

STATES OF GUERNSEY

REVIEW OF GUERNSEY'S PLANNING SERVICE

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April 2008

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Introduction

I was appointed in February 2008 to carry out a review of the planning function in the States of Guernsey. I am of course entirely independent, with no connections to Guernsey other than having been to the Island on two previous occasions as a visitor. I have some knowledge of the Channel Islands through some similar work I have done in Jersey, though I fully appreciate the differences between the two Islands.

The objectives of the contract were set out in a schedule to the Consultancy agreement and are reproduced as Appendix A. They consisted of 12 specific issues which were to be considered (the last of which was a general reference to "any other matters"), preceded by 3 more general questions which set the scene. I plan to deal with the question of the resources available to the Department – a recurring theme – under the twelfth matter at the end of the report. A number of other points were raised in the documentation which I have also considered, including a reference in the invitation to tender to the States Strategic Economic Plan.

I have approached the task partly by reading a large amount of material which has been supplied to me, and partly by talking to more than sixty people (in addition to the planners themselves) during two visits to Guernsey (in February and March 2008); these included States Members, Civil Servants, and others outside the States organisation who have an interest in planning. Appendix B gives a list of these people and I am very grateful to them for their time and their thoughtful consideration of the issues.

In addition the States placed advertisements in the local press inviting others who wished to make points about the project to write to me. As a result of this I received 14 letters, some of which were from people whom I subsequently met. I am grateful for these letters and have read them all and taken them into account. In addition I

received letters from some Deputies, and also written comments from some of the outside bodies and individuals whom I met. I have also seen a copy of a useful report by David Green, a member of the Department, on the development control service. All of this was very helpful. I quote from many of the letters and discussions during this report, but without attributing comments to any individual or group. I should also say that I have had such a vast amount of material that it would be quite impossible for me to cover every point which was made. This report is longer than I intended in any event. I apologise to any who think there are other points I should have reflected, but I hope I have covered all the important issues.

There are two general points I make as a result of this reading and discussion.

The first is that while there was agreement on a number of issues, there was fundamental disagreement on others. I will seek to make this clear as I go along; but it means that there is no way in which this report can satisfy everybody.

The second is that, while there are clearly important problems of process and resources to be addressed within the Planning Division of the Environment Department, many of the issues raised go beyond the Department into the way the States as a whole organises and approaches its operations. It might be said that the fundamental issue which the States needs to address is the way the States and its Departments operate, the way decisions are made (or not made) at Member level in the centre of Government, and the political structure which leads to conflict, pressure and uncertainty for the planners. One Deputy said to me "I confess – the problems are at the centre". Another said "...there is resistance to the idea of leadership...the system is designed to stop people doing things". In some respects points which were made to me go well beyond my terms of reference, but nonetheless I shall address these issues where they seem to me to be relevant.

It should be noted for the avoidance of doubt that where I refer in this report to the "Planning Division", "Planning", or "the planners", I mean the professional planners, building control officers, and support staff in the Environment Department. Where I refer to the "Environment Board" or "the Board" I mean the Environment Department political Board.

I structure this report in the following way. First I deal with the general question which was raised in the preamble to the schedule in

Appendix A, concerning whether current arrangements are effective in setting strategic policy objectives for the planning system. This will cover much of the ground which participants raised regarding the context in which planning has to operate. I will then go through the twelve points which were listed in the contract. In practice these overlap, not surprisingly, but nonetheless I hope this will be a helpful approach. I will include recommendations as I go along, but summarise them at the end of the report.

Background

This report is produced at a time of change. There is about to be a States election which may alter the policy context. And the new Law is likely to be introduced later this year. This is obviously extremely important and it directly relates to some of the issues which I have been asked to consider.

Planning Law was introduced into Guernsey in 1966. If anyone doubts the importance of planning they need only look at what had happened before. As one person said "a lot was lost before there was effective control". The spread of "ribbon development" across Guernsey was very damaging; an Island which, away from the east coast, is essentially rural appears to the visitor to be largely urban and Guernsey will never recover from those mistakes. It took some time after 1966 for the system to become fully operational and for development plans to be produced.

This is the latest of a series of reports into the planning function over the last twenty years. The two most important were that by Melville Dunbar in 1988 and that by District Audit in 1998. The first of these, relating as it does to the circumstances of 20 years ago, is not of great relevance any more; but the second has a very clear resonance today. The Planning Division supplied me with a paper showing the action which had been taken regarding their main recommendations; many of them have been implemented or partly implemented but I return to some of them later in this report. It is however, as a context for all that follows, worth repeating one of their main conclusions (p 14 and also worded differently on p 12):

"...There appear to be three options for the future of the service:

- An increase in staffing to match workload
- A reduction in workload through a change in policy
- Acceptance that service standards will be constrained by workload"

This remains as true now as it was then (though I would add that it is also important to see whether there are any efficiency savings to be made within the Division). In practice, there has not been any increase in staffing levels and indeed the development control section has been dependent at various times on trainees and supernumeraries in order to function. At present the total number of staff in the section (including one about to start) is 10, including three trainees and one temporary Agency planner – one less in total than two years ago (and of course the departure of the Chief Planning Officer has placed pressure on other senior members of staff).

Though there is widespread unhappiness with performance virtually all of those to whom I spoke recognised that, as District Audit put it, “service standards are constrained by workload”. Resource constraints mean that the public are not getting the service they should get. The new Law may – through the exemptions policy – lead to a reduction in workload though this will be balanced and maybe even exceeded by an increase in appeal and other work.

I have also read a number of other reports to the IDC and the Environment Board considering broadly these same issues. These include reports dated 25 September 1996, 14 February 2000, 3 May 2002, 8 April 2004, and 29 March 2007. These reports are repetitive. They paint a picture of dissatisfaction amongst Members concerning performance, and frustration among officials that the main conclusion of District Audit has not been taken forward.

The new Law

Some people expressed reservations about aspects of the new Law – indeed I have some myself. One States Member said that, if re-elected, he would consider seeking to get changes made to it. But it has taken something approaching 20 years to get it onto the statute book and to prepare the Ordinances. It is my view that it should be put into force as soon as possible, even if it is not perfect. Its advantages outweigh any disadvantages. I have no doubt that aspects of it may need to be reviewed fairly soon after implementation – but without experience of how it operates in practice this will be difficult. It may well be that the fears that some people have will not be realised. If they are, then those aspects can be changed. It is really rather important, though, that such a review process does not take 20 years!

I recommend that the new Law is brought into force without further delay, despite reservations that individual Members or

Officials may have, and that resources are put aside to review the operation of the Law after twelve months and set in motion any changes which may appear necessary or desirable, with a view to implementation not more than three years after the Law has come into operation.

How effective are current organisational arrangements in setting strategic policy objectives for the planning system and ensuring that they are fulfilled?

In my tender response I made the following comment: "The Department works within a culture – perhaps several cultures – which influence the way it operates and the way in which it might operate, and it is important to understand those cultures and demands".

This was based on previous experience – but I do not think I could have anticipated how important it would be in Guernsey. I will admit that understanding those cultures has been a challenge.

But I have read with interest the "Review of the Machinery of Government in Guernsey" (the Harwood Report) 2000. Things have, I appreciate, moved on. But nonetheless many of that report's comments seemed to me to be relevant still.

For example they said that: "Perhaps the most remarkable feature of the present machinery of Government is the near absolute autonomy that each Committee possesses...(which)...often leads to conflicts between Committees and the perhaps unedifying spectacle of such conflicts being aired in open debate" (page 4). And: "Many....cited the lack of co-operation and cohesion in the machinery of Government Island as being of paramount concern" (p 51). This is still the case. They referred to "...the ability of States Members independently to derail Committee policies..." (p 52) and the "reluctance on the part of many politicians to engage in the establishment of strategic policy" (p 49). "It is far from clear who if anyone can pull the political strings and compel individual Committees to implement a cohesive strategic policy that might in some circumstances require Committees to co-operate with each other and subsume their individual authority in the interests of the Island" (p52).

I have quoted at some length – there are many more, similar, quotes I could have used – because my own findings increasingly confirmed that those views remained relevant. I am now in danger of going beyond my remit. But I feel bound to observe that the absence firstly of some kind of strong Ministerial system and secondly of Members

who represent the interests of the Island as a whole rather than of individual Parishes is inimical to good and efficient decision making. These are matters for others to address. But many of the issues and criticisms faced by the Planning Division arise from these fundamental problems. Members and Officers strive hard to make the system work. But much time and effort goes to waste as a result of all this.

I should acknowledge at this point the Government Business Plan (GBP). It is a monumental and impressive document and it strives to address all these problems and more. The very first sentence of the Foreword says that: "The importance of political leadership and teamwork has been at the heart of public debate....the process of building a new action-oriented GBP has continued steadily behind the scenes with this firmly in mind". This process has, I think, the potential to resolve many of the issues. But it can only do so if the culture changes and I do not have the impression that it has yet done so.

I do not recall previously in my career seeing a published document produced by one part of a public organisation which criticised another part of the same organisation. However the Strategic Economic Plan on pages 29-31 comments critically on the performance of the planners, attributing the problems to a lack of resources (and it also, in effect, repeats once again, on page 31, the District Audit conclusion which I mentioned earlier). I make no comment here on the rights and wrongs of the statements in the report. But this is a matter which I would in previous experience have expected to see sorted out at a corporate level. How can it be right for a document endorsed by the States to contain comments and recommendations about resources and processes which, it might reasonably be anticipated, the States themselves have (or should have) the power and responsibility to sort out?

Many of the current policy setting problems from which the planners, in my perception, suffer stem from the relationship between Commerce and Employment and Environment (though I think the problem is not confined to them – the 10 Departments were described by one person as "tribes", both at political and official level). I will say more about the substance of this later – I comment here merely on the process, and I give an example. There is an issue about what is locally referred to as "Fred's in Sheds" – the UAP refers to it more delicately as "Small Workshops and Yards". This is a matter which was raised with me early in my first visit, and it was coincidentally the subject of an Editorial in the local paper while I was

there which criticised the lack of corporate decision making on the matter ("It's time to bang heads", 20/2/08).

The Planning Division, in response to this problem, had produced a report, after consultation with other Departments, entitled "Land for Industry Project". It considered a number of options for tackling this question and identified a number of sites which might be suitable to accommodate these uses. It seems to me to have been a very professional piece of work.

The report was presented to the Environment Board on 22 August 2007 but it was not accepted. The Board sought further information on the need for such sites. But C & E thought the need for such sites had already been established and that the Environment Board should proceed to act on the report of the planners. Several months later the dispute remains unresolved. (I was surprised that the report and minute had not been made available to C & E, but this is normal practice amongst State Departments).

The Environment Board was entitled to take such a view. But two points arise. The first is that it seems quite wrong to criticise the planners, who had sought to take a proactive approach and to find a solution to what all agree is a difficult issue. This is essentially a political problem. The second is that there appears to be no effective mechanism for resolving this dispute between two parts of the organisation. The Strategic Land Planning Group has a locus to do so but has so far failed to resolve it, for whatever reason. The planners are caught in a limbo between their masters the Environment Board and another Department which is openly critical of them.

I was told of other examples where either there was an inability to determine policy, or a propensity to change policy which appeared to be established, or the making of policy in an opportunistic way without the consequences being fully considered.

Briefly – and these examples will be familiar – the change of direction at a late stage on the Waste Disposal Strategy; the (apparently unanticipated) problems created for the planners following the decision to introduce competition into the mobile phone market; and the changes of plan in relation to the Belgrave Vinery site (originally intended for housing, now used for employment, but likely to be needed for housing again in the future) demonstrate in different ways the unpredictability of decision making.

I want to add one further point to the analysis of the Harwood

Report. It seems to me that there is a “blame culture”. This flows directly from the lack of a corporate spirit between Boards and Departments. Again it is something which is recognised in the Government Business Plan. I will return to it later – but it is important because it leads in the Planning Division (and probably elsewhere) to a risk averse approach to the task. It is hard to stress the importance of this sufficiently; it is a key obstacle to change and unless it is addressed it will be hard for the Division to escape from its current difficulties.

So the answer to the question which I was set (how effective are current organisational arrangements?) is “not very effective”. This leads me to ask a number of further questions, some of which were specifically raised in my list of issues:

What is, or should be the role of the SLPG?

Is the Division correctly located under the aegis of the Environment Board?

If a change were to be made should the regulatory function be split from the forward planning functions of the Division?

And, even more fundamentally, what is the Planning Division anyway?

What is the Planning Division?

I note that all the reports I mentioned earlier concentrate on development control performance, and to many of the people who spoke to me this is the key – maybe the only - issue. In some eyes the Division is seen as a regulatory organisation, with relatively little attention paid to the remainder of its functions. My terms of reference go wider than this; but I think it is to the detriment of the Division that this view is taken. As one person said, “...planning is not just a bundle of applications which can be dealt with in isolation”.

As I discuss later, planning, when employed to best effect, is a means of resolving difficult policy issues and of balancing economic, social and environmental objectives in a rigorous and open way; the Division is quite able to do this, but not seen as offering this opportunity.

One person said to me, rather succinctly and I thought convincingly, that “the planners are not seen as a corporate resource; they are seen as the property of the Environment Board”. (The GBP mandates all Departments to use their staff resources more flexibly to support corporate aims but this needs to be embraced not just by the

Planning Division but also by others). There were references to the lack of knowledge outside the Division of, or commitment to, the policies in the UAP and RAP, and the various development briefs which have been produced.

So it seems clear to me that this widespread misunderstanding needs to be addressed. For those who wait impatiently for me to tackle the problems of development control, I will come to them later. But I want to stress here that the Division is more than that. It contains some skilled people in the policy section. They are of course overstretched; but nonetheless they have a part to play in the making of more efficient decisions.

As an example, I was taken to see the site of the new school on the edge of St Peter Port. I understand that this was purchased for the purpose with no consultation with the planners – who, when later informed, argued that it was not a suitable site and pointed to at least one much better alternative. I agree with them that it is a quite inappropriate site, not close to its catchment or to main routes, and with likely traffic problems on the approaches which Islanders will regret for generations. The planners should be involved in such major decisions at the outset.

A current example is the search for a Civic Amenities site. In the Billet D'Etat of March 12 2008 it appears that the relevant Department is actively seeking a site but "even after the identification of such a site there will be processes such as planning to be followed as well as potential consultation with neighbours etc...". The planners told me that the Board had not been aware of the search for a site until very late in the process, after the preparation of the States report. Clearly, however, they should have been involved at the earliest stage. They have the skills and information to be able to assist in finding the most suitable site; and the potential delay to which the report refers should be much reduced or even eliminated if the planning issues have, so far as possible, been addressed and resolved during the site identification process.

This case was mentioned to me by a Deputy in a letter; he went on, referring to site identification in general, to say that "...The initiating Department is not equipped to identify sites. The result often is that a great deal of time and effort is expended unnecessarily. There should be a process whereby either the States or the Policy Council instructs the Environment Department to identify a site or possible sites for strategic or essential States purposes. This system would certainly speed the process when the States have identified a specific need".

The same point had been made to me by the planners, who stand in readiness to carry out such exercises if asked. It is all part of the development of a corporate culture.

The role of the SLPG

It might be thought that the Strategic Land Planning Group would be able to sort out problems such as the school, and the problem of small workshops and yards. It is a relatively recent innovation – a statutory body which is also enshrined in the new Law - and should include all the people with an interest and with the knowledge to deal with such problems. I can only report what was said to me. The (pretty unanimous) view was that the SLPG was a good innovation, that it had made a good start, but that for whatever reason it had become less useful. Members looked after their own interests and did not take a corporate view. I know that officials are looking at ways in which it can be made more effective in the next States term.

I recommend that the Strategic Land Planning Group should be refreshed and upgraded. It should be Chaired by the Chief Minister and he or she should have the remit of ensuring that it operates in a corporate way, without members who simply represent the interests of particular Departments.

Planning under the Environment Board

Much of the criticism of the Planning function was in practice criticism of the political Board. There were very many comments about individual Members, elected and appointed, but I do not think it right to pursue these in this report.

The Board take a particular view – not surprisingly given their remit – which in the eyes of many skews planning decisions towards environmental considerations and away, for example, from economic ones. This, it seems to me, is hardly a surprise and not a reasonable criticism. The planners are following the wishes of the Board which controls them, and the Board is doing the job which it was set up to do. If the States does not want that job done (very unlikely, I would have thought) it should say so, rather than accepting remarks about “sandal wearing” (Guernsey Press 20/2) or “an unreasonable obsession with food miles and sustainability” (my discussions).

In my view it is inevitable, if the Planning Division is placed under the wing of any Board which has a particular sectoral interest, that it will find it difficult to retain the professional balance which is the essence

of planning. The problem would be equally difficult if the Division were placed, for example, under the control of Commerce and Employment; its decisions would lean in that direction and those with an interest in the environment would understandably complain.

As I have said, the essence of planning is that in its policy making and its decisions it should balance economic, social and environmental considerations (as the GBP says it should). That is what planners are trained to do. This does not always mean that there is "competition" between these three factors – the aim is to achieve all of them as far as possible and to find ways in which, for example, the economic ambitions of the Island can be met without compromising environmental objectives and imperatives. The UAP, RAP and development briefs seek to do this of course; but because of the awkward situation in which the Division finds itself, as I have described, it is difficult for this balance to be maintained and the result is the criticism which I heard. Unless this structural problem is addressed the problems which the Division faces will continue.

In my view the Planning Division should report to a Board, or other Member organisation, which has a less partial view (I should stress here that I am discussing Member level organisation – not the Environment Department itself or the Chief Officer, who is clearly highly regarded).

Together or split

I discussed with a number of people whether, if such a step were taken, the policy part of the Division should be placed under some kind of corporate control with the regulatory part remaining where it is; or whether the whole Division should be kept together with a different reporting line to Members.

There are arguments on both sides but I favour the latter. Firstly I think it is necessary to remove development decisions from the Environment Board, as well as policy matters – otherwise the problem I have identified will remain. Second I think it is a mistake to break the links between policy and development decisions; the one feeds in to the other and there should be close contact and liaison between the two sections. Even today – as I shall mention later – there were some comments to the effect that these links could be closer. Third I think that a purely regulatory Division could become isolated from the policy mainstream and could be vulnerable to even more criticism that it was not reflecting the wishes of the States (insofar as anybody knows what they are).

Possible solutions

These are matters which go beyond what I was asked to do – the Departmental structure of the States Government is a complex issue, and one which raises issues outside the organisation of the planning function itself. But I do offer some thoughts.

I think some quite significant changes are needed in relation to Planning itself. My proposal would be that responsibility for high level environmental policy should be placed in the centre, not with an Environment Board. This seems to me to make sense in a number of ways, and also to fit in with the principles of the GBP. Far from being a way of downplaying the environment, it would place it at the core. It is a cross cutting issue – one which affects all Departments. There is a danger, if it is managed by a particular Board, that everyone else assumes that it is being covered elsewhere and pays no attention to it. More than one person said to me that it was not in the “mainstream” and I think this is true – and that it is to be regretted. This proposal might help to put it there.

The present Environment Department would then become, in effect, a “Planning Department”, or a “Planning and Transport Department. There will no doubt be all kinds of internal issues arising from this – what happens to waste policy for example – and these are the kinds of points which I feel unable to comment upon. But the planning function would no longer report to a political Board with a sectoral interest, and the terms of reference of the re-named Department would clearly indicate its independence from any pressure to give priority to the environment or, indeed, to the economy, but to make independent balanced judgements.

The Planning Division (the professional staff) would remain as a single unit, and I recommend elsewhere the appointment of a Chief Planning Officer (however described). It would, however, also need to report, explicitly, to the revitalised SLPG on appropriate strategic planning matters, and be seen to have a role in that regard, alongside the Strategic Adviser (Policy Development). The Minister would in effect wear two hats – one as the Planning Minister, and one as a key member of the SLPG, with a brief to oversee the consistent implementation of States strategic policies through the land planning process.

I recommend:

That the Planning function should not report to a sectoral

political Board

That responsibility for high level environmental policy should be transferred to a different body at the centre of the States organisation. It should not be downgraded in its importance, but regarded as a cross cutting issue, central to States policy

That the Environment Department is then re-named ("Planning" or "Planning and Transport") and that it should be responsible for forward planning policy, development control, design and conservation and building control.

That the Department should report to the SLPG, as reorganised, in relation to cross cutting strategic policies, and that the Minister should have a formal role through the SLPG in overseeing the consistent implementation of States strategic policies through the land planning process.

A number of people raised the constitution of the political Board. Firstly, it was said that it is too small. It is vulnerable to the absence of members and this sometimes threatens the quorum. Secondly there were questions about the role of non-elected Members, who do not have a vote - but I was told matters rarely come to a vote and therefore they very much influence the outcome. It was suggested to me that if there are to be appointed Members they should be people with specific knowledge and expertise (if such people can be found who are impartial enough to sit in this quasi-judicial position). And thirdly it was said that there needs to be a "broad church" of attitudes on the Board, looking at Guernsey in the round. These are important points, and some of them may be addressed by my other recommendations, but generally I think they go beyond my remit; I report them, and if changes are to be made they should be taken into account.

I note that the recommendation of District Audit (R25), that there should be a "Code of Conduct" for Board Members, has been only partially implemented. Though, like District Audit, I have no reason to doubt the probity of the Board this is a matter which needs to be kept under review as time goes by and Membership changes. DA set out reasoning on this issue on which I could not improve. I think it would be very desirable for this issue to be revisited and for a Code of Conduct for Members dealing with planning issues to be produced; but I do not think it is the first priority for action.

I recommend that the District Audit recommendation in favour

of a Code of Conduct for political Board Members should be implemented in full.

I come now to the twelve specific issues I was asked to address

1 The degree to which the planning system is understood and supported by the general public, States Members and States Departments and, in particular, whether their expectations of the system can realistically be met

Much of what I have said already touches on the question of whether the system is understood within the States organisation, and I have suggested that the present level of understanding is poor. I have made some recommendations to bring it into the mainstream.

So far as the general public is concerned the evidence suggests that understanding is not good. States Members made this point to me – “there should be more consultation with the public”. I received similar comments from others. One body said “There is little understanding by the public how the system operates. Information on planning policy processes and procedures are not easily available....there is a perception of a closed, inaccessible system”.

There have, however, been some successful public consultation exercises – for example on development briefs. I was told that visitors to exhibitions were sometimes surprised (and pleased) to find that the States employed planners at all. The view was expressed from within the Division that public involvement was not well developed in Guernsey. Various suggestions came from the staff including “outreach” planning surgeries (open sessions where members of the public can raise and discuss planning issues), or a newsletter, and these are worth pursuing. However, as always, the question of resources comes into the equation – I was told there is not currently time available to run more consultation, and that some saw it as “an extravagance” – a view which I firmly reject. I should stress that the staff recognise the importance of this and would be enthusiastic to implement better external communication: “...we are all frustrated by our inability through resource problems to give this the priority it deserves”.

The role of the local press is worth debate. One person wrote (unsolicited) that “Media influence needs to be considered. The Guernsey Press on occasion is unreasonable in its criticism. There is no real evidence that the Environment Department is hugely inefficient or not fit for purpose”; and “The Guernsey Press will often

intensify the situation with what I consider to be a published unbalanced comment. The consequence is that often politicians will not support their officers in order to maintain relationships with their electorate". Many of the other outsiders to whom I spoke made similar points, though one person said that "Oddly, given its frequent attacks on the States and the Civil Service, the Guernsey Press has occasionally praised the professionalism of the planners". However, I was told that the paper sees itself as "the opposition". This may be an important role; but if the newspaper could add to its perceived functions that of seeking to explain the process accurately and clearly, so as to increase the chances of the public influencing it in an effective and constructive way, Guernsey would be a better place. I should add in fairness to the newspaper that it is not part of the political culture for the planners (or other civil servants) to talk to the press and to explain what is going on. I think a more open relationship on the part of the civil service and a less hostile approach by the newspaper would help both parties, and the Island, immeasurably.

I recommend that the Division consider measures such as outreach sessions where members of the public can raise and discuss planning problems, to improve public knowledge and involvement; and that it should develop a strategy for ensuring that the Press is better informed and is able to ask questions directly to officials about planning matters.

It is generally accepted, including by the planners themselves, that there is not sufficient guidance available, for example on the planning process or on design or simple development control policy. This is clearly an important area of weakness. I discuss resources later; it should be a priority, if it is possible to increase staffing levels in the Division (or to bring in outside help), to prepare much more comprehensive guidance and explanatory material. With the introduction of the new Law this is particularly important; for example a clear explanation of the new Exemptions could avoid many queries coming to the planners. Guidance on how to prepare a planning application, and what supporting material to include, should also be produced and should help to improve the quality (which is sometimes poor, even from professional agents) and reduce the need to ask for further information. Better design guidance is also essential. Within the Division all this is accepted; the only question for them is finding the time and resources to carry out the work.

I recommend that guidance is urgently produced and published on a range of matters including how to make a

planning application and what material to include; the nature and purpose of pre-application meetings; exemptions in plain English; design guidance; and such other matters as the Division may decide.

See also my recommendations on resources under question 12.

Open meetings

This may be a suitable point to discuss the difficult question of open meetings of the Board when it is discussing planning matters. There were strong views on this. Some were fiercely in favour, some equally fiercely against, and there is no consensus to be achieved. This is a matter which was discussed by the Harwood Report (which was against open Committees in general, though it was not discussing planning in particular); and by District Audit. The latter proposed, perhaps rather imprecisely, on page 18 that the States should "Consider ways in which the public can gain greater access to the decision making process. This may include allowing access to committee meetings".

I recognise the objections to this proposal. These include possible extra costs (though in practice I do not believe these would be significant); a limitation which might be placed on the free and frank expression of views; and the precedent which it may set for other Committees (which is certainly a consideration).

I have considered this carefully, taking into account these views. I am of course well used to the system of open Committees which has been in place in the UK for many years; but I recognise that this does not mean that such a system would be successful or desirable in Guernsey.

However I recommend in favour of it. I think it would improve public understanding of, and confidence in, the system. It would improve the understanding of other States members too. I agree with one of the Deputies who said to me that it would be likely to improve the quality of debate. It should improve the quality of reporting in the press, assuming intelligent and responsible journalism. It would undoubtedly demonstrate that decisions were being taken on the basis of proper information and with regard to the correct policies and other considerations. It would publicly demonstrate the probity of the Board, of which I have no doubt. In my view there should be no views relevant to the quasi-judicial process of determining planning applications which cannot be expressed in public. Therefore I do not

think it would inhibit debate.

It would be appropriate to introduce this, initially, during the discussion of planning applications; but should this proceed satisfactorily it should be extended to planning policy issues – such as the revision of the RAP/UAP, or the preparation of briefs or other guidance - too.

I think it needs to be made clear that this is a planning issue only and does not necessarily set a precedent for other Committees – though I recognise that there would be pressure to go further. But having said that I firmly believe that it is in the interests of planning for the public to be able to gain access to the decision making process. And I believe that it would significantly improve public understanding of the process and confidence in their planning Division and in the Members taking the decision. It would also enhance the ability of people to have an input to that process.

There will of course need to be safeguards regarding personal or commercially confidential information – there is ample experience of this elsewhere.

I recommend that Board meetings dealing with planning applications should be open to the public and the press and that if successful this should be extended to other planning matters in due course, subject to suitable safeguards about personal or commercially confidential information.

The question of whether applicants and other interested parties should be permitted to speak at such open meetings is a related issue – it need not necessarily be introduced at the same time. I think it best to take it one step at a time but I think in due course such an opportunity – widely operated elsewhere – should be introduced. It is important that this is not limited to the applicant – I mention this because some seemed to think this would be the case; other parties with a direct interest should also be allowed to speak.

I recommend that the question of whether parties should be able to address the Board should be considered after a period of two years.

Commerce and Employment

I said that I would return, briefly, to the relationship between Commerce and Employment and Environment. The importance of the

Guernsey economy, and the threats and opportunities, are not lost on me. The Strategic Economic Plan (SEP) tackles this and I have already mentioned its comments on the Planning Division.

There are significant differences between the two Committees. For example the SEP (Action Point 5) calls for a “degree of over-supply [of land for business] to allow market forces to determine use...and provide “headroom” to facilitate movement and unpredictable expansion”. C&E feel that the planning system needs to be more flexible in order to cope with whatever the next opportunity might be, and that there is latent demand. These reasons are not, it seems accepted by the Environment Board. They feel that “over-supply” would not necessarily lead to land being developed – indeed could have the opposite effect – and that given the scarcity of land in Guernsey and the need to protect it for future generations it is unwise to be too generous in provision. I heard various views from outside experts – surveyors and developers – on this point and not all of them supported the C & E view. A surveyor said to me that “the true demand for light industrial land is virtually zero”, though another felt that there was a need for more office space.

A related point is that the Environment Board has required detailed information about the need for such land – evidence to support its allocation. I was told by several people that the evidence base for employment and indeed other issues is weak. An outsider said that the States need to “...get some credible evidence that could be substantiated” and that the present evidence was “...just gossip”.

C & E have found this difficult to provide but are nevertheless convinced that it is necessary to increase supply in order to ensure that no opportunity for development is lost. They are frustrated that Environment “want everything proven”.

Planners have sought assist this through the preparation of development briefs for various sites. The briefs for example for Saltpans and Leales Yard seem to me to be professional pieces of work and seem to be leading to satisfactory outcomes, potentially with a higher quality of development than might otherwise have been the case. These have taken too long to prepare – Planning acknowledge this (though a surveyor said that Saltpans could probably not have been brought forward more quickly because of a lack of demand). Resources are once again the main cause of the delay (though issues such as the access problem at Saltpans have also proved difficult to resolve). But I am not entirely sure why – apart from the timescale – C & E seem to view these briefs with so

little enthusiasm.

This is a very frustrating issue. The planners feel that they are the subject of vitriolic and unjustified criticism. I heard some of this and thought it was unhelpful to the cause of C & E and the States, and said so; but I can also see why C & E think that the planners are standing in the way of their achieving their goals. Yet in fact both are trying to do what they see as the right thing.

The GBP (p 1451 of the Billet D'Etat of 25/7/07) sets out strategic land use policies which make clear that the States need to work within a structure which balances economic, social and environmental considerations:

"States policy is for economic growth and environmental quality achieved through a balanced and sustainable strategy for the benefit of Guernsey. The three interdependent principles of sustainable development as they relate to the local context are:

- To encourage the further social and economic development of the Island and to ensure as far as possible that sufficient land and support infrastructure are available to accommodate this objective
- To use land and buildings efficiently and consequently to channel development activity into existing and committed urban areas....constraining further inroads into undeveloped land...
- Actively to conserve and enhance the quality of the environment of both urban and rural areas".

I have already indicated that the Planning Division needs to be placed in a situation where it can do what planners do – which is to balance these objectives independently without bias towards one and away from another. Over-provision of land is not necessarily in conflict with these overall aims – it fits well with the first of them; but given the second and third of them I can see why it needs to be fully justified and since C & E are also bound by the GBP I would hope that they might accept this. Both Departments have to work within the (admittedly difficult) confines of this overarching policy.

Nothing whatsoever will be achieved if C & E spend time complaining about the planners. It merely makes them more defensive. C & E are quite right to complain about delay; but not to complain about the attention which is paid to the three arms of the States corporate policy.

An outsider put it in an interesting way: "C&E and Planning are not looking each other in the eye; they are looking over one another's shoulders". In other words they were not addressing their differences sufficiently directly. I think the GBP provides an opportunity to tackle this difficult problem. A political figure in the centre needs to bring the Planning Division and C & E together and to help them to understand one another's problems. If Planning has a new home by that stage, such a debate should be easier – but ground needs to be given on both sides. Clearly SLPG has a role in doing this; if the new political Members can put aside their "tribal" loyalties, a better relationship may be achievable.

I recommend that the Chief Minister in his recommended role as Chair of the SLPG should as a priority seek to find common ground between the Planning Division and Commerce and Employment, ensuring that both operate within the framework of agreed States policies.

2 The boundary between the responsibilities of the Strategic Land Planning Group and the Environment Department.

I have already discussed the place of the Planning Division in the overall structure of the States and it is clear to me that there is confusion within the Division as a result of having more than one body expressing views about its activities and policies. It is clear that it sees the Environment Board as its "master" but on occasion is pulled in other directions by the SLPG (which is often very critical of it). The proposals I have already put forward should assist in resolving this problem.

The Strategic Land Use Plan (SLUP) is an important part of the GBP. I am aware of the "Guernsey Tomorrow" work, and the fact that the SLUP is under review. It is however clearly crucial and needs to be taken fully into account in decision making by all Departments.

3 The way in which the planning service is managed as a division within the Environment Department and issues arising from this arrangement including, for example, the Environment Department's responsibility for administering Crown Land.

In my earlier discussion of the place of the Planning Division within the States organisation I was concerned with the way in which Members took decisions. The place of Planning at official level within the Environment Department caused less concern amongst those who

raised the subject and as I have said the skills of the Chief Officer are appreciated.

Three particular issues need consideration.

The first is one to which I have already alluded. This may or may not be the right place to expand on it – but it underlies much of what follows. I talked of the “blame culture” (p8) and the risk averse stance of the Planning Division. In some of the comments which were made to me, it was said that the Division was “cowed”; that it reeled under the constant barrage of criticism which it received, both internally and externally. “There is an absence of confidence due to constant political flak”. I don’t want to paint a picture of the planners as “victims”, helplessly suffering the slings and arrows of outraged critics. This is not the case. But on the other hand there is a natural response to this situation which is to close ranks, to become defensive, to become cautious. The reader would do exactly the same. There is a tendency to delay in order to ensure that every detail has been covered and every possible criticism anticipated. There is a reluctance to be pro-active in case the weight of opprobrium descends once again. And since criticism this comes from all sides – internal and external, Members and officials, pro- and anti-development – it is hard to deal with.

There was an interesting manifestation of this when I followed up some of the cases which had been mentioned to me by the people I had met. It was possible, even though some of these cases were some years old, to look at the files and see every detail of what had happened and what had been said. This was very helpful to me of course. But it indicates a culture in which there is an over cautious approach – the planners are obviously well used to people like me crawling over cases in this fashion, and therefore feel that in order to defend themselves they have to write everything down so that they can answer the points which are raised.

Planners accept that they will be criticised because they know that all of their important decisions are likely to upset one or other of the protagonists. They are also constantly aware that they are subject to challenge in the Courts. For these reasons among others they go about their business in a methodical way, and they operate on the basis of important legal and procedural constraints (something which their critics do not always understand). Judgements such as that at Sandpiper Vinery (a judicial review and subsequent independent inquiry into the handling of a planning application) emphasise the need to ensure that planning decisions are consistent with adopted

policy.

This does not prevent them operating in a flexible way; it does not even prevent them from procedurally “cutting corners”, judiciously; but this can only happen if the planners feel they have the backing of Members and other officials in doing so. They do not have this backing at present; if anything goes wrong they will not be supported. And they cannot be infinitely flexible – twisting this way and that in response to particular pressures and personalities; that way lies confusion and inconsistency. They must operate on the basis of policies and plans which everybody understands and to which everybody can contribute; these truths are not always appreciated either.

I will return to this when I discuss the efficiency of the Division later. But I cannot stress it sufficiently. Unless and until the constraints within which the Division operates are understood; and unless and until they are given firm backing by Members and other Officers; they will remain cowed, defensive and risk averse.

The second issue is whether there should be a Chief Planning Officer, or Head of Planning. A number of people (inside and outside) said to me that the Division suffered from the lack of a single professional head. It “lacked coherence”. Again this was not a reflection on the Head of Department, and certainly not on the two people who are in the lead in Planning itself. Rather, it was a reflection of the rather awkward situation of having twin heads of profession. And also of a feeling that planning – by not having its own Chief - had been downgraded to a second tier. It did not, it was said, have a direct voice in corporate decision making at political or officer level, was not able to hold its own in the debates about policy which I have discussed, was not able to present its own vision of the future, and was therefore marginalised and particularly vulnerable to criticism. A professional planning input to the Chief Officers’ Group, in particular, would help to alleviate many of these problems, and to nip in the bud some of the disputes which I have been discussing.

The points which I have just made about the blame culture are relevant here, and the job of the Chief would be a difficult one in this situation. On the other hand he or she could have an important role in explaining the point of view of the Division, and in handling some of this criticism – allowing the others to get on with the job in a less frenetic atmosphere.

I refer back to my discussion about the future of the Division; the

role of the Chief might again be important in ensuring that the twin roles of the Minister, and of the Division, in advising both the SLPG on policy and the Planning Board (however named) on other issues, were achieved satisfactorily.

I recommend that a Chief Planning Officer, or Head of Planning, should be appointed and should be a member of the Chief Officers Group.

The third concerns the issue of Crown Land, which is raised in the terms of reference. Not all Crown Land is administered by the Environment Department – principally those areas of the foreshore, beach and adjacent lands which the public use for recreation, which the States have managed on behalf of the Crown for many years. In any event the Crown Land is subject to the overall control and direction of HM Receiver General.

I have seen a letter from the Chief Officer to HM Receiver General which sets out the reasons why he considers there is no problem in retaining within the Environment Department both responsibility for Crown Land and also the planning function (28/11/07). He does not believe that the Environment Department as planning authority would determine an application differently if it were Crown land. I have not seen evidence to the contrary. He refers to the professionalism of his staff, which I do not doubt, and to the existence of “Chinese Walls” within the Department.

But in my view the perception is as important as the reality here, and a contrary view was put to me by HM Receiver General, who felt that the administration of Crown Land should be transferred to the Treasury and Resources Department.

My view is that there should be a visible separation between the administration of Crown Land and the planning function. This is not because I have any evidence of inappropriate decision making. It is because it needs to be crystal clear, to the public and indeed to other States members that decisions are being made on policy grounds and not on any other grounds. Of course if open Committee meetings were to be introduced then the veracity of the Chief Officer’s comments would be regularly demonstrated.

I recommend that, however achieved, there should be a separation between responsibility for planning and responsibility for Crown or States Land

I want to discuss the wider question of land owned by the States at greater length. There was conflicting evidence on this.

On the one hand some people felt that the States Property Service was discriminated against because of the understandable need to demonstrate that there was no favouritism being extended to them. I was impressed by the officers representing the Treasury and Resources department whom I met; they understood the need to be careful in these cases and were keen to discuss the issues and find common ground with the planners. They stressed the need – as I have done – for a corporate view and for early discussions. But they were concerned about delay (naturally) and wanted to see a more flexible approach.

But on the other hand it seemed during some of my other discussions that there were those who thought that the States could and should be treated differently from others. The legal position on this will change with the new Law; but the moral position will not. Permission should not be given for development by the States or its offshoots, contrary to the established principles of States policy (particularly as expressed in the UAP or RAP, and indeed in the GBP), unless exceptional reasons can be demonstrated.

An example of this is the case of St Andrews Quarry, about which I heard a great deal. It has a long and complicated history, set out in a letter which I have seen from the then Environment Minister to the then Chief Minister in June 2004. There have, once again, been delays in dealing with it which are hard to defend – though at root this is an intractable problem. I do not go into the merits of the case; there are two proposals, for a headquarters office and for some industrial units. According to the letter the office proposal, at least, is contrary to the provisions of the RAP. Such a proposal would not be approved if it came from a private person, and this being so there would need to be special circumstances if it were to be allowed, in my opinion. The planners see themselves as “defending the States own policy”.

However it was made very clear to me that the Public Services Department expect the proposals to be approved, and I was told that they are looking forward to a refusal from the Environment Board so that they can go to the States and get the decision overturned. I cannot view this approach with equanimity. There may be reasons to allow these proposals – I repeat I am not concerned with the merits. But this kind of approach seems inappropriate to me. No part of the States organisation should see itself as having the opportunity to ride

roughshod over approved States policy. It is another illustration of a lack of corporate thinking and a lack of regard to the plans and to the GBP.

A more difficult example was the replacing of information boards on about eighty listed buildings around the Island. The relevant Department felt that a general consent could have been given for all these Boards. While I can understand their frustration at such minor applications taking so long to deal with, I can also see that any development, however minor, affecting listed buildings is sensitive. Such blanket permission would not have been given to a private owner, and it is difficult to treat the States differently. The option, which was suggested to me, that the relevant Department "...proceed with the works and make a retrospective application on the basis that if there were objections it would simply move those boards and reapply with a modified design" is irresponsible. It is hardly the example that the States should be setting for other applicants. Nonetheless, I think there may be a middle way here, where a protocol or set of criteria might be developed, with care and co-operation, to deal with such cases. While the planners need to appreciate the problems and frustrations which other Departments have, the constraints (legal and moral) of the planners themselves also need to be understood. But this could be considered as part of the recommendation which follows.

I recommend that a Code of Practice for dealing with the development of States owned land should be prepared, published and operated by all States Departments and bodies. This should be founded on the underlying proposition that the States should work on the basis of the same policies as other land owners unless there are exceptional reasons for departing from them.

It was also suggested to me that States applications which are in the public interest should be fast tracked – "jump the application determination queue". Generally, I do not think this is right as a matter of equity. Private applicants will feel that their applications, which in some cases carry considerable benefit to the Island, are as important. I think the key is to improve performance on ALL applications.

But are there any circumstances in which States applications could be so important, and so much in the public interest, that they should be given priority? I think the answer might sometimes be "yes", though I think such cases should be rare and that if the general performance

of the Department is improved they would be even less common. There need to be clear criteria, approved and published by the States to cover such circumstances and to identify the kinds of cases where this might arise. The most likely would be those where there is some kind of emergency relating to a particular public service. The decision should be taken at a high level – perhaps by the Chief Minister - and made known to the public.

4 The rigidity/flexibility of the planning system both in terms of development plan policies and the way these are interpreted in dealing with individual planning applications

I have already referred to the importance of establishing policy and sticking to it. This has been an issue everywhere I have worked. The making of policy seems difficult; tackling individual proposals on an ad hoc basis seems easier. In fact, of course, without the hard work of policy making it becomes very difficult to make rapid and consistent decisions on individual proposals.

It is important to make this point. The policies which we are discussing are the States policies. They are not the Planners' policies. This seemed to be overlooked in some of my conversations – it was as though the planners had drawn up a set of policies of their own and were imposing these on other Departments. This is wrong, and the planners should not have to defend them against other parts of the States organisation.

The two plans – Urban and Rural – seem to me to be good pieces of work which compare well with other such documents which I have seen. They provide a solid basis for decision making, with some crucial policy decisions having been made. In my view the level of policy making, in a small Island with little land to spare and great pressures for development, needs to be strong. Guernsey cannot afford an ad hoc approach to the development of scarce resources. The Plans should be followed unless there are very significant material considerations which might over-ride them; but on the other hand they do not comprise a rigid set of rules which must be followed in all circumstances at all costs. I return to this point in more detail under my question 11 (p 60). Care needs to be taken – especially at the minor end of the scale. I received many complaints that Planning goes into too much detail and I will address this point later.

The plans have of course been endorsed by the States and in some areas the intentions of the planners to make them less rigid was frustrated. For example, in the rural areas, the planners sought to

reduce the number of Conservation Areas, concentrating on those which were of greatest significance and strengthening the policies as they applied in those areas. This was not accepted by the States and all the previous Conservation Areas were reinstated. This means a much higher level of detailed control than the planners had advocated. The States is perfectly entitled to make such a decision – I mean no criticism of them. But they, or others, are not entitled to complain that the planners are exercising too inflexible a set of policies in such areas.

In discussing the relationship with Commerce and Employment earlier I referred to the development briefs. There is an issue about the length of time taken to prepare these, but there also seemed to be an issue as to whether they were needed at all. I conclude that, at least in relation to the larger sites to which my attention was drawn, they had made a valuable contribution to improving the quality of development in those areas. I was told that there have been cases however where briefs have been required for smaller sites and that this could over-complicate the process without adding much value. The policy on this is set in the UAP. I did not see examples, but proportionality is certainly important, and I was told that the planners are reviewing the effectiveness of briefs and the procedures they use to prepare them. This is a factor to be taken into account in that review but I make no specific recommendation. I was also told – and can well believe – that the updating of the briefs, as circumstances change, can be a problem, and this should also be considered in the review.

5 The handling of consultations on planning applications with official consultees, other stakeholders and the general public, bearing in mind the arrangements to be brought in under the new planning law

During all my discussions, and in the material I read, there was very little said about this particular point. There was however one important issue – which is that some of the organisations whom the Department must consult are very slow in replying. This can and does hold up the processing of applications. This is likely to be because of a lack of resources in those sections – for example even within the Environment Department traffic have very limited resources to deal with the necessary casework. C & E in respect of consultations on agriculture are also slow, but the Board of Health are very efficient in responding on cases where they are consulted. I refer later (p32) to the possibility of targets for these bodies.

6 The efficiency of the development control process including levels and standards of control, checking and reporting procedures, use of exemptions and use of delegation. Particular consideration should be given to the proportionality of exercising detailed control of small scale development

There are two parts of this report which I regard as being particularly important. The first is the earlier discussion about the States organisation as a whole, including the policy making processes and the blame culture/risk aversion. This is the second and there is a lot to say about it.

Comments on the planners

I heard very many favourable comments about the staff in the Planning Division. For example:

"...would like to express their appreciation to the staff of the Planning Department for trying to provide a good level of service within the constraints they currently have, though they do not have the resources to provide the service needed..."

"Overall the people involved are very pleasant, therefore the staffing, delegation or system within the Environment Department is not as it should be"

"The planners are very good, in a very difficult time"

Most people appreciated the problems which the planners faced and there were very few personal criticisms of Officers. It is important to register this point firmly before proceeding further.

The complaints

However there were obviously complaints and concerns – I would not have been writing this report otherwise. They fell essentially into the following categories:

- (i) Delay
- (ii) Lack of transparency
- (iii) Problems over pre-application meetings
- (iv) Too much attention to detail
- (v) Too negative
- (vi) Paying for applications
- (vii) Some other issues

(viii) The processes within the Division

I deal with each of these in turn – but first I give some statistical background

Performance Statistics

The number of applications received in recent years has been

2003	4497
2004	4547
2005	4374
2006	4351
2007	4059

The overall average time taken to deal with all planning applications, including those dealt with alongside Building Control Applications and those including heritage applications has been:

2002	5.92 weeks
2003	8.23 weeks
2004	8.67 weeks
2005	8.74 weeks
2006	10.38 weeks
2007	12.27 weeks

However these averages mask a very great variation. For example, to take a snapshot, figures I was given showed that in January 2008 there were 281 applications outstanding which had been with the Division for 15 weeks or more. There were 181 applications more than 20 weeks old, and 14% of cases determined in the first three months of this year had taken 20 weeks or more to decide.

The caseload per officer varies, with trainees able to carry a lesser workload for obvious reasons; but the experienced planning officers are all dealing with 400+ cases per year (reaching over 500 in some cases). This compares with an expected average elsewhere of some 150-200 per year. As at 11 March three members of staff had an outstanding caseload of well over 100.

These findings are similar to those discovered by District Audit in 1998; the situation has not changed. Even allowing for the fact that many of the applications are minor ones, this is clearly an exceptionally heavy workload. Nobody to whom I spoke suggested for a moment that the staff were not working extremely hard – perhaps

too hard in some cases, with examples of staff not taking the holidays to which they are entitled.

Targets

The Division does not have a formal set of targets, as in other jurisdictions. It “normally seeks to deal with most applications within a period of eight weeks from registration” but in its acknowledgement letter for planning applications it notes that at present the heavy workload means that the decision is likely to be reached “considerably beyond the normal target”. Targets have advantages but also unintended consequences; for example if they are too rigid, experience elsewhere has shown perverse results such as Planning Departments refusing applications just before the end of the target period, even though there may be the possibility of negotiating a satisfactory outcome.

Despite this, some form of publicly available performance statistics seem to me to be necessary, and they need to be monitored effectively. I refer to these as targets for the States, through the Division, rather than simply as targets for the Division. This is to reflect the fact that action needs to be taken at States level – e.g. to implement the new Law, later to consider extending exemptions, and to deal with the resource issue; it is not possible for the planners to achieve these targets alone. There needs to be corporate ownership of the targets and a corporate approach to meeting them. I also refer to them as indicative targets. I mean by this that their purpose is to indicate the level of performance which is acceptable and to monitor the States’ progress in achieving and maintaining that performance. But I do not mean that they should be a stick with which to beat the Division – still less (as in England) that there should be penalties of some kind if they are not met. This would not only tend to undermine this corporate perspective but might also have unintended consequences, as it has elsewhere.

I recommend that the States, through the Planning Division, should have indicative targets in relation to performance. These should cover the length of time taken to deal with applications of various sorts (eg 80% of householder cases to be dealt with in 8 weeks; 80% of other cases to be dealt with in 13 weeks; with individual targets or contracts for very large cases). For the next three years a gradually tightening series of targets should be set which enable the Division to reach these levels. The achievement of these targets will be dependent on the implementation of all the relevant

recommendations in this report, including resources.

It may be necessary to set targets for consultees to respond on planning applications in order for the planners to meet their own targets.

Similar targets should be set for building control and relevant targets should also be established for the review of the RAP and UAP.

It is important not to ignore the question of the quality of decisions – timeliness is not the only issue. Some people said to me that there is an emphasis on quality at the expense of timeliness at present – but there were plenty of complaints about it (as there always will be, mainly from the disappointed customer). Nobody really knows how good the quality is, and there can never be agreement – for example some think Admiral Park is quite the most appalling development in the Island; others that it is a splendid achievement.

Experience elsewhere is that quality is almost impossible to monitor satisfactorily but there are several mechanisms which may be useful. One is to measure the number of comments and complaints and to analyse these in order to look at improvements to the service. A second is to carry out surveys of applicants, agents, consultees and people who have commented on applications, from time to time, to measure their response. A third is to take a random sample of cases and trace them in detail through the process to see how they were handled and how the process could have been improved. A fourth is Peer review – for example to compare performance with similar places (such as Jersey or the Isle of Man). And a fifth is to carry out post decision visits to a selection of sites to examine results on the ground – which after all is the whole point of the exercise.

I recommend that appropriate quality assurance measures from the list I have described should be introduced once timeliness is under control.

(i) Delay

I can be unequivocal. It is quite clear that the time currently being taken to deal with applications is not acceptable. This is the view inside the Division as well as outside. Most (but not quite all) of the people I met were concerned about this – for example:

“The biggest problem for our industry is the time scale taken for

applications, which can be as much as 26 weeks and beyond..."

"...the long delays in receiving responses to planning applications has been and continues to be one of the major issues...."

"Most applicants find time taken to process applications is unacceptable....no process to provide a decision date....project timescales cannot be realistically planned due to apparent inconsistencies in processing applications"

"...the larger Island projects tend to almost block the system to a standstill...."

And in complete contrast:

"I can only conclude that preferential treatment is being given to simpler/minor applications....".

And, on a slightly different tack: "I am not so bothered if it takes longer so long as it is predictable"

I need say no more about the problem – but I need to say a lot more about the solutions. These fall under several headings – there is no magic fix:

- Reducing the amount of casework. As I have indicated the new Law will reduce the number of applications through the increases in exemptions and also the elimination of double handling (following the replacement of "Permissions in Principle" by outline and detailed applications). These are balanced by increases elsewhere, so the reduction in workload will not be so great as some hope; nobody was willing to give me a firm prediction – some well informed sources thought it might even increase workload - but it may have some benefit and it might be extended later
- Some changes to internal processes – see below
- Some reduction in the level of detail of examination of applications – again see below
- The preparation of better guidance – see above
- An increase in the level of resources available to the Division.

It is my judgement that ALL of these will be necessary.

(ii) Lack of transparency

In many of my discussions I heard that there was a lack of

transparency in the process. People simply did not know what happened to their application once it had been submitted. Someone said that it disappears into a “black hole”.

“We are in the dark after a scheme has been submitted. We don’t know what’s going on”

“We fully appreciate that Officers cannot give binding assurances....however many discussions (which are often difficult to arrange within a commercially reasonable period) are simply a waste of time as the planning officers are unwilling or unable to offer any meaningful advice or information....largely due to lack of confidence (as a result of past experience) that their professional views will not be supported by their managers and/or at a political level....”.

I have a great deal of sympathy with this. The Division is, without doubt, at fault in not explaining this properly. On a number of occasions I found myself – having watched the process – explaining to people what happened. I was able to answer some of the criticisms. For example one person alleged that consultations were not sent out until several weeks after the application was submitted – whereas I had seen this being set in motion at the “Team Table” on the day after the applications had been received. Another alleged that applications were not registered for several weeks after receipt in a deliberate attempt to make performance look better; this is also not the case (though there are some delays in registration due to administrative staff resources which I shall consider later). I was also able to explain to some people the “two pairs of eyes” principle, to which I also return later; this means that no decision can be made by one individual and therefore no applicant can be disadvantaged by having an application allocated to a particular officer (as some alleged). This principle seemed to be largely unknown outside the Division and those who raised the matter were surprised and comforted to find their complaint unjustified; and that decisions were vetted at a higher level in a search for consistency and fairness (but of course this adds to the time taken to deal with each case). There were several other examples of this kind.

In addition, I was told by several people that I met of particular cases which in one way or another had “gone wrong”. I followed these up. In some cases there had been significant delay – obviously a genuine problem. But in others the reality did not seem to match the complaint – the story from the files was different from the story I had been told. In some cases the difference between what I was told and the reality was quite astonishing. It was described to me as a “bizarre

and deeply depressing aspect of planning in Guernsey". It was obviously due to a lack of communication, which had led to a misunderstanding either of policy or of the process, even though in some cases the planners told me they had gone to some lengths to explain.

It seems to me that it is entirely in the interests of the planners to make very clear what happens to an application once it hits the Division. I put this to them and they said that this had been tried in the past but the information seems to have been forgotten. This is no doubt true, and the complainants do have some obligation to understand what is going on. But nonetheless the exercise needs to be repeated at intervals. It is intended that there will be briefing meetings for the Members of the new Board after the election; these should be extended to ALL members of the States and similar briefings should be held for those outside the organisation who have regular contact. Some of them told me they would welcome this. They should turn up, listen carefully, and remember what they are told. And this should be repeated from time to time to ensure that communication links are maintained and the messages are not forgotten. It would be wise for the meetings to be moderated by an independent person since a small number of people can become unhelpfully heated about these matters.

I recommend that briefing meetings are held for all States Members after the election and that meetings are held on a regular basis with those who regularly come into contact with the Division. At these meetings the process which is followed in dealing with planning applications should be explained. In addition guidance should be given – internally about the policies, processes and proprieties which Members need to follow, and externally about matters such as the material which needs to be submitted with planning applications or the approach to pre-application discussions.

I understand that case officers are not encouraged to have contact by telephone or e-mail with applicants. It would carry the danger that things will be said that are later regretted. However, the Division accept that this will and should increase, so long as it is recognised that comments are without prejudice and so long as conversations are adequately recorded.

I came across a number of quite serious points which arise from this lack of communication. A number of people said that they felt intimidated – they either wrote to me anonymously or expressed

concern that if they criticised the planners they would be punished in some way. ("May I apologise for remaining anonymous; this is due to the fact that I fear that by expressing my views it will leave me vulnerable for future refusals..."). I simply do not believe this. I think the planners are professional people who are (perhaps to excess) doing things "by the book". I do not believe they are – as one person put it "bad losers". Planners – dealing as they do with finely balanced arguments in relation to particular cases – are well used to having their decisions or recommendations challenged or overturned by Members, on appeal, or in the Courts. If they bore grudges every time this happened, they would be labouring under an intolerable weight of unhappiness. If there have been any individual cases of a particular planner seeking "revenge" after having lost an argument it would be deplorable; but I heard no real evidence of this, was told of no particular cases, and I cannot take it any further. In any event the introduction of an accessible appeals system should make sure any such cases are exposed.

But I think it illustrates my point – the planners would be better off if they were open, if the process was transparent, and if people knew what was really going on.

(iii) Pre-application discussions, and related matters

I note that planning officers spend a considerable amount of their time on discussions with applicants, agents and members of the public – one morning or afternoon per week (or 10% of their time). This is more than would be spent in most Authorities in England – where the difficulty of getting pre-application discussions at all is a frequent source of complaint. There is also a "duty planner" system, on a rota basis, for dealing with telephone inquiries etc.

All this is good and beneficial, and the time taken in doing it should not be under-estimated. But nonetheless a number of points of concern were raised under this heading. The main ones were:

- The difficulty of getting a meeting in the first place
- The vague and unhelpful advice which was given
- The fact that that advice might be changed by a more senior officer

While these are widely held views, and clearly there is substance to them, not everybody agreed with all them. In particular one architect told me that he was always very careful to supply, at least a week in advance, details of the case which he wished to discuss, with plans etc. As a result he found the discussions very helpful. Officials had

had the chance to consider the case, talk to more senior staff, maybe visit the site. The advice tended to be reliable and the whole process was smoothed as a result.

The Division in its defence made similar points. Often applicants or agents came in with no notice of what they wanted to discuss and little idea of the outcome they were seeking. In some cases they were virtually asking the planners to design the scheme for them. For a member of the public this might be reasonable and the planners would help as much as they could; but for a professional it was not a reasonable way to use up the planners' precious time. "The Department is not there to provide a free design/architectural service to applicants" (outside body). It is clear that there is a great variation in the competence of those who approach the planners. Some are as good as you would find anywhere. Others are not. There is no registration of architects in Guernsey – anyone can set up in business – and some outsiders as well as the planners commented that this was unsatisfactory.

The planners added that sometimes the advice given was "neither heard nor taken". An outsider said that "complaints about lack of advice may really be complaints about the unwelcome nature of the advice".

This could be improved if the Division sent out notes of what had been said, and this was suggested to me. I do not recommend it – not because it would not be helpful but simply on the grounds of the time and resources which would be needed to do this. However once a state of equilibrium has been reached it might be reconsidered.

The Planning Division could again help itself by explaining all this and by issuing guidance about pre-application discussions. It is not in fact reasonable to expect a hard pressed officer to give an instant reaction to a scheme – especially in the risk averse atmosphere which I described earlier. Pre application discussions are important but they are time consuming and need to be better organised – along the lines of the approach which the architect I have mentioned above habitually adopts.

This lack of warning and preparation may explain some of the difficulties – especially the vagueness of the advice which is often given (and it was not suggested that this advice was given in bad faith). But the possibility of that advice being countermanded at a later stage needs debate. When I raised it, senior officers seemed surprised. It is hard to gather precise evidence in such a short time –

but my instinct is that there is truth in it, and that it is not always explained by the inadequacy of the information at the pre-application stage. It may be that the case officer changes his or her view. This may be because new information becomes available – perhaps as a result of the consultations or advertisement of the application. Or it may simply be that on mature reflection and balancing of the conflicting factors which apply to most complex cases, the officer simply comes to a different view. This happens in all the best Departments and it will continue to happen. In some of the more complex cases it is inevitable that the more senior officer will take a different view – either to ensure consistency across the board or because he or she has information and knowledge about corporate or political priorities which others may not have.

But two things are necessary. The first is for the senior staff who had not appreciated that this was a problem to look further into this than I have been able to do and to consider whether there are ways of reducing this problem. The second is to give a full explanation when it happens. Communication and openness once again.

One more point should be made. More than one person said to me that they would prefer planners to say “no” at the outset, if they thought a scheme was likely to be refused, rather than trying to be “helpful” and allowing the scheme to go forward. Whether, in the event, those people would be so sanguine is a moot point; but it is worth the consideration of the planners.

I recommend that guidance is published and publicised giving advice on pre-application discussions. Those seeking such meetings should be advised to submit as much information as possible beforehand so as to enable officials to prepare for the meeting. Where a decision is ultimately made which differs from the advice given in pre application discussions, the Division should give an explanation on request. Senior staff should carry out a study of the extent to which early advice is later countermanded and the reasons for it.

(iv) Too much attention to detail

This again was a common complaint.

I have come to the conclusion that it is a justified one. It is a difficult issue to pin down and there are a number of points in the planners' favour. In particular I have already mentioned the risk averse culture and the reasons for it; I will not go over that ground again but if the

Division is to reduce its attention to fine detail it will need continuing and committed support from Ministers and States Members – who, I was told, tend at present to support the detailed approach. The planners felt that they were reflecting what was wanted in Guernsey, rather than having an obsession with detail on their own part. An outsider, in defence of detail, said “give people an inch and they’ll take a mile – people try it on all the time”.

A number of cases were mentioned to me and I looked into some of them. In one case, relating to the width of a gateway, I could see entirely why the Division had intervened on what seemed on the face of it to be a trivial matter, when I looked at the history. So it is not clear cut.

And as elsewhere, there is an appetite for detail on the part of the public. (“Greater attention should be given to protecting neighbours, and privacy in general” – letter). Constantly it was said to me that Guernsey is a crowded Island. Its environment is special and it is precious. People live close to one another, so what happens to a property is very likely to affect its neighbour. There is therefore a great interest in these matters and the public demands that they are very carefully considered. As one body said: “XX supports the Environment’s stance on careful and considered debate before granting or rejecting planning applications”. These points were made strongly – but certainly not exclusively - in relation to historic buildings and conservation areas.

It should be noted that some of the minutiae will be removed from the system when the exemptions are extended – see below. But it was said that a “light touch” in relation to what remained in the system was more important.

Despite all these points in defence of the Division, the overwhelming impression I received from looking at files, and talking to people both inside and outside the Division, was that there is too much concern with detail. People referred to “micro-management” or “micro-examination”. I was told (from within the Division) that there was a culture of “having to improve the design”. And that too much time was spent on the small cases at the expense of the larger ones. It is a serious problem. I was shown cases, in relation to minor applications – for example concerning dormer windows - where I thought that a relatively quick decision could have been made but where officers were raising concerns.

It is a question of proportionality; of being able to distinguish what

really matters from what doesn't. I met one senior officer in particular who clearly had this skill; obviously that person is not alone in this, but it does not seem to be universally applied – and I have given some of the reasons why not. Common sense suggests that it does not arise from a wish on the part of incredibly hard pressed officers to give themselves even more work. It is a cultural issue. The Division reflects (and maybe exaggerates) a wider culture, and it has to change.

It is difficult to make a recommendation on this point because the issue is a cultural one and not simply a procedural one which can be tackled by a change of rules or processes. How do you set out rules which enable an individual planner to distinguish between what is unnecessary detail and what can safely be left alone, on a case by case basis, where the circumstances are always different and the public reaction or that of neighbours cannot be predicted?

I think several things are necessary.

I recommend firstly that, with the explicit support of elected members, a policy is adopted which (taking account of the new exemptions rules) requires a less detailed appraisal of smaller developments – defined as any development within the curtilage of a dwelling house, minor extensions to other properties, or any development where there are no objections following advertisement,

It is crucial that the full and active backing of Members is obtained, clearly documented and maintained. If this is not forthcoming then the change of culture will be impossible and the recommendations regarding resources which I make later are likely to be inadequate.

Secondly, I recommend that revised guidance for development control officers is produced alongside that report and implemented through internal training and debate.

I have suggested to the Division that the Head of Planning Policy and the Conservation and Design Manager should take the lead in producing this report and guidance. Of course if my recommendation in favour of a Chief Planning Officer were accepted and implemented it might be expected that he or she would be given the responsibility of pushing through this change of culture. In the absence of a Chief, the maintenance of this change will be much more difficult; it is an ongoing process and it would be easy to slip back into the old ways of doing things. But there is a will on the part of a number of people

within the Division to push it through – provided, once again, that they are confident that they will be actively backed by Members and by the Corporate Centre.

Thirdly I recommend that the change is monitored in a structured way to ensure that it is embedded in the culture.

(v) Too negative?

Some people said to me that the Division was too negative; that it turned down applications without good reason and that some officers were hostile to development. This was not a widespread view, and the fact of the matter is that well over 80% of applications are approved – a figure similar to that elsewhere. (In 2005 15.9% of applications were refused; in 2006 13.8%; and in 2007 just 10.6%). The strongest expression of this view came from lawyers who deal with appeals – and who therefore see the most extreme cases. About 50% of the small number of appeals which are currently lodged are allowed. But if jurats only see ten or fifteen cases per annum they are not likely to get a very broad view. The same point was made by some of the agents/architects but not by all of them. One said that particular individuals had a negative attitude – but the “two pairs of eyes” process should have prevented this.

I had an interesting conversation with one person who was very well informed about planning. When I told him that over 80% of applications were approved he was very surprised. He said that, if asked to guess, he would have said that only between 40% and 60% were allowed. I think this is salutary.

Another person said that “the Board sees the Department as the Developer’s friend; the developers see the planners as hostile”. I think this also sums up the problem well.

I do not think there is justice in this complaint. But if there is, the introduction of an accessible appeal system under the new Law should soon put it right. I deal with this later.

(vi) Paying for Applications

I can be brief here – there is just one point to make, but it is an important one.

I spoke to a lot of people outside the organisation who submit planning applications and they nearly all made the same point. They

do not mind paying for applications. But they expect the fees to be used to pay for the resources needed to improve the service. They expect a predictable and efficient service in return for their payment.

"Once we have to start paying application fees then we will need to see a step change..."

"We would welcome such charges as long as they are introduced in conjunction with service level agreements which will ensure the timely determination of applications...."

I did hear it said, internally, that some or all of the fee income might be used for another purpose. This in my view would be unfair; I shall be recommending increased resources later in this report and it seems reasonable to me that at least some of the fee income should be used for this purpose. I so recommend later.

(vii) Some other issues

The question of historic buildings and conservation was raised with me on a number of occasions. Clearly this is important, given the Island's history and character.

I heard conflicting views. Some thought too much attention was paid to the issue and the planners had been over cautious in dealing, for example, with the re-use of old buildings. The Fire Station was mentioned. But more people expressed concern at what they saw as damage or potential damage to historic resources. The demolition and redevelopment of the old prison was mentioned more than once. Organisations like La Societe Guernesiaise and the National Trust clearly represent a widely held view amongst the population that care needs to be taken on these issues, and they stressed the need for full consultation on appropriate cases. "It is a small Island; we have to protect what we have".

There was, however, mostly praise for the senior officer who specialises in conservation, and it seemed to me that he took a sensible and proportionate approach to the issues before him. "...thorough understanding of the issues relating to protected buildings....decisions are realistic and take good account of practical requirements, eg it is understood that historic buildings are not set in aspic...." (local architect). It was said that he was more pragmatic than the development control officers. There are no hard and fast rules here; cases have to be treated on their merits and there will always be the twin concerns (from developers) that the planners are

too rigid and (from the conservation side) that they are too flexible. That will never change. I think that the balance on this issue is about right.

Similarly strong and conflicting views were expressed about the conservation of the Island's natural resources and I come to the same view. The Department struggles to maintain a balance between development needs and the protection of the landscape, the coast, and biodiversity and natural resources; it is damned if it does and damned if it doesn't. This applies to all Planning Departments but it is heightened in a small Island. I think they do a conscientious job.

The views expressed to me in meetings and letters from La Societe and from the National Trust, on historic buildings and the natural environment, were very valuable. They provided an important balance to some of the other views I heard from developers and agents, and I think they represent attitudes which are widely held in Guernsey. It is important that they are consulted as appropriate on planning applications.

A number of people, internally and externally, mentioned to me the "Architects Panel", which had previously existed in a very active form but was now very rarely used. The Minister was among those who asked me whether I thought this was a useful idea. My answer, having heard from local architects, is that it would be. I think, if nothing else, it would help to improve the dialogue with some of the main customers of the Division. But more than that I think it could assist in safeguarding design quality.

There are fears. Some worry that it would tend to favour more modern designs as against traditional ones – but it is far from being the case that most of the architects in the Island take that view. There is also a concern that the relatively small community of architects would find it difficult to comment unfavourably on one another's schemes – it would become a cosy arrangement. I acknowledge this; but it is difficult to see how, in the Guernsey situation, a wider view could in practice be brought to bear (as it sometimes is on the mainland). I think the Panel should be small – it was suggested to me that it might consist of three architects on rotation and this seems a sensible approach. I think it should not meet too frequently, for resource reasons – perhaps once a month; it should if possible have an independent Chair – someone with experience but not currently engaged in development; and its mandate should be very strictly limited to design matters only.

I was also told that the Civic Trust and Guernsey Design awards had been dropped from the calendar. I think this is unfortunate and that they should be reinstated; I understand that outside funding may be available.

I recommend that an Architects' Panel is re-formed along the lines described in this report, and that the Design Awards are reinstated.

(viii) Internal organisation

I spent some time (about 1 ½ days in total, in separate chunks) inside the Division watching the processes at work. I must say at the outset however that this was not sufficient to get under the skin of all the aspects of it. It would take some time, working inside the Division, fully to understand how the machine operates. Nonetheless I came to some conclusions. I will run through the various stages.

The initial reaction to applications, via what is known as the "Team Table" (dealing with both Development Control and Building Control applications) is efficient. Initial decisions are made as to whether more information is needed (though sometimes this may not become clear until later when cases are examined in detail). I noticed that a significant number of applications are returned with a request for more information. This may reflect three things. The first might be an unnecessary wish on the part of the planners themselves for information which might not be important; but in fact while I was there I did not see any such cases. Nonetheless the planners should exercise caution and request further information only if it is really necessary; since it involves them in extra work and effort I do not think they do this in a careless way however. Secondly, it may reflect the inadequacy of the applications themselves – understandable when submitted by individuals who are not familiar with the system, but less so from professionals. I think there is a real problem here and it is right to send back applications which are clearly not up to scratch (I do not agree with the suggestion that was made to me that this information should be sought later, after registration – I think this would only add to confusion and delay). But thirdly it may (I think does) reflect a lack of guidance as to what constitutes a full planning application. I have already mentioned this. Guidance should be produced – and the planners should stick to it.

The move from "Permissions in Principle" (PIP) to Outline and Detailed Applications in the new Law, which I briefly mentioned earlier, may help with this process; it seems less than clear what

information the planners need for a PIP. Several people, inside and outside, referred to this issue. Clearly the present system causes confusion and wastes time. This is potentially an important shift; I was shown statistics relating to 100 cases of small domestic developments; these had generated 205 applications as further details were put into fresh applications or changes were made to the schemes.

I recommend once again that better guidance is published dealing with planning applications – what information is needed and at what stage. This should be completed and introduced to coincide with the new Law coming into operation. In addition information should be published which explains the process through which planning applications go after submission.

The applications are then registered, and the Division aims to do this within a week. While I was there, there were significant backlogs – which I was told arose from the fact that there had been sickness absences in the Administration section. It is clear that admin can only just cope with the throughput of work and that they are incredibly vulnerable to absences due to sickness or holidays. If one person is missing for a week or two delays immediately occur. Admin should be assisted by the reduction in applications following the introduction of the Law and the extension of exemptions. Even then – though its effects will need to be monitored – there will continue to be problems at registration stage unless resources are increased. I return to this under question 12.

At this stage, as I indicated, building control and planning applications are being considered together. It is proposed to change this arrangement, and this should assist in speeding up the planning side of the process. In some cases I saw, the registration of the planning application was held up because more information was needed on the building control side.

Cases are then advertised as appropriate, consultations are initiated, and they are allocated to officers and take their place in the queue. It is during this stage that the greatest frustration arises both for applicants (who have little idea of what is happening or when their application might be dealt with) and for officers (whose piles of files are daunting and sometimes dangerous).

There is a “fast track” process for smaller applications – this again is something which seemed not to be known in the outside world.

Officers, after a site visit, prepare only very brief handwritten reports on these items. More than half of all cases follow this route.

For other cases officers carry out site visits, consider the policies in the UAP and RAP, and consider the results of consultations with statutory bodies, neighbours and other interested parties. In larger cases there will be meetings and negotiations. In those cases the process is inevitably complex as, for example, new information emerges or revisions are made to the schemes. I was told, in this connection, that architects and agents were very reluctant to get a refusal because this reflected badly on the practice and may have commercial implications; they preferred to negotiate and make changes to ensure approval. I can understand that; but if it is true, then it is likely to lead to a lot of work for the planners, dealing with repeat applications, and to delay. I think the planners should discuss this with agents, in the kind of co-operative spirit which I have described. It may be more efficient for applications sometimes to be refused, or withdrawn.

At the end of all this, the officers prepare quite a detailed report with a recommendation.

All of the cases, including the minor ones, are then considered either by one of the two Principal Planners or by the Head of the Section (in all refusal cases and in all cases which are to go to the Board). Those three people are then responsible for issuing the decisions.

It is clear to me, without going into very great detail, that these processes could be simplified – though doing so is not without risk.

In some cases minor alterations or revisions or variations to approved applications could probably be dealt with by letter rather than by requiring a separate application.

The reports could be shorter – for example they do not need to repeat what is in the UAP/RAP in full. This makes them less helpful to the reader but would save small but useful amounts of time on all cases.

Delegation/empowerment

More importantly, I believe it is crucially important to start to devolve decision making to staff at lower levels in the DC hierarchy.

“Junior planners should be given more power in minor decision

making. Senior planners need to delegate more and manage their area better" (local organisation).

This would have twin benefits. On the one hand it was put to me that these staff presently feel disempowered. I believe they would welcome, and could handle, a greater level of responsibility. On the other hand senior staff are carrying out processes with which they should not be involved; their time could be freed up to concentrate on the more complex cases and on the administration and management of the Division.

Many of the cases do not need to go to the senior officers. It is often reasonably clear at the outset what the likely decision will be. In most of the fast track cases the decision could be handled by any officer without further reference to senior officers unless there is a change in circumstances or an unexpected piece of evidence. They may sometimes need to float the decision in front of the Principal – for example to look at any conditions or details of reasons for refusal – but the principle should be to delegate responsibility for smaller applications as far as possible. For the larger cases some involvement by the Principals is necessary but this should be limited in all but the most controversial cases to a short discussion. The actual issue of the decision – the "clicking and ticking" as one person called it – should not be handled by the Principals or the Section Head as it is now. There is no need for ALL refusals to go to the Section Head either.

It was put to me by one of the staff that there should be three tiers of applications, for which criteria need to be designed:

- Those – the majority – which are dealt with by case officers, only consulting briefly with senior staff where for example there is uncertainty about the details of a condition or reason for refusal
- Those dealt with by the case officers in consultation with the Principal
- Those dealt with by the Principal in consultation with the Section Head

I think this gives a pointer to the way the system should be designed and run.

These proposals – in effect the removal of the "second pair of eyes" principle for most planning applications – are not without risk. They may reduce, or appear to reduce, the level of consistency (though there are accusations of inconsistency even with the present system, as there are in all planning organisations).

Mistakes such as the omission of an important condition or reason for refusal are more likely, though I would not expect them to be common. We are talking about competent people.

The questions essentially are firstly whether those risks are worth taking in order to achieve the efficiencies which would result – the savings in time and the empowerment of planning officers. And secondly whether the planners will have the full backing of Members and other Departments if they take these steps. I think the answer to the first is “yes”. I think the risks are quite small and certainly acceptable given the savings involved. I don’t know the answer to the second – previous experience is not encouraging. Certainly the Board need consciously to adopt these new methods of working.

The role of the administrative staff is extremely important and I believe they have the talent and experience to play a greater role. For example, they particularly need to be trained to deal with the question of what is, and what is not, exempted under the new Law, so that they can handle queries without the planners having to be involved.

DC is divided into two teams – East and West. The division is sensible and gives all staff a mixture of urban and rural work. The question is whether it is necessary at all – would it be more efficient to have a single team – especially after the introduction of the new Law and the increase in exemptions? I think, after discussion with the staff, that there would be benefits in combining the administrative staff into a single team. I think this would reduce a certain degree of duplication, enable the staff to be used more flexibly and enable them to develop specialisms. But I am less certain whether the change would assist the planning staff. I think it is something which should be considered twelve months after the new Law comes into force, when the effect on workload for DC officers has become clear.

I make a number of recommendations here – but to a degree these can only be pointers to what is needed; as I have indicated, the time available was limited and I could not possibly get into the necessary detail to provide a complete answer. Nonetheless I am convinced that the general principle of making decisions at a lower level in the hierarchy and freeing up the senior staff to manage the section more effectively is the way forward. There needs to be an action plan to achieve this, and I return to this at the end of my report.

I make the following recommendations:

Applications should be dealt with at a lower level in the hierarchy. In the simplest fast track cases a provisional decision should be made at the outset as described in this report. For the more complex cases the decision should be agreed by the Principal Officers but processed and issued by the case officers. The Head of Development Control should see only the cases which are to go to the Board or others which the Principals consider to be potentially controversial; the decisions should be processed and issued by the case officers/administrative staff.

Reports should be as short and concise as possible and usually need not repeat the policies in the RAP/UAP in full.

Where possible minor alterations or revisions or variations to approved applications should be dealt with by letter rather than requiring a fresh application.

The administrative staff should be combined into a single team. Professional staff should remain as East and West teams pending the introduction of the new Law – further consideration should be given to combining them should the caseload reduce in due course.

A report should be prepared for the Board, who need to understand and endorse these changes, including the risks involved, and to support the Division in their implementation.

Use of exemptions

There seems to be no doubt in anybody's mind that at the present time too many small developments fall within the ambit of development control, and steps have already been taken through the new Planning Law and the relevant Ordinance to tackle this problem. This will hopefully come into force in the foreseeable future, and the main question for me seems to be whether the provisions go far enough.

I was warned by more than one person that seeking to take this change too far, too fast, would provoke a backlash of discontent. "If you move the exemptions too far there will be a public outcry". There had been opposition to the present proposals. In fact, it was argued, small scale development is important, especially given the geography of Guernsey. It was put to me that it is "part of the culture" to deal with detail in this way and there would be political and public

resistance to change.

I feel, first, therefore that the new arrangements should be brought into operation as soon as possible and that their impact (and the public reaction) should be monitored for a period of twelve months before any further action is taken. This will also enable a measure to be made of the impact which it has on the planning workload.

Changes are also in the offing, in relation to domestic development, in England – where this has also been an intractable problem for many years. There is a similar dissatisfaction in some quarters with the number of householder applications which come to the planners. Though some quite radical ideas have been proposed, the outcome has been the introduction of an approach which many think will have only a limited impact (except in one respect, which is that more than one development may be exempted in respect of a dwelling, so long as they all meet various criteria – unlike the present system where, usually, this is not possible). In fact it seems that the individual and cumulative impact of these small developments is indeed a matter of public concern and one over which a reasonable level of control is needed. In some ways the proposals in England are similar to the method already adopted in Guernsey, in that they move away from a “volume” approach to the definition of exemptions (called “permitted development” in England), to one primarily based on length, breadth and height.

The details of this system are set out in “Householder Development Consents Review – Implementation of Recommendations” - a study by White Young Green (WYG) for the Department of Communities and Local Government, May 2007. This was followed by a consultation by CLG (Changes to Permitted Development Consultation Paper 2, May 2007). The WYG paper gives some history of the gradual extension of permitted development, explores options in great detail, and puts forward recommendations (which have yet to be implemented). In most respects the exemptions are more generous than those proposed in the new Law in Guernsey (though permission will be required in England for hard-standings which are not constructed from porous materials). The situation in Guernsey is different, and I do not suggest that the English model can be followed; merely that the detailed examination of options will be useful. But the history in England is that exemptions have gradually been increased and that this has not in practice led to the kinds of concern and even damage that critics anticipated. I would be surprised if this is not the experience in Guernsey too.

An earlier review in England ("Householder Development Consents Review – Steering Group Report" July 2006) proposed a streamlined process or "fast track" for householder applications. Various means of doing this have been considered, but they have generally met with opposition and the proposal has not yet been taken forward. Proposals that applicants should themselves carry out consultation with neighbours have also not been pursued in England. In Scotland this is the current arrangement, but it causes problems and it is intended that this will change shortly and that the responsibility will be given to Local Authorities.

My judgement is that in Guernsey after a 12 month monitoring period it will be possible to go considerably further than the exemptions proposed in the new Law, by relaxing some of the criteria and measurements contained in the Ordinance. Because of the public concern over this issue it will be valuable to have a period of monitoring to ensure that the impact is indeed acceptable but time should not be lost in moving forward if this experiment is favourable.

I received relatively few comments about the Use Classes Order but some people thought that the 44 classes set out in the 2007 Ordinance were too many and too complex. In particular it was said that the separation between "Light Industry" and "Storage and Distribution" was unnecessary. But some said there should be an additional Use Class for small workshops and yards. I think there is some substance in this general complaint but I think the Ordinance should be brought into force and, like the exemptions, monitored and reviewed after twelve months of operation.

I recommend that the new Law is implemented as soon as possible and that the effect of the extension of exemptions is monitored. After a period of twelve months I recommend that, subject to consultation, exemptions are further extended. Similarly I recommend that the changes to the Use Classes Order are monitored and further simplification should be considered after twelve months.

Delegation

In practice the level of delegation of planning applications to officials is quite high, at over 90%. I have seen the delegation agreement (set out in the Board Briefing Paper of 24/8/05). It seems entirely sensible to me and I am pleased to be able to report that this seems one area where there are few problems. I was asked whether political involvement was necessary at all in planning applications. I think it

is; politicians are responsible for States decisions and though they should concentrate on policy and leave much of the detail to officials, they should in my view quite clearly take the decisions on the major applications.

Appeals

Though I was not asked in my list of questions about appeals, it is a matter which was raised with me on frequent occasions, and one on which I have some experience – at least in other jurisdictions.

An appeal system will be introduced as part of the new Law. This is not based, as was originally proposed, on decisions by a single adjudicator but on the use of a tribunal. Nor is it based on the general use of written representations, though there is provision for this in the Law.

Under the current system about 10-15 cases per year are taken to the Courts. The present appeal process does not amount to a full review of the merits. It is an expensive process, not generally accessible to most disappointed applicants. The new process will be much easier to access and will consider the merits. It is not intended in the new process that legal representation will be necessary or normal. I support this, and in other jurisdictions the trend has been to reduce the amount of legal involvement. For the most part it is not felt that the undoubted skills of advocates are necessary in the kinds of cases which arise under planning legislation; nor, if there are any benefits, that they outweigh the cost and time generally consequent upon their introduction.

Nobody knows how many cases there will be – I have heard an estimate of 200 per year (which would be a quarter of all refusals). I suspect the figure would initially be high – maybe even more than 200. But as the Division becomes clearer about the parameters, and as potential appellants become more realistic about their chances of success, the figure would probably fall.

In all appeal systems in my experience, decisions will be overturned. Many planning decisions are very finely balanced and with further evidence and detailed consideration, an Inspector or Tribunal is likely to come to a different view in some cases. On the other hand, appellants are frequently over-optimistic about their chances. They feel that their case has not been understood, perhaps even suspect (as some suggested to me) that they have been treated unfairly. When realism sets in, in most jurisdictions even with different rules

and approaches, the proportion of appeals made in the first instance settles at a very much lower figure than a quarter, and the number of appeals allowed settles at around one third. This will be the result of behaviour by the planners or the Board, which may take a different view on some marginal cases in the knowledge that there is the “backstop” of an appeal. And also a change of behaviour by potential appellants and their advisers, who come to realise that in fact the decisions made by the States are not nearly so unreasonable as their natural reaction to a refusal presently leads them to suppose. In this sense the mere existence of an appeal system, even if it were not used at all, places a discipline on all sides which is helpful to the smooth running of the system and to the perception of fairness and impartiality throughout the process.

I do not believe this outcome would be much different whether there is a tribunal of three, as proposed, or a single professional adjudicator – though it is obviously a much more expensive process if there are three tribunal members – and there are practical difficulties in finding suitable members. There are very strong views on this issue in the Island, on both sides, and I have been asked to give a view.

It is my experience in England and Wales that a single person can deal simply, adequately, and professionally with all cases, to the complete satisfaction of the parties. It is also my experience that in at least three quarters of cases this can be done through the medium of written representations.

This is also the experience of Scotland, Northern Ireland, The Republic of Ireland and the Isle of Man. In some of those examples a higher number of cases is dealt with in writing (over 90% in Ireland).

I have heard a number of reasons why people feel very strongly that this would not work in Guernsey. It is felt that local knowledge is needed and that the views of professionals need to be tempered by those of lay people. Some think that professionals would tend to support other professionals and disallow appeals (though there is no evidence of this elsewhere). I understand and respect these arguments but I do not accept them. It is my firm and unequivocal belief that a fair and impartial system could work in Guernsey, as elsewhere, on the basis of a single person tribunal. And that the great majority of cases could be determined on the basis of written evidence, with a site visit. A single adjudicator system would also quite obviously be preferable in resource and efficiency terms.

However, we are where we are. I have already said that I think the Law should be brought into operation as soon as possible. There would be delay in implementing it if the appeal processes were to be changed. I have seen some internal documents setting out the options and it is clear that there would be likely to be a delay of at least a year. I therefore think, pragmatically, that the States should proceed with the Tribunal system, see how it operates, and look to move later to an adjudicator system. For legal and practical reasons I do not think the Law should be introduced, as some have suggested, without the appeal system.

The Chair of the Tribunal Panel has the power, in the Act, to provide for certain classes of appeal to be dealt with by a single professional Member on the basis of written representations and this power should be used extensively, partly to save resources, but also as the only means of proving or disproving the proposition that such a system can produce a fair outcome.

There is also, of course, the question of how this expensive system is to be funded and I know discussions are taking place about charging for appeals. This seems inevitable, and it would also discourage frivolous appeals – though I understand it is unlikely to cover the full cost. There is some suggestion that planning fees might be used to pay for the system; this is not really a matter for me, but I do indicate elsewhere that I think the income from planning fees should in the first instance be used to provide the resources to improve the service generally. The States are also likely to run into problems in finding suitable people to sit on the Tribunal – who have sufficient knowledge and understanding of the process, have the necessary (but unpredictable) time to spare, and do not have an interest in development in Guernsey. Jersey might provide a source of Members, and, though I have not spoken to them, I would expect the Planning Inspectorate in Bristol would be willing to help with training on procedures etc.

I recommend that the Appeal system as proposed in the new Law is brought into force, in order to avoid further delay. I recommend that the powers to appoint a single adjudicator and to consider appeals in writing are extensively used and monitored. I recommend that, should that process prove successful, provision should be made in due course to move to a single adjudicator system for all cases.

Third Party Appeals were mentioned to me by two people – one in favour and one against. It is not intended to introduce these at

present, and it must certainly be the case that the proposed system should be introduced and allowed to settle down before any thought is given to extending it in this way. I do not recommend, even then, that it is introduced. It is a seductive idea, but expensive and the cause of much delay. Developers, having gone through the hoops of gaining planning permission, should not it seems to me have to go through further hoops and delays. However, it is important that the kinds of steps I have advocated in terms of the openness and transparency of the system are introduced, so that people can be confident that the mainstream process is operating fairly and impartially.

7 The organisational structure and respective workloads of staff in different planning sections and whether staff are deployed where they can best contribute to the overall effectiveness of the planning system

As I have indicated I will deal with the overall question of resources later; this matter concerns their distribution within the Division. It is quite clear that staff in all sections are under great strain.

This is a suitable place to say something about staff morale. This is low. I was shown the results of an employee opinion survey which showed that the Environment Department scored worse on almost all measures than the staff of the States as a whole. Only 24% thought they had time to do the job effectively (compared with 42%). 16% thought morale was good (cf 38%). 35% felt that they provided a good service to customers (cf 75%). Environment scored well on a few items – eg training, career prospects, and being treated with fairness and respect – but lower on most other measures. And generally the scores were worse than in 2005.

I have already referred to some of the main reasons for this. The constant criticism of the planners is one of them. The lack of resources is another. The staff themselves are frustrated by their inability to give the kind of service they feel they should offer. The need to delegate decision making down the line and give greater responsibility to more junior staff is another. I was also told by some staff that they thought communication within the Division was not good; and there were various comments about management systems such as appraisal, supervision, feedback, pay etc which I believe to be outside my remit. I am not a management consultant. But these need to be addressed. Some of the recommendations in this report, if implemented, will assist and in particular it will be valuable to relieve the most senior staff of some of their detailed work in order to free

up time to attend to management issues. This would include better measures to keep staff informed and to improve liaison between the various sections. I have been told of team building efforts in the past which have had some success in improving morale. I think it is an important issue – the Department is only as good as its people.

I recommend that targets are set for the improvement of staff morale, as measured in the staff surveys which are carried out, and that the Chief Officer is given the task of drawing up a programme to achieve these targets.

Having said all that, I did not see evidence that the staff were wrongly distributed between sections. All parts of the Division are under stress. It may appear more severe in Development Control, because of the public attention which is paid to the process. But it is equally severe in Building Control (though they are able to manage their workload to a degree, in a way which DC cannot). And there are equal pressures and certainly no room for manoeuvre in the Forward Planning sections. I make no recommendation for change here.

There is however an issue about the extent of liaison between the two sides of the Division. This is always an issue – though a much less serious one than the issue of liaison between Departments. It was quite hard to get a feel for this. I was told by one or two people that there was “too much detachment”, and given the time pressures which I have discussed that would not be surprising. Steps have been taken, and there are mechanisms for closer working, but I sense they are not working as well as they might. I was told that the liaison meetings tend to deal with detail and that important matters are not discussed there. It is another issue which a Chief might be able to resolve. It is not one of the top priorities. But for the moment:

I recommend that the mechanisms for liaison between the two sides of the Planning Division are reviewed and refreshed.

8 The relationship between planning and building control and the costs and benefits of the “one stop shop” approach

I think I can deal quite briefly with this matter. A decision has already been taken in the Division to separate the planning and building control processes. I agree with this. While the “one-stop shop” approach has attractions, it does tend to slow down the overall process – and make the planning performance appear worse than it really is. It can also create confusion in that processes which are in fact designed to determine quite different issues are run together in a

way which can obscure those differences. Other jurisdictions have gone down a similar route; Jersey separated its planning and building control processes to good effect quite recently.

I think I should add that I looked (albeit quite briefly) at the building control section itself and was impressed by its professional approach; and also that I received no adverse comments on its performance during my discussions. They are obviously under strain but use a risk assessment approach to manage their workload. Comments included:

"...the Building Control Department continues to perform as it always has with efficiency and help"

"Building Control Department from our point of view has over the years performed quite well.....Building Control Department now is very seriously understaffed and is not performing its duties to an acceptable level"

"The officers are generally helpful and pragmatic.....They are willing to discuss issues and come to compromise agreements if appropriate"

I recommend that the proposal to separate the planning and building control processes, which is already in hand, should be implemented

9 Where is the demarcation line or lines between the responsibilities of politicians and civil servants? On what basis are decisions referred to politicians and why, and on what basis are they dealt with by Civil Servants? Should those demarcation lines be published?

I discussed earlier in this report the question of the delegation agreement which sets out which cases are considered at political level and which by the officials. I thought that the agreement was entirely sensible, and along the lines of those I have seen elsewhere. Essentially cases which depart from established policies, or raise particularly contentious issues are referred to Members – and any Board Member can request that an application is referred to them.

While I have no problem with these rules, I do think they should be published so that everybody can see the basis on which decisions are taken.

I recommend that the delegation agreement is published.

10 Should an applicant or any third party who is likely to be affected by any decision be able to enquire whether an application is being dealt with by a Civil Servant or politicians, and what stage the application has reached?

Yes.

I raised this earlier when I was discussing communication and several people said to me that they would like to be able to track applications once they had been submitted, preferably over the internet. I have no doubt at all that an applicant or an interested third party should be entitled to know about progress. This seems to me a basic tenet of openness and of good customer service. I recognise however that, insofar as this is not already done, there are resource implications.

As I understand it the present IT systems do not allow this and it would be very expensive - perhaps impossible – to set up an internet based system in the near future. Nonetheless this should be an aim; it would save a great deal of time for administrative staff and planning officers in answering queries.

But, of course, this is primarily an issue at present because applications are taking so long to process. They take their place in the queue – and when an inquiry is made it is often the case that officials simply do not know when it will reach the top of the pile and be determined. The most important priority is to reduce waiting times, using all the measures I have been discussing; this will increase certainty and reduce the need for repeated inquiries from applicants/interested parties about progress.

I recommend that so far as possible applicants and interested parties should be informed on request of the progress of applications; and that when IT systems are updated in the future measures to enable the online tracking of applications should be considered.

11 Should the planning authority view planning applications on the basis that planning permission will be granted unless there are written policy reasons, in the detailed development plans, that they should be refused?

This is a complex question, one of policy rather than procedure, which could have important effects on decision making in Guernsey. I divide my comments into two parts.

The Development Plan

On the specific question my answer is “no”. The Plan is crucially important – as I said earlier in dealing with question 4 about the rigidity/flexibility of the system - and must form the basis for decision making; but it cannot normally be a mechanistic process where proposals are tested against the Plan (if this is what the question implies), in the way that, say, a cook follows a recipe.

I say this for three main reasons. First there is no way in which any plan can remain completely up to date. New considerations will arise, which may point either in favour of, or against, development. An example might be a change in economic circumstances or developing thinking on climate change. Or there might be a change in the transport infrastructure which opens up new possibilities, or the closure of certain premises which had not been anticipated. A number of people expressed to me concern that the plans were not kept sufficiently up to date, and there need to be ways of making changes in between reviews. But if policy changes are to be made on the basis of such trends or changes, it should be done openly and formally, in the form of supplementary planning guidance or some similar process – not “on the hoof”.

Secondly no plan can anticipate every eventuality. Nor can it, or should it, go to a level of detail which covers all aspects of every development.

And thirdly, in even the best plan, judgements have to be made. A proposal may meet some but not all of the matters listed in a criteria based policy, or there may be dispute about the extent to which it complies with them. And there can be contradictions – a proposed development might meet the requirements of some policies but not others.

So I think there are dangers in slavishly seeking to follow the letter of the policies in the plans – professional judgement has to be applied.

In this respect I need to say something about the “policy gateway”. This concept gives greater pre-eminence to the Development Plan than would be the case elsewhere and though there is a provision for minor departures it is generally the case that a positive “policy gateway” in the plan is needed if development is to be allowed. This principle is enshrined in legal decisions and is not one which the planners can easily escape.

Without going into detail, two issues arise here. The first is whether the scope for minor departures is being adequately employed. I think in relation to smaller development it may not be – this is in effect the same point as the one I discussed earlier in relation to the level of detail in development control. The review I have recommended should take this on board.

The second is the need to review the plans to introduce a greater degree of flexibility. This has already been done in relation to the RAP, but needs to be done in relation to the UAP too. The Division have already begun this process. The new Law will also give them the ability to produce other planning policy guidance.

I recommend that, with a view to achieving greater flexibility in the operation of the Development Plan: firstly the review which I have recommended of the level of detail in development control should take into account the way in which the policy gateway is applied in minor developments; secondly the amendments to the UAP to introduce greater flexibility, which are already under consideration, should be progressed as soon as possible; and thirdly that the provision in the new Law for the production of planning guidance should also be used, judiciously, to introduce greater flexibility.

The presumption in favour

However the question might have been put differently – should there be a presumption in favour of development unless material considerations (pre-eminently the development plan) dictate otherwise? This is a question which was raised with me, unprompted, by more than one of the people I met.

This used to be the case in the UK – the supposition was dropped about 15 years ago but there are many who think it should be reinstated. There is little doubt that it would have an effect on decision making and tilt the balance in favour of development – which is why I suggest that this is a matter of policy for the States and not just a matter of process for me. On balance my judgement is that, given the culture and geography of Guernsey, it would at present be a step too far.

12 Such other matters as the Contractor may consider relevant

The question of resources has arisen at various points in this report

and I have, as promised at the outset, left it to be discussed at this point. Many comments were made about it:

"We would suggest that the States employ more planning officers to spread the load..." (development company)

"....the planning service is clearly understaffed at present...."

"I feel for the staff that are clearly under-resourced".

I have no doubt at all that with its present workload the Division is overstretched. The conclusions of District Audit in this regard remain true. They found for example that the workload of case officers in the development control division was three or four times that of their equivalents elsewhere and, as I have said, this remains true.

As we have seen performance has deteriorated. And as we have also seen there are similar pressures in the policy division, with the preparation of development briefs taking too long for example.

A reminder of the District Audit conclusion which I quoted at the outset is appropriate:

"There appear to be three options for the future of the service:

- An increase in staffing to match to workload
- A reduction in workload though a change in policy
- Acceptance that service standards will be constrained by workload" (p 14)

If, as I expect, it is generally accepted that this is still the case, the question which arises is whether the changes to be brought about by the introduction of the new law will have a significant effect on workload. This is, to say the least, doubtful.

It is my view that the States expects too much from the limited resources it puts into the Planning Division. Unless it is prepared to use some of the fee income which will arise from charging for applications (which as a matter of natural justice would seem right) then the District Audit Option 3 ("acceptance that service standards will be constrained by workload") will continue to apply.

Recruitment and retention

There is a serious problem in relation to the recruitment and retention of staff. This was mentioned many times to me by

outsiders, with just one dissenting voice at one of the meetings I attended. Typical comments were:

"It seems to me that such an important role should warrant longer term licences to allow the Department to get better use of individuals and to provide better continuity..."

"Have planning officers with longer than "5 year" licences"

"...case officers are frequently less experienced and on short term housing licences – thus they do not have the time or opportunity to build up a deep knowledge or understanding of the Island".

"Environment Department cannot keep staff. This is due to the 5 year licence. After 4 years they are looking for a new job. This leads to lack of continuity....".

The five year housing licence has three effects. Firstly it adds seriously to the problem of attracting staff to come to Guernsey in the first place. This is already likely to be difficult for many people (despite the obvious attractions of the Island), involving as it may a degree of separation from friends and family and a significant change of lifestyle. And there are in any event shortages of planners throughout the UK. An advertisement in Guernsey in late 2007 for 3 planning officers produced only three applications, two of which were later withdrawn. Secondly it means that, after three years or so, people are starting to think about their future careers, looking around for other jobs, and then leaving their posts just as they have become really effective and well attuned to the local culture. And thirdly it makes succession planning very difficult.

Though the Division tries to recruit and train locally, and has had some success, this is a long term process and is unlikely to fill the gap. In any event there is a need to balance this with planners with suitable wider experience.

This is a problem for other States Departments too, and for the private sector. I know it is under review. Given the obvious problems from which the planning service is suffering and the implications of this for development in the Island, many think that longer housing licences should be offered to planning staff. I appreciate that this is a wider issue – but nonetheless from the point of view of my remit to look at ways of improving the service I think this would be right. I do not suggest it should apply to all posts because there are dangers in reducing staff turnover too far.

I recommend that as appropriate consideration is given to providing planning officers with housing licences for longer than five years to improve recruitment and retention.

Some (not just inside the Division) suggested that salaries needed to be increased too but I think that is not a matter for me.

Increasing resources

I have thought carefully about the level of resources which might be needed to help the Division to get out of its present problems (and to stay out). This is difficult because of the uncertainty about future workload, but in any scenario I believe that more staff will be needed (alongside the efficiency improvements I have discussed). There is no point in overdoing this; resources are tight across the whole of the States organisation. So I think what follows are minima and may not be the last word on the subject. For all the reasons I have outlined I recommend additional staff in the Development Control division and I would argue that they should be at a sufficiently senior level to be able to make an impact on the more complex cases; it is essential to avoid having more people who devote their efforts to the detail of the lesser cases. I recommend some strengthening of the administrative division and elsewhere I have argued that the two teams should be combined. I think the addition of one person will both enable the team to provide a good service even when hit by sickness or other absences and also enable individuals to receive training to enable them to deal with more complex work; I have given the identification of cases which are, or are not, exempt under the new Law or its successor, and the provision of advice to the public, as an example which would lift the load on the

planning staff themselves. I also recommend that a major effort is made to tackle the long standing problem of a lack of published advice and guidance and that a short term addition is made to the staff to deal with this and related matters designed to improve communication with the public and the outside world.

I do not think that staff can simply be moved from one part of the Division to another – I think that all sections are under strain. I have concentrated my recommendations in the areas where there is greatest strain, but this does not mean that there is slack elsewhere. Nor do I think (and I was asked to consider this) that in the context of Guernsey the outsourcing of work would even be feasible, let alone efficient or desirable.

I recommend

1 As a minimum, there should be one experienced planner added to each of the two development control teams

2 There should be one extra administrative post to support development control and reduce their vulnerability to sickness absence etc

3 One additional person should be appointed for a period of twelve months for the purpose of improving external communications – principally by producing guidance notes of various kinds (see references earlier in this report) but also by liaising with the press and with stakeholders in order to open up and explain the planning process as I described earlier in this report. He or she should be located within the Forward Planning Team, though some of the work relates to development control issues.

4 In my view these figures are minima. They should be kept under review and if the workload increases, or does not reduce, as a result of the Law further resources should be added.

5 The source of finance should be the fee income from planning applications.

Action Plan

As I have already mentioned I believe it is important to produce a detailed action plan, with priorities and timescales for the achievement of those recommendations in this report which the States decides to accept, and the allocation of the necessary staff and financial resources. This is complex because the actions involve central Departments as well as the Planning Division. It is therefore necessary for two people to be identified – one from Planning and one from the centre – to prepare the action plan. It is equally important that its implementation is monitored and that momentum from the present exercise is not lost. In the case of the Division this can be done by the new Chief Planning Officer, if appointed, or by the Chief Officer (Environment) if not. A similar monitoring role needs to be identified in the centre.

I recommend that a detailed action plan for the implementation of change in the centre and in the Division

should be produced, clearly setting out priorities and timescales, and that its implementation should be carefully monitored at a senior level.

Conclusions

I have ranged widely over not just the Planning Division but also over other aspects of the States organisation. This became inevitable as a result of the things that were said to me and the material I read. It is clear to me that improvements need to be made within the Planning Division but that this is far from being the only consideration in tackling the problems which led to my appointment. Improvements are needed in the centre too. And more resources are needed. Perhaps the most disappointing finding is that the situation in 2008 is much the same as that identified by District Audit in 1998. Their essential conclusions remain the same. But there is good news too. Part of this is in the preparation of documents such as the GBP, which suggest a more corporate approach in the future. This is essential. And part of it is in the hard work and dedication of the planners themselves, who work on, despite the shortage of resources and the constant barrage of criticism, to provide the best service they can. Guernsey is, without doubt, a better place as a result of their efforts. With support and encouragement they can go from strength to strength. Without it, however, another consultant in another ten years time will be called upon to write another very similar report.

List of recommendations

The new planning Law

I recommend that the new Law is brought into force without further delay, despite reservations that individual Members or Officials may have, and that resources are put aside to review the operation of the Law after twelve months and set in motion any changes which may appear necessary or desirable, with a view to implementation not more than three years after the Law has come into operation.

The Strategic Land Planning Group

I recommend that the Strategic Land Planning Group should be refreshed and upgraded. It should be Chaired by the Chief Minister and he or she should have the remit of ensuring that it operates in a corporate way, without members who simply represent the interests of particular Departments.

Future location of the Planning Division

I recommend:

That the Planning function should not report to a sectoral political Board

That responsibility for high level environmental policy should be transferred to a different body at the centre of the States organisation. It should not be downgraded in its importance, but regarded as a cross cutting issue, central to States policy

That the Environment Department is then re-named (“Planning” or “Planning and Transport”) and that it should be responsible for forward planning policy, development control, design and conservation and building control.

That the Department should report to the SLPG, as reorganised, in relation to cross cutting strategic polices, and that the Minister should have a formal role through the SLPG in overseeing the consistent implementation of States strategic polices through the land planning process.

Code of conduct

I recommend that the District Audit recommendation in favour of a Code of Conduct for political Board Members should be implemented in full.

Communication

I recommend that the Division consider measures such as outreach sessions where members of the public can raise and discuss planning problems, to improve public knowledge and involvement; and that it should develop a strategy for ensuring that the Press is better informed and is able to ask questions directly to officials about planning matters.

I recommend that guidance is urgently produced and published on a range of matters including how to make a planning application and what material to include; the nature and purpose of pre-application meetings; exemptions in plain English; design guidance; and such other matters as the Division may decide.

Open meetings

I recommend that Board meetings dealing with planning applications should be open to the public and the press and that if successful this should be extended to other planning matters in due course, subject to suitable safeguards about personal or commercially confidential information.

I recommend that the question of whether parties should be able to address the Board should be considered after a period of two years.

Planning and Commerce and Employment

I recommend that the Chief Minister in his recommended role as Chair of the SLPG should as a priority seek to find common ground between the Planning Division and Commerce and Employment, ensuring that both operate within the framework of agreed States policies.

Chief Planning Officer

I recommend that a Chief Planning Officer, or Head of Planning, should be appointed and should be a member of the Chief Officers Group.

Crown Land and States owned Land

I recommend that, however achieved, there should be a separation between responsibility for planning and responsibility for Crown or States Land

I recommend that a Code of Practice for dealing with the development of States owned land should be prepared, published and operated by all States Departments and bodies. This should be founded on the underlying proposition that the States should work on the basis of the same policies as other land owners unless there are exceptional reasons for departing from them.

Targets

I recommend that the States, through the Planning Division, should have indicative targets in relation to performance.

These should cover the length of time taken to deal with applications of various sorts (eg 80% of householder cases to be dealt with in 8 weeks; 80% of other cases to be dealt with in 13 weeks; with individual targets or contracts for very large cases). For the next three years a gradually tightening series of targets should be set which enable the Division to reach these levels. The achievement of these targets will be dependent on the implementation of all the relevant recommendations in this report, including resources.

It may be necessary to set targets for consultees to respond on planning applications in order for the planners to meet their own targets.

Similar targets should be set for building control and relevant targets should also be established for the review of the RAP and UAP.

I recommend that appropriate quality assurance measures from the list I have described should be introduced once timeliness is under control.

Briefing meetings and guidance

I recommend that briefing meetings are held for all States Members after the election and that meetings are held on a regular basis with those who regularly come into contact with the Division. At these meetings the process which is followed in dealing with planning applications should be explained. In addition guidance should be given – internally about the policies, processes and proprieties which Members need to follow, and externally about matters such as the material which needs to be submitted with planning applications or the approach to pre-application discussions.

I recommend that guidance is published and publicised giving advice on pre-application discussions. Those seeking such meetings should be advised to submit as much information as possible beforehand so as to enable officials to prepare for the meeting. Where a decision is ultimately made which differs from the advice given in pre application discussions, the Division should give an explanation on request. Senior staff should carry out a study of the extent to which early advice is later countermanded and the reasons for it.

Attention to detail

I recommend firstly that, with the explicit support of elected members, a policy is adopted which (taking account of the new exemptions rules) requires a less detailed appraisal of smaller developments – defined as any development within the curtilage of a dwelling house, minor extensions to other properties, or any development where there are no objections following advertisement,

Secondly, I recommend that revised procedure guidance for development control officers is produced alongside that report and implemented through internal training and debate.

Thirdly I recommend that the change is monitored in a structured way to ensure that it is embedded in the culture.

Architects Panel and awards

I recommend that an Architects' Panel is re-formed along the lines described in this report, and that the Design Awards are reinstated.

Guidance on the new Law and the planning process

I recommend once again that better guidance is published dealing with planning applications – what information is needed and at what stage. This should be completed and introduced to coincide with the new Law coming into operation. In addition information should be published which explains the process through which planning applications go after submission.

Internal organisation of the Planning Division

I make the following recommendations:

Applications should be dealt with at a lower level in the hierarchy. In the simplest fast track cases a provisional decision should be made at the outset as described in this report. For the more complex cases the decision should be agreed by the Principal Officers but processed and issued by the case officers. The Head of Development Control should see only the cases which are to go to the Board or others which the Principals consider to be potentially controversial; the

decisions should be processed and issued by the case officers/administrative staff.

Reports should be as short and concise as possible and usually need not repeat the policies in the RAP/UAP in full.

Where possible minor alterations or revisions or variations to approved applications should be dealt with by letter rather than requiring a fresh application.

The administrative staff should be combined into a single team. Professional staff should remain as East and West teams pending the introduction of the new Law – further consideration should be given to combining them should the caseload reduce in due course.

A report should be prepared for the Board, who need to understand and endorse these changes, including the risks involved, and to support the Division in their implementation.

Exemptions

I recommend that the new Law is implemented as soon as possible and that the effect of the extension of exemptions is monitored. After a period of twelve months I recommend that, subject to consultation, exemptions are further extended. Similarly I recommend that the changes to the Use Classes Order are monitored and further simplification should be considered after twelve months.

Appeals

I recommend that the Appeal system as proposed in the new Law is brought into force, in order to avoid further delay. I recommend that the powers to appoint a single adjudicator and to consider appeals in writing are extensively used and monitored. I recommend that, should that process prove successful, provision should be made in due course to move to a single adjudicator system for all cases.

Staff morale

I recommend that targets are set for the improvement of staff morale, as measured in the staff surveys which are carried out, and that the Chief Officer is given the task of drawing up

a programme to achieve these targets.

I recommend that the mechanisms for liaison between the two sides of the Planning Division are reviewed and refreshed.

Building control

I recommend that the proposal to separate the planning and building control processes, which is already in hand, should be implemented

Publication of delegation agreement

I recommend that the delegation agreement is published.

Progress of applications/IT systems

I recommend that so far as possible applicants and interested parties should be informed on request of the progress of applications; and that when IT systems are updated in the future measures to enable the online tracking of applications should be considered.

Flexibility of the Development Plan

I recommend that, with a view to achieving greater flexibility in the operation of the Development Plan: firstly the review which I have recommended of the level of detail in development control should take into account the way in which the policy gateway is applied in minor developments; secondly the amendments to the UAP to introduce greater flexibility, which are already under consideration, should be progressed as soon as possible; and thirdly that the provision in the new Law for the production of planning guidance should also be used, judiciously, to introduce greater flexibility.

Recruitment and retention

I recommend that as appropriate consideration is given to providing planning officers with housing licences for longer than five years to improve recruitment and retention.

Resources

I recommend

1 As a minimum, there should be one experienced planner added to each of the two development control teams

2 There should be one extra administrative post to support development control and reduce their vulnerability to sickness absence etc

3 One additional person should be appointed for a period of twelve months for the purpose of improving external communications – principally by producing guidance notes of various kinds (see references earlier in this report) but also by liaising with the press and with stakeholders in order to open up and explain the planning process as I described earlier in this report. He or she should be located within the Forward Planning Team, though some of the work relates to development control issues.

4 In my view these figures are minima. They should be kept under review and if the workload increases, or does not reduce, as a result of the Law further resources should be added.

5 The source of finance should be the fee income from planning applications.

Action Plan

I recommend that a detailed action plan for the implementation of change in the centre and in the Division should be produced, clearly setting out priorities and timescales, and that its implementation should be carefully monitored at a senior level.

Appendices

1 Terms of reference

2 List of meetings with people and organisations

3 Glossary of terms

Appendix 1 Terms of reference

This review is intended to take all aspects of the planning service into account but to focus in particular in answering the following key questions:

- How effective are current organisational arrangements in setting strategic policy objectives for the planning system and ensuring that they are fulfilled?
- By what means can the planning system be made more responsive to the reasonable expectations of its many different customer groups and how might this approach be carried forward into a service level agreement?
- What are the specific, practical measures that would need to be taken to enable the Development Control system to make legally robust and timely decisions on planning applications without a significant increase in planning posts and what are the likely costs and benefits of such an approach?

It is expected that the reviewer will examine the following matters and comment on them in the report:-

- The degree to which the planning system is understood and supported by the general public, States Members and States Departments and, in particular, whether their respective expectations of the system can realistically be met.
- The boundary between the responsibilities of the Strategic Land Planning Group and the Environment Department.
- The way in which the planning service is managed as a division within the Environment Department and issues arising from this arrangement including, for example, the Environment Department's responsibility for administering Crown land.
- The rigidity/flexibility of the planning system both in terms of Development Plan policies and the way these are interpreted in dealing with individual planning applications.
- The handling of consultations on planning applications with official consultees, other stakeholders and the general public bearing in mind the arrangements to be brought in under the new planning law.
- The efficiency of the Development Control process including levels and standards of control, checking and reporting procedures, use of exemptions and use of delegation. Particular consideration should be given to the proportionality of exercising detailed control of small scale

development.

- The organisational structure and respective workloads of staff in different planning sections and whether staff are deployed where they can best contribute to the overall effectiveness of the planning service.
- The relationship between planning and building control and the costs and benefits of a 'one stop shop' approach.
- Where is the demarcation line or lines between the responsibilities of politicians and civil servants? On what basis are decisions referred to politicians and why, and on what basis are they dealt with by civil servants? Should those demarcation lines be published?
- Should an applicant, or any third party who is likely to be affected by any decision, be able to enquire whether an application is being dealt with by a civil servant or politicians, and what stage the application has reached?
- Should the planning authority view planning applications on the basis that planning permission will be granted unless there are written policy reasons, in the Detailed Development Plans, that they should be refused?
- Such other matters as the reviewer may consider relevant.

Appendix 2 List of meetings with people and organisations

I met with the following individuals and organisations, during my visits to Guernsey. In addition I met most of the officials in the Planning Department but they are not included in this list.

They appear in the order in which they occurred, and I am grateful to Rachel de la Mare for arranging all the meetings so efficiently:

Mr Nigel Lewis, Ms Angela Lockwood and others
Members of the Environment Board
Deputy Brock
Deputy Bell
Deputy Falla
Deputy McNulty-Bauer
Deputy Honeybill
HM Procureur (also in his capacity as HM Receiver General)
Mr Richard McMahon
Advocate Ferbrache
Members of the Strategic Land Planning Group
Advocate Langlois
Deputy Trott
Deputy Mahy
Mr Chris Lovell
Mr Nigel Jones
Deputy Brouard
Deputy Matthews
Officers representing States Property Services
Deputy Gollop
Mr Bill Lockwood
Mr Andrew Dyke and Mr John Pettitt
Representatives of La Societe Guernesiate
Representatives of the Construction Industry Forum
Breakfast meeting with 12 representatives of the Guernsey Industry Group (Chamber of Commerce, Institute of Directors, Guernsey International Business Association and Confederation of Guernsey Industry)
Advocate Perrot
Mr George Sauvage (Commerce and Employment)
Mr Steve Smith (Environment)
Representatives of the Public Services Department
Representatives of the Guernsey Society of Architects
Representatives of the Confederation of Architectural Technologists
Representatives of the National Trust
Deputy Jones

Appendix 3

Glossary of terms

Where in this report I refer to “the Planning Division” or “Planning” or “the planners” I mean the professional planning, design and conservation, building control and support staff within the Environment Department. Where I refer to the “Environment Board” or “the Board” I mean the Environment Department political Board.

By the “UAP” and “RAP” I mean the “Urban Area Plan” and the “Rural Area Plan”

“DC” means “Development Control”

“SLPG” means “Strategic Land Planning Group”

“GBP” means “Government Business Plan”

The “IDC” is the former Island Development Committee