient and timely service to its residents, businesses and investors whilst at the same time making it clear that they would only accept good quality development.

Political control within the borough is subject to change and the areas with most potential development are those that are most vulnerable to changes of control. So, to achieve this goal Croydon have made a number of changes to the way it deals with strategic planning issues.

### The “virtual team” approach

Mike says that the challenge with major applications is that they need a different approach, but as pieces of work they are a bit like buses; they do not come along evenly. It's a challenge to maintain and manage the necessary skills and resources, even in a large borough like Croydon. Mike's solution involves setting up a Strategic Applications Team that acts as a “virtual team”. In practice, any officer in Development Management can deal with a major application but when they do, they report to the Strategic Applications Team Leader rather than their area based team leader.

This means that the approach Croydon takes major applications is maintained and developed effectively.

### The design team approach

All large applications are seen as discrete projects with a single lead officer, and a team of planners, urban designers, highway engineers, etc. is formed as required to effectively progress the scheme. Mike describes this as a ‘design team’ rather than the usual development team, because the emphasis is on working with the developer at the earliest possible stage to influence the scheme's design. This helps the project progress in a logical way and to the satisfaction of all parties. The key inputs of urban design and development management are deployed as required throughout the process. In practice, the balance of inputs changes through the life of the application as the emphasis shifts from strategic planning to development management.



Fig 5: Croydon's "design team" approach

## A Strategic Applications Committee

Mike decided that the improvement programme must be whole-heartedly embraced by the politicians, and so a separate Strategic Applications Committee has been set up to run alongside the Planning Committee. The Strategic Applications Committee deals with only two types of item:

- applications requiring a developer presentation
- major applications for determination.

The developer presentations are held in public but there is no public speaking allowed. Mike says that, initially, the tricky thing was getting members to understand that they must not be seen to pre-determine applications. Worries about this were quickly

overcome and members welcome the opportunity to be involved at an early stage. A bonus has been that if politicians have not raised issues during the early stages it has proved possible to deal with some of these major applications as delegated decisions.

## Involving elected members in the vision

In addition to developer presentations, Croydon's planners also hold a series of workshops over the year to develop the "vision" for 16 key places within the borough. Mike involves junior officers in this work to develop skills within his team, especially among junior members of staff who regularly present items and their own ideas to the Member Liaison Forum (MLF). The MLF is a cross-party group that meets to develop planning policy for the Borough. It is made up of two elected representatives from each quarter of the Borough, together with the Portfolio Holder and the Chair of Planning. The deliberations of this group are not binding but go a long way towards informing the policy decisions taken by Cabinet.

Croydon has now adopted masterplans for five key development areas. These have been developed through Boards that have been set up to include landowners, developers and local authority representatives. Working in this way means that all parties have agreed and taken ownership of the masterplan and are then happy to deliver on that basis. Mike comments that this consensus means the planners can move forward confidently, knowing that they have political "buy in" to schemes, although he warns that it can still take a frustratingly long time to get development going on the ground.

## Nationally Significant Infrastructure Projects (Extracts from Planning Portal website)

On 1 April 2012, under the [Localism Act 2011](#), the Planning Inspectorate became the government agency responsible for operating the planning process for Nationally Significant Infrastructure Projects (NSIPs).

NSIPs are major infrastructure projects such as new harbours, roads, power generating stations (including offshore wind farms) and electricity transmission lines, which require a type of consent known as 'development consent' under procedures governed by the [Planning Act 2008](#) (PA2008). Development consent, where granted, is made in the form of a Development Consent Order (DCO).

The PA2008 sets out thresholds above which certain types of major infrastructure projects are considered to be nationally significant and require development consent.

In England, the Planning Inspectorate examines applications for development consent from the energy; transport; waste; waste water; water; and business and commercial sectors. In Wales, it examines applications for energy and harbour development, subject to detailed provisions in the PA2008. Other matters are for Welsh Ministers.

Anybody wishing to construct an NSIP must first apply for consent to do so. For such a project, the Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will make the decision on whether to grant or to refuse development consent.

The relevant Secretary of State is the minister with responsibility for the area of government business that an application relates to. For example, the Secretary of State for Transport takes the decisions on applications for highway NSIPs.

The six stages in the process are:

### Pre-application

Before submitting an application, potential applicants have a statutory duty to carry out consultation on their proposals. The length of time taken to prepare and consult on a project will vary depending upon its scale and complexity. Responding to an applicant's Pre-application consultation is the best time to influence a project, whether you agree with it, disagree with it, or believe it could be improved.

The Planning Inspectorate cannot consider representations about the merits of a proposed application at the Pre-application stage of the process. For advice about how to engage with the process at the Pre-application stage read our [Community Consultation FAQ](#).

### Acceptance

The Acceptance stage begins when an applicant submits an application for development consent to the Planning Inspectorate. There follows a period of up to 28 days (excluding the date of receipt of the application) for the Planning Inspectorate, on behalf of the Secretary of State, to decide whether or not the application meets the standards required to be accepted for examination.

### Pre-examination

At this stage, the public will be able to register with the Planning Inspectorate to become an Interested Party by making a Relevant Representation. A Relevant Representation is a summary of a person's views on an application, made in writing. An Examining Authority is also appointed at the Pre-examination stage, and all Interested Parties will be invited to attend a Preliminary Meeting, run and chaired by the Examining Authority. Although there is no statutory timescale for this stage of the process, it usually takes approximately three months from the Applicant's formal notification and publicity of an accepted application.

### Examination

The Planning Inspectorate has up to six months to carry out the examination. During this stage Interested Parties who have registered by making a Relevant Representation are invited to provide more details of their views in writing. Careful consideration is given by the Examining Authority to all the important and relevant matters including the representations of all Interested Parties, any supporting evidence submitted and answers provided to the Examining Authority's questions set out in writing or posed at hearings.

### Recommendation and Decision

The Planning Inspectorate must prepare a report on the application to the relevant Secretary of State, including a recommendation, within three months of the close of the six-month Examination stage. The relevant Secretary of State then has a further three months to make the decision on whether to grant or refuse development consent.

### Post decision

Once a decision has been issued by the relevant Secretary of State, there is a six-week period in which the decision may be challenged in the High Court. This process of legal challenge is known as Judicial Review.



## PLANNING PERFORMANCE AGREEMENTS: GUIDANCE NOTE FOR APPLICANTS

JANUARY 2013

### 1. Introduction

- 1.1 Planning Performance Agreements (PPAs) were formally introduced into the planning system in April 2008 with the aim of improving the quality of planning applications and the decision making process through collaboration. They bring together the Local Planning Authority (LPA), developer and key stakeholders, preferably at an early stage, to work together in partnership throughout the planning process to provide greater certainty and transparency to the development of scheme proposals, the planning application assessment and decision making. This approach accords with Cotswold District Council's own adopted objectives for the delivery of the Development Management Service.
- 1.2 The important role of PPAs, to help guide positive collaborative working, has also been recognised by the National Planning Policy Framework of which paragraph 195 states the following:-

*"Applicants and local planning authorities should consider the potential of entering into planning performance agreements, where this might achieve a faster and more effective application process."*

### 2. What is in a PPA?

- 2.1 A PPA does not have to be a complex legal agreement between the applicant and the Local Planning Authority. Instead it can be a concise document that includes a number of the core components recommended as a minimum by Communities and Local Government (CLG). These include:
  - Objectives of the planning proposal and the PPA;
  - Main issues to be addressed and a tasks plan;
  - Establishment of a Project team and decision making framework;
  - Project programme.

An example PPA is provided on the [Council's web-site](#).

### **3. When to Use a PPA**

- 3.1 A PPA can be used for all Major applications and it is strongly advised that it is implemented at the pre-application stage to maximise the benefits and give you the best chance of submitting a formal planning application that addresses all the relevant issues. Examples of Major applications include proposals for 10 or more dwellings or for the erection of buildings with a floor area of 1000sqm or more.

### **4. The Benefits of a Planning Performance Agreement**

- 4.1 Entering into a Planning Performance Agreement does not guarantee that your planning application will be permitted. However, there are a number of significant advantages that you will benefit from. These include the following:
- better overall project management at pre-application, application and post-application stages (eg. when dealing with conditions);
  - Early identification of critical issues and improved quality of development;
  - improved collaboration between all parties;
  - more realistic and stricter timetables being agreed and met as a result of removal from the statutory deadlines; and
  - greater accountability and transparency.
  - Collaborative flexibility in partnership, if it is agreed that the quality of the decision beyond 13 weeks would be improved.
- 4.2 In conjunction with the Council's [pre-application service](#), we will also provide you with the following help and advice;
- Agreed dates for when the application will be determined together with other key milestones such as the submission of the application and, if applicable, when it will be presented to Planning Committee.
  - Nomination of a project lead for both parties who will take responsibility for ensuring the PPA progresses in accordance with the agreed timetable.
  - Detailed advice on current national, regional and local planning policy that is relevant to your proposal.
  - Advice on how and who to consult within the local community to ensure that the relevant parties are involved in the process thereby enabling early consideration of all the fundamental issues they may raise relating to your proposal.
  - A detailed Planning Advice Note setting out the issues, the likelihood of planning permission being granted and what steps you should take to improve the likelihood of permission being granted. This will help address any concerns early on and, if permission is granted, reduce the number of

conditions attached to the decision thereby saving time post-decision to enable a quicker start to the development.

- Relevant Council Members will be kept informed of your proposal.
- Input from the Council's Building Control team to ensure your proposal will also comply with the Building Regulations.
- Advice on likely S106 requirements at an early stage in the process so that any legal agreement required can be prepared and completed quickly to reduce delays later in the process.
- Advice on what information the planning application must contain to help ensure that it can be validated quickly.

## **5. What We Need From You**

5.1 To enable you to make the most of the PPA, we also ask that you contribute the following:-

- Provide good quality information and plans, up front, to enable us to provide considered feedback to you.
- Engage in meaningful pre-application discussions/consultations with the local community, allowing enough time for community feedback and for plans and documents to be drawn up/amended that take into account their views.
- Respond positively and in a timely manner to requests for further information.
- Keep the Council informed of progress at all key stages of the project.
- Submit a complete and valid planning application with all the relevant information as agreed with the Council, including a draft S106 where appropriate with solicitor details and evidence of title.

## **6. Cost**

6.1 The Council is able to charge for services provided in the pre-application phase of a PPA, under Section 93 of the Local Government Act 2003. Charges are on a not-for-profit basis and the income from charges for such services must not exceed the cost for providing them. The charging of such a fee enables the Council to provide you with a more responsive and effective service than would normally be possible for Major development proposals.

6.2 The exact fee to be charged for entering into a PPA will therefore be negotiated on an individual basis as it will depend upon the size and complexity of the proposal and the level of expenditure that is likely to be incurred by the Council.

6.3 However, please note that we are currently offering this element of the service for no additional charge when taken up as part of our [pre-application service](#).

**7. Interested?**

7.1 If you are interested in taking advantage of the many benefits of a PPA you should contact one of our Development Management Team Leaders, Mike Napper or Deborah Smith, by telephone (01285 623000) or e-mail ([planning@cotswold.gov.uk](mailto:planning@cotswold.gov.uk)) to discuss the following:-

- i) Whether it is appropriate to use a PPA for your proposal;
- ii) Identify the likely make up of the teams from the LPA and the applicant teams and other key parties that should be included;
- iii) Agree to prepare for an inception process to develop the structure and content of the PPA
- iv) Agree a date for the inception meeting and invite relevant parties.

7.2 You should then complete and submit the form provided on the [Council's web-site](#) to enable us to assess how best to deal with your proposal.

E-mails should be clearly marked in the subject field as 'PPA enquiry'



**COTSWOLD**  
DISTRICT COUNCIL

PLANNING PERFORMANCE AGREEMENT
<b>SITE LOCATION</b>  [...]
<b>DESCRIPTION OF PROPOSED DEVELOPMENT:</b>  [...]
<b>DEVELOPERS TEAM:</b>  Main Point of Contact: [...]
<b>COUNCIL TEAM</b>  Main Point of Contact [...]
This agreement is made the [...] day of [...] between;  (1) Cotswold District Council, Trinity Road, Cirencester, GL7 1PX ( <b>"CDC"</b> )  (2) [...] ( <b>"Developer"</b> )

### PROJECT TIMETABLE (PROCESSING OF APPLICATION)

**The following is only an example of what might be included – please delete and overtype as appropriate**

	Action/ Task	Responsibility	Target Date	
1.	Consultation with Community	Agent	Prior to submission of application	
2.	Submission of Valid Application with completed draft S.106	Agent	[insert date]	
3.	Application validated and Consultations carried out	CDC	Within 1 week of receipt of valid application	
4.	Agent advised of Consultation Responses and initial assessment of proposal and recommended amendments and/or additional information required, if any.	CDC/ Agent	Within 5 weeks (subject to all consultation responses received).	
5.	Submission of any required amended plans/ additional information (go back to 3 if consultation required).	Agent	Within 6 weeks	
6.	Discussion of Draft Committee Report (including conditions if applicable) and identification of any outstanding issues	Agent/CDC	Within 8 weeks	
7.	Committee Meeting	CDC	Within 13 weeks	
8.	Completion of S.106 Agreement (if applicable)	Agent/CDC	Within 2 weeks of Committee	
8.	Decision Notice Issued	CDC	Within 1 week of completion of S.106	

#### Notes

1. This agreement is entered into on the basis that formal pre-application discussions have already taken place between the Council and the applicant/ agent.

