

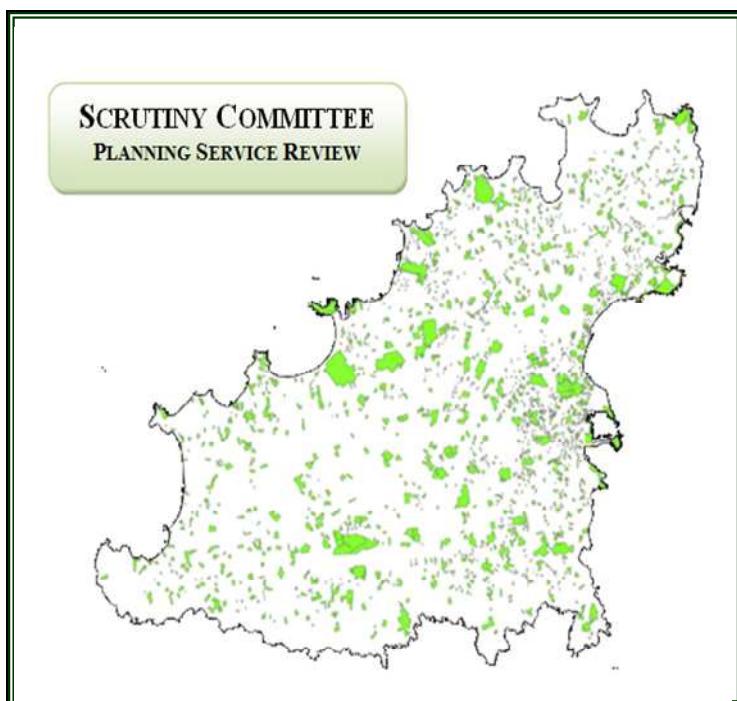


SCRUTINY COMMITTEE

THE STATES OF GUERNSEY

SCRUTINY REVIEW
REPORT

GUERNSEY'S PLANNING SERVICE:
POST-SHEPLEY REVIEW



FEBRUARY 2011

Contents

TOPIC	PAGE
A. Summary of the actions taken to date against the recommendations contained in the ‘Review of Guernsey’s Planning Service’ Report by Chris Shepley	4
1. Recommendations	18
2. Introduction	
• Background to the review	20
• The Shepley Report	21
• The introduction of the new Law	21
• Reasons for Scrutiny review	22
3. Methodology	23
4. The Land Planning and Development (Guernsey) Law, 2005	
• The review of the new Law	24
• The use of exemptions	25
• Use classes	26
5. Strategic Planning Policy	
• Policy Plans	28
• Strategic Land Use Plan	28
• The Urban and Rural Area Plans	29
6. Governance	
• The Strategic Land Planning Group (SLPG)	33
• New Policy Council sub-group	33
• Responsibility for environmental policy and the planning function at a strategic and operational level	35
• Strategic Environmental Policy	36
• Timeline of consideration on recommendations SR3A-D	37
• The creation of a ‘Chief Planning Officer’ role	39
• Crown land administration	39
• States owned land	41
• Planning as a corporate resource	41
7. Planning division operations	
• Separation of planning and building control	43
• Staff resources	43
• Staff retention and recruitment	44
• Staff morale	45
8. The planning application process	
• Interpretation of policy	48

• ‘The Planning Application Process’ map	49
• ‘Attention to detail’ issues	50
• Approved scheme of delegation	52
• Decision making at political level	52
• Code of conduct	54
• Conflicting advice	55
• Caseloads and targets	56
• Analysis of the 2009 – 2010 performance information	58
• Targets for consultees	59
• Quality assurance measures	60
• Review of the application process through the FTP	62
• The Planning Appeals Tribunal	62
9. Communication and openness	
• The role of the Communications Officer	66
• Guidance	68
• Future guidance	69
• Open meetings	69
• Outreach sessions	71
• Obtaining feedback from the Public	72
• Access to planning application reports	73
• Public access to previously approved plans	73
• Communicating with interest groups	74
• The Guernsey Arts Commission: ‘Architecture Today’	74
• Communicating with and through the local media	74
• Communicating with States Members	76
• Communicating with the industry	77
• Architects’ Panel and Design Awards	78
• Communicating using the internet	79
• Internal communication	80
10. Change Management	82
11. Conclusions	83
Appendix A : Terms of Reference for the Review	93

A: Summary of the actions taken to date against the recommendations contained in the ‘Review of Guernsey’s Planning Service’ Report by Chris Shepley (April 2008)

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
1	The new planning law			
A	The new Law is brought into force without further delay	Completed	Environment Department	The new Law was brought into force on 6 th April 2009. See Section 2: <i>The introduction of the new law</i>
B	Resources are put aside to review the operation of the Law after 12 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	Ongoing	Environment Department	The Department stated the Law was under ongoing and continuous review. See Section 4: <i>The Land Planning and Development (Guernsey) Law, 2005</i>
2	The Strategic Land Planning Group (SLPG)			
	The SLPG should be refreshed and upgraded, 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	Rejected	Policy Council	The SLPG changed from a Policy Council sub-group to a statutory group further to the commencement of the new Law in April 2009, which essentially made this recommendation obsolete. See Section 6: <i>SLPG</i>
3	Future governance of the Planning Division			
A	That the Planning function should not report to a sectoral political Board	On hold	Policy Council	It is the intention of the Policy Council that this will be considered further by a separate political working group, pending the publication of the PAC

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
				Corporate Governance Report. See <i>Section 6 Governance of Planning Strategic Policy Objectives</i>
B	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.	Completed in part	Policy Council	High level environmental policy is now developed and performance monitored through the States' Strategic Plan and by the Policy Council. However, this is additional rather than transferred responsibilities and no change has been made to the Environment Department's mandate. See <i>Section 6: Strategic Environmental Policy</i>
C	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.	On hold	Policy Council	It is the intention of the Policy Council that this will be considered further by a separate political working group, pending the publication of the PAC Corporate Governance Report. See <i>Section 6 Governance of Planning Strategic Policy Objectives</i>
D	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.	On hold	Policy Council	Superseded by the new statutory role of the SLPG. The Policy Council intends a new political group be formed to have responsibility for cross cutting strategic planning policies, pending the States approval of the Strategic Land Use Plan. See <i>Section 6: Governance of Planning Strategic Policy Objectives</i>

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
4	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.	Ongoing / Nearing completion	Environment Department	The Department is developing a Code of Conduct' policy to be published in February/March 2011. See Section 8, 'Code of Conduct'.
5	Communication A 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.	Ongoing	Environment Department	The Division is seeking to plan and implement a programme of public engagement and outreach in planning in 2011. See Section 9, 'Outreach sessions'
B	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.	Ongoing	Environment Department	The Department has resolved to create a planning and building control media strategy to be adopted in 2011 and has confirmed it is seeking to forge a positive relationship with the media. See Section 9, 'Communicating with and through the local media'
C	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.	Majority Completed/ Ongoing	Environment Department	3 of the 4 suggested guidance notes have been produced, alongside further guidance notes, and published on the States' Planning website. This workstream will be taken forward further by the Communications Officer. See Section 9, 'Guidance'

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
6	Open meetings			
A	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.	Ongoing / Nearing completion	Environment Department	The Department had resolved to introduce open meetings in Autumn 2010. This was delayed to February/March 2011. See Section 9, 'Open Meetings'.
B	I recommend that the question of whether parties should be able to address the Board should be considered after a period of two years.	Not yet commenced	Environment Department	This recommendation is dependent on the implementation of recommendation 6A.
7	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.	On hold	Policy Council	Superseded by the new statutory role of the SLPG. The Policy Council intends a new political group be formed to have responsibility for cross cutting strategic planning policies, pending the States approval of the Strategic Land Use Plan and this may be an issue for further consideration by that group. This item is still under consideration by the Policy Council. See Section 6 Governance of Planning Strategic Policy Objectives
8	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.	Rejected	Environment Department	This was considered unnecessary by the Environment Department. The Policy Council may give further consideration to this recommendation

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
				if mandates are revised following consideration of recommendations SR3A & C.
9	Crown Land and States owned Land			
A	I recommend that, however achieved, there should be a separation between responsibility for planning and responsibility for Crown or States Land	Rejected	Environment Department	The Department decided this recommendation was not required as set out in <i>Section 6: Crown Land administration</i>
B	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.	Ongoing	Treasury & Resources Department	This issue was largely resolved by the introduction of the new Law. The Treasury & Resources Department is drafting directives on estate management issues which will reference planning policies where appropriate. See <i>Section 6: States owned land</i>
10	Targets			
A	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 (e.g. 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).	Completed	Environment Department	The Department has introduced 8 & 13 week targets and is publishing them on its 'Development Control Performance Statistics' webpage on a quarterly basis. See <i>Section 8, 'Caseloads and Targets'</i>
B	For the next three years a gradually tightening series of targets should be set which enable the Division to reach	Completed	Environment Department	The Department has set and published future targets on its 'Development Control Performance

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
	these levels. The achievement of these targets will be dependent on the implementation of all the relevant recommendations in this report, including resources.			Statistics' webpage. See Section 8, 'Caseloads and Targets'
C	It may be necessary to set targets for consultees to respond on planning applications in order for the planners to meet their own targets.	Completed	Environment Department	The Department have agreed 'realistic timetables' with consultees for response times, rather than set targets. See Section 8, 'Targets for Consultees'
D	Similar targets should be set for building control and...	Completed	Environment Department	Targets have been set for building control.
Erelevant targets should also be established for the review of the RAP and UAP.	Ongoing	Environment Department	Meaningful targets cannot be set until the SLUP is agreed by the States of Guernsey in late 2011. See Section 5: 'The Urban and Rural Area Plans'
F	I recommend that appropriate quality assurance measures from the list I have described should be introduced once timeliness is under control.	Part completed/ Ongoing	Environment Department	Three of the five quality assurances measures have been progressed. See Section 8, 'Quality Assurance Measures'
11	Briefing meetings and guidance			
A	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.	Ongoing	Environment Department	The Department did not hold briefing meetings for all States Members after the election. However, States Members who follow planning matters are given the opportunity to meet with staff and discuss cases and concerns and the Department is developing a 'States Member training programme'.

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
				See Section 9, 'Communicating with States Members'.
B	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.	Pending	Environment Department	As stated above, the initial 'briefing meetings' did not occur. The Communications Officer will be taking forward the formulation of guidance for States Members in 2011. See Section 9, 'Communicating with States Members'.
C	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.	Completed	Environment Department	The guidance was produced and published. It contains advice on how an applicant can effectively prepare for a meeting with officials. See Section 9, 'Guidance'
D	Where a decision is ultimately made which differs from the advice given in pre application discussions, the Division should give an explanation on request.	Completed	Environment Department	The Department confirmed that it would always explain when a decision differed from advice originally tendered. See Section 8, 'Conflicting Advice'.
E	Senior staff should carry out a study of the extent to which early advice is later countermanded and the reasons for it.	Ongoing	Environment Department	Details of the original study, and the results from the Customer Satisfaction Survey, are listed in Section 8, 'Conflicting Advice'.

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
12	Attention to detail			
A	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.	Completed	Environment Department	The Department confirmed such a policy had been adopted through the amendments to the Development Plans in April 2010. See Section 8, ' <i>Attention to detail issues</i> '
B	Secondly, I recommend that revised procedure guidance for development control officers is produced alongside that report and implemented through internal training and debate.	Ongoing	Environment Department	The drafting of in-house guidance will be supported by the Communications Officer. See Section 8, ' <i>Attention to detail issues</i> '
C	Thirdly I recommend that the change is monitored in a structured way to ensure that it is embedded in the culture.	Rejected	Environment Department	The Department stated the section was small enough for senior management to monitor change. See Section 8, ' <i>Attention to detail issues</i> '
13	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.	Ongoing	Environment Department	This work will be progressed by the Communications Officer in 2011. See Section 9, ' <i>Architects' Panel and Design Awards</i> '
14	Guidance on the new Law and the planning process			
A	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	Completed	Environment Department	Guidance has been produced and is available online / from the Department. See Section 9, ' <i>Guidance</i> '

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
	introduced to coincide with the new Law coming into operation.			
B	In addition information should be published which explains the process through which planning applications go after submission.	Completed	Environment Department	Guidance was produced and is available online / from the Department. See Section 9, 'Guidance'
15	Internal organisation of the Planning Division			
A	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.	Ongoing	Environment Department	The Department has extended delegation downwards however has approached this cautiously. See 'Section 8: 'Attention to detail' issues
B	Reports should be as short and concise as possible and usually need not repeat the policies in the RAP/UAP in full.	Completed	Environment Department	See Section 8: 'Attention to detail' issues
C	Where possible minor alterations or revisions or variations to approved applications should be dealt with by letter rather than requiring a fresh application.	Completed	Environment Department	See Section 8: 'Attention to detail' issues

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
D	The administrative staff should be combined into a single team.	Completed	Environment Department	See Section 7: 'Staff Resources'
E	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.	n/a	Environment Department	This recommendation will not come into force unless the caseload reduces.
F	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.	Completed	Environment Department	Reports had been provided to the Department's Political Board who had endorsed the changes and support the Division in implementation. See Section 8: 'Attention to detail' issues
16	Exemptions			
A	I recommend that the new Law is implemented as soon as possible and that the effect of the extension of exemptions is monitored.	Completed	Environment Department	The new law was implemented as aforementioned and the effect of exemptions monitored by the Department. See Section 4: <i>The Land Planning and Development (Guernsey) Law, 2005</i>
B	After a period of twelve months I recommend that, subject to consultation, exemptions are further extended.	Ongoing	Environment Department	The Department has commenced a review of the Exemptions Ordinance. See Section 4: 'Exemptions'
C	Similarly I recommend that the changes to the Use Classes Order are monitored and further simplification should be considered after twelve months.	Ongoing	Environment & Commerce & Employment Departments	The Department confirmed it had met with the Commerce & Employment Department to discuss changes to the Use Classes Ordinance. See Section 4: 'Use classes'

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
17	Appeals			
A	I recommend that the Appeal system as proposed in the new Law is brought into force, in order to avoid further delay.	Completed	Policy Council	See Section 8, 'The Appeals Tribunal'
B	I recommend that the powers to appoint a single adjudicator and to consider appeals in writing are extensively used and monitored.	Pending	Policy Council	See Section 8, 'The Appeals Tribunal'. A report on single adjudication appeals is being prepared for presentation to the Policy Council. A timeframe for its production is not currently known.
C	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.	Pending	Policy Council	See Section 8, 'The Appeals Tribunal'. This recommendation is dependent on SR17B being progressed.
18	Staff morale			
A	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.	Rejected	Environment Department	The Department will not be adopting 'targets'. See Section 7, 'Staff Morale'
B	I recommend that the mechanisms for liaison between the two sides of the Planning Division are reviewed and refreshed.	Ongoing	Environment Department	The Department is undertaking a comprehensive review of internal communications. See Section 9: 'Internal Communication'.
19	Building control			
	I recommend that the proposal to separate the planning and building control processes, which is already in hand, should be implemented	Completed	Environment Department	See Section 7, 'Separation of Planning and Building Control'

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
20	Publication of delegation agreement			
	I recommend that the delegation agreement is published.	Completed	Environment Department	Delegation and the decision making process is discussed in Section 8, ' <i>The Planning Application Process</i> '.
21	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.	Completed	Environment Department	The new Planning website was launched in February 2010, with the facility to enable online tracking of applications. See Section 8, ' <i>Communicating using the internet</i> '
22	Flexibility of the Development Plan			
	I recommend that, with a view to achieving greater flexibility in the operation of the Development Plan:			
A	...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;	Completed	Environment Department	Review completed. See Section 5 " <i>The Urban and Rural Area Plans</i> "
B	...secondly the amendments to the UAP to introduce greater flexibility, which are already under consideration, should be progressed as soon as possible;	Completed	Environment Department	A report amending the UAP was passed on 29 th April 2010 (<i>Billet d'Etat VIII 2010</i>). See Section 5 " <i>The Urban and Rural Area Plans</i> "
C	...and thirdly that the provision in the new Law for the production of planning guidance should also be used, judiciously, to introduce greater flexibility.	Ongoing	Environment Department	Guidance continues to be developed by the Communication Officer. See Section 11: ' <i>Conclusions</i> '

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
23	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.	Ongoing	Financial Transformation Executive	A review of the impact of the Housing Licence regime on recruitment and retention of staff will be undertaken through the Financial Transformation Programme. See Section 7 'Staff Retention and Recruitment'.
24	Resources			
A	As a minimum, there should be one experienced planner added to each of the two development control teams	Completed	Environment Department	See Section 7, 'Staff Resources'
B	There should be one extra administrative post to support development control and reduce their vulnerability to sickness absence etc	Completed	Environment Department	See Section 7, 'Staff Resources'
C	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.	Completed	Environment Department	A Communications Officer was successfully recruited and commenced employment with the Department in August 2010. See Section 9, 'The role of the Communications Officer'.

REC No.	RECOMMENDATION	STATUS	LEAD	COMMENTS
D	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.	Pending	Environment Department	Staffing figures will be kept under review. See Section 7, 'Staff Resources'
E	The source of finance should be the fee income from planning applications.	Completed	Environment Department	Fee income has been used to fund the aforementioned recruitment. See Section 7, 'Staff Resources'
25	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.	In part/ Completed Ongoing	Environment Department Policy Council	The Environment Department created an action plan for dealing with the recommendations. See Section 10 'Change Management' for further details.

1. Recommendations

Further to the conclusions contained in Section 11 of this report, the Committee recommends:

- the **Environment Department** draws up an action plan, in consultation with relevant stakeholders, for review of the legislation, including the extent of exemptions and the number of use classes, aiming to report to the States suggesting any desirable amendments by April 2012. (11.1 – 11.3)
- the **Environment Department**, as part of its intended educational publications, provides an explanation of the hierarchy, purpose and relationship of the policy plans, further to the approval of the Strategic Land Use Plan and prior to the 2012 General Election. (11.4 – 11.8)
- the **Policy Council** produce a publication providing a clear explanation of the various roles, responsibilities, and where accountability rests, for planning policy, forward planning and operations. (11.4 – 11.8)
- the **Policy Council** make the necessary amendments to the published mandate of the SLPG (as revised in April 2009 as a consequence of the introduction of the new Planning Law) as expeditiously as possible, to prevent any misunderstanding of the role and constitution of this statutory group. (11.9 – 11.11)
- the **Policy Council** review the need for its proposed new sub-group intended to take up some responsibilities of the former SLPG. If it determines a group is required, it should clearly define its mandate and constitution and publish it alongside those of all Departments and Committees, in accordance with principles of good governance. (11.12 – 11.18)
- the **Policy Council** take into account the Committee's caution that any further review of the governance issues arising from the Shepley Report, whosoever may conduct it, would need to first identify whether there are any problems that would need to be addressed in the present day governance of planning and environment policies and operations before further consideration can be given to possible solutions. This might include consideration of whether it remains a perception that the impartiality of the Planning Division is compromised and whether environmental policy is given adequate prominence corporately, which were the problems that Shepley had identified in 2008. (11.19 – 11.26)
- the **Environment Department** to seriously consider the introduction of a structured process for engaging staff in identifying issues that may affect the quality of the service they provide and identifying critical actions for improvement. The Department Board might expect formal reports on general progress against these actions, at least on an annual basis. (11.27 – 11.33)

- the **Environment Department** takes a structured approach to monitoring the flexibility and ‘attention to detail’ applied to minor applications e.g. through case-study analysis and/or the recording of separate targets. (*11.34 – 11.37*)
- the **Environment Department** ensures it reproduces all information released to the media on its own website in case a member of the public wishes to seek clarification on the position of the Department. (*11.38 – 11.44*)
- the **Environment Department** ensures it schedules specific induction seminars for States Members following the 2012 elections, to ensure all Members are aware of the purpose and function of the planning system within the States of Guernsey. (*11.45 – 11.48*)

2. Introduction

Background to the review

- 2.1 The Scrutiny Committee is mandated¹, through a process of political scrutiny, to subject Departments and Committees to regular reviews to determine the effectiveness of government policies and services.
- 2.2 The Environment Department is responsible for planning services, including building control; environmental protection; environmental services and traffic and transport services.
- 2.3 The planning service is a division of the Environment Department (“the Department”). As outlined in the 2010 States Strategic Plan, the Division has the following responsibilities:
 - *Determination of planning applications in accordance with the provisions of the Land Planning & Development Law, its related ordinances and the statutory Plans (Strategic and Corporate Plan, Urban Area Plan and Rural Area Plan);*
 - *Prepare statutory Development Plans and Briefs;*
 - *Provide advice on matters relating to the conservation and enhancement of the natural and manmade environment/ heritage;*
 - *Administration, processing and determination of applications in accordance with requirements of the Land Planning & Development Law and current Building Regulations.*
 - *Reports to the Royal Court on the adequacy and operation of premises licensed as Salle Publiques (public buildings).*
- 2.4 The Strategic Land Planning Group² (the ‘SLPG’) is mandated to advise the Policy Council on matters relating to the development of strategic land use planning/spatial policy in accordance with the strategic economic, social and environmental policies and plans of the States of Guernsey.
- 2.5 The SLPG changed from a Policy Council subgroup to a statutory group in April 2009 with the commencement of the new *Land Planning and Development (Guernsey) Law, 2005* (detailed in Section 4). The role and changes made to the SLPG are detailed in more depth in Section 6.

¹ The Scrutiny Committee’s mandate can be located at: www.gov.gg/ccm/navigation/government/states-members-and-committees/mandates-and-memberships/

² The statutory function of the Strategic Land Planning Group’s can be located at: www.guernseylegalresources.gg/ccm/legal-resources/laws/planning/land-planning-and-development-guernsey-law-2005.en

The Shepley Report

- 2.6 In February 2008, the then SLPG commissioned Mr Chris Shepley, former UK Chief Planning Inspector, to carry out an independent review of Guernsey's planning service.
- 2.7 The review examined, amongst other matters:
- How well the planning system was understood by the States and the public, and how it could be made more responsive;
 - The effectiveness of the current organisational arrangements in setting strategic policy objectives for the planning system;
 - How the system could be improved to make legally robust and timely decisions on planning applications, and what the costs and benefits of this would be.
- 2.8 Shepley delivered the '*Review of Guernsey's Planning Service*' Report³ ("the Shepley Report") in April 2008, which made recommendations relating to planning operations and governance for the Environment Department and the then SLPG/Policy Council to consider. The Report findings were broadly welcomed by the Department, the then SLPG, the Policy Council and the Division's stakeholders, however there were differing opinions on the Report's recommendations regarding the organisational structure.

The introduction of the new Law

- 2.9 The new planning Law, the *Land Planning and Development (Guernsey) Law, 2005*⁴ ("the Law"), came into force on 6th April 2009⁵ and represented a major shift in how the Planning Division would function in the future. Deputy Peter Sirett, Minister, Environment Department, remarked at the public scrutiny meeting:

"The introduction of the new Law has brought many opportunities for positive change. In addition to instigating a system of fees for applications, which has improved our resources, the changes in application types by extension of exemptions, have also altered the profile of our development control work."

- 2.10 The Committee was conscious of the significant impact the introduction of the new Law would have had on the operation of the service and was mindful that it had only been in force for eleven months at the time the public meeting with the Department was held.

³ www.gov.gg/ccm/treasury-and-resources/reports/review-of-guernseys-planning-service.en

⁴ www.guernseylegalresources.gg/ccm/navigation/orders-in-council/guernsey--bailiwick/p/planning/

⁵ The Law was based on the Report submitted to the States on 31st May 2002 entitled the *Review of the Island Development (Guernsey) Laws 1966 - 90* and a further Report (of the same name) included in Billet d'Etat I of 2005.

Reasons for Scrutiny review

- 2.11 In July 2009, the Scrutiny Committee finalised its forward work programme. In considering the planning service as a potential topic for review, the Committee had examined the Shepley Report and had noted the comments made in the conclusion that:

“Perhaps the disappointing finding is that the situation in 2008 is much the same as that identified by District Audit⁶ in 1998. Their essential conclusions remain the same”.

- 2.12 The Committee wished to establish what action had been taken by the Environment Department, Strategic Land Planning Group and the Policy Council following the publication of the Shepley Report.
- 2.13 The Shepley Report has not been presented to the States for debate and no further reports have been published illustrating how the recommendations within the report have been considered. The Committee believed that public political scrutiny would add value in providing a critical update on the progress made by the Environment Department and the Policy Council against the report’s recommendations.
- 2.14 The table located in Section A of this report summarises progress against each of Shepley’s recommendations, which are referred to in the main body of this report.
- 2.15 The Committee considered its involvement would add value to the process in assessing what impact the report and the new Law has had on the planning service. As lead Panel member Deputy Hadley said when announcing the Committee’s intention to hold a public scrutiny meeting:

“Everyone has a view of the planning service and everyone has at some time, either directly or indirectly, been affected by the decisions it makes”.

⁶ The District Audit undertook a value for money service review of the Island Development Committee (IDC)’s operation which culminated in a report entitled the *Review of the Island Development Committee* published in June 1999. The functions of the IDC were subsumed into the mandate of the Environment Department as part of the machinery of government changes which became effective in May 2004.

3. Methodology

- 3.1 In October 2009, the Committee appointed a Panel (“the Panel”) comprising Deputies Mike Hadley, Jan Kuttelwascher, John Gollop and Martin Storey⁷. The Panel met in November 2009 to discuss how the review should be taken forward and drafted the terms of reference for the review (Appendix A), which was approved by the full Committee in January 2010.
- 3.2 The Scrutiny Committee resolved to review the action taken by the Environment Department, the Strategic Land Planning Group and the Policy Council in addressing the contents and recommendations contained in the Shepley Report, exploring how the recommendations had been considered, implemented or rejected, and the rationale behind these decisions. The Committee also agreed to assess what indicators, monitoring processes and action plans have been introduced to ensure policies and services have been effectively implemented, performance managed and reviewed.
- 3.3 The Panel critically read the Shepley Report and considered media coverage relating to the planning service. It gathered information through written correspondence with the Environment Department, the SLPG and the Policy Council and by holding a public scrutiny meeting⁸ on Thursday 4th March 2010 with representatives from the Environment Department⁹.
- 3.4 The staff of the Environment Department, SLPG and Policy Council were asked for their comments on the factual accuracy of the draft report, minus the conclusions and recommendations, on 23rd December 2010. The Final Report was approved by the Committee on 2nd February 2011 and sent to the Department, the SLPG and Policy Council for their final comments
- 3.5 This report will be submitted to the States of Deliberation, appending the comments of the Environment Department and Policy Council.

⁷ At the February 2010 States Meeting, Deputy Storey announced his intention to resign from the Scrutiny Committee, and therefore did not take any further part in the review from that time.

⁸ Transcripts from the public hearing are available online at www.gov.gg/scrutiny

⁹ The Minister, Deputy Minister, Chief Officer, Director of Planning Policy and Director of Planning Control Services.

4. The Land Planning and Development (Guernsey) Law, 2005

The review of the new Law

SR1A&B: *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.*

- 4.1 The new planning Law, the ‘*Land Planning and Development (Guernsey) Law, 2005*’¹⁰ (“the Law”), came into force on 6th April 2009.
- 4.2 The Committee noted comments previously made by the Department (contained in an appendix to a letter to the SLPG dated 30th December 2008) that it would set up the means to review the operation of the new Law, and that such a review should be completed before the end of its current term of office (April/May 2012).
- 4.3 In its written response to the Committee, the Department stated the operational issues associated with the new Law are under regular, informal review through discussion at team meetings, with fine tuning of operational procedures being carried out on an ongoing basis. One of the amendments that had already been carried out was to the Fees Ordinance¹¹ in relation to the fees for moveable structures.
- 4.4 A list of minor amendments necessary to the Ordinances is being compiled, to be actioned together rather than in a piecemeal fashion. Some changes could be undertaken by Regulation, however others would require amendments to the Ordinance.
- 4.5 The Committee noted that amendments to Ordinances could be undertaken relatively quickly and asked whether the Department would consider amending Ordinances as the need arose. The Department responded that ‘*the downside to making incremental changes is that of confusion...from the point of view of avoiding confusion amongst the public and practitioners, as well as ourselves, it is desirable to try and group amendments so that they are dealt with in ‘one hit’ if we can*’.

¹⁰ www.guernseylegalresources.gg/ccm/navigation/orders-in-council/guernsey--bailiwick/p/planning/

¹¹ Land Planning and Development (Fees)(Amendment) Regulations, 2010

- 4.6 The Department had stated a review would take place '*once the legislation has had a reasonable time to bed in*'. The Committee questioned when the Department estimated this would be. The Minister responded it was difficult to specify a time, however, the Department was reacting to feedback from the agents' forum, architects and developers, in order to ensure the Planning Division, and the Law, was working efficiently.
- 4.7 Department representatives later clarified that it was difficult to assign a rigid timescale to the review of the new Law. This is a continuous and ongoing process as planning policies and practices develop and issues are identified that require changes to the Law. It was stated that no changes of high priority or significance had arisen, rather that the Law required some small modifications. Specific areas within the legislation had been prioritised for review, such as the provisions for Environmental Impact Assessments.

The use of exemptions

- 4.8 At the time the Shepley Report was produced, many small developments fell within the scope of development control i.e. they required planning permission. This changed through the introduction of the *Land Planning and Development (Exemptions) Ordinance, 2007*, brought into force on 6th April 2009, which contained a schedule of ten classes of development which are exempt from planning control¹² (in England exemptions are known as "permitted development"). Guidance notes¹³ were also introduced for applicants to judge whether their proposals would be exempt from planning control prior to contacting the Planning Division.
- 4.9 Shepley had questioned whether the provisions went far enough. He had acknowledged that there may be public concern regarding the introduction of exemptions, therefore he believed a monitoring period of twelve months would be valuable to ensure the impact was acceptable before seeking to extend them:

SR16A&B: *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....*

- 4.10 In its written response in October 2009, the Department had stated it was "*too soon to form a view on the acceptability or otherwise of the exemptions and/or use class ordinance*".
- 4.11 At the public scrutiny meeting, the Director of Planning Control Services explained it had been difficult to measure precisely the impact of the exemptions

¹² i.e. when planning permission is not required

¹³ www.gov.gv/ccm/navigation/environment/planning/development-control/exemptions/

introduced, as many key factors regarding the operation of the Planning Division had changed e.g. the shift in workload, the impact of the recession, the introduction of fees, the changes to the ‘application profile’ etc.

- 4.12 However, he stated that the Department had introduced new systems to enable the Department to monitor pre-application enquiries, which included exemption queries, so a form of monitoring in respect of exemptions was taking place.
- 4.13 The Minister acknowledged that there was scope to extend the list of exemptions. However, the Department had approached exemptions cautiously in order first to assess how they would work in practice.
- 4.14 The Director of Planning Control Services commented:

“The Exemptions Ordinance is something we are positively committed to looking again at after it’s been in operation for say, a year, eighteen months, and there are thoughts, certainly, as to areas where that could be amended slightly”.

- 4.15 The Committee had questioned whether there had been any negative reaction from the public to exemptions being introduced, resulting in complaints regarding exempt developments. The Department stated that it had only received a couple of complaints since its implementation.
- 4.16 Department representatives stated feedback had been sought through the agents forum on how exemptions were working in practice. It was confirmed that a review had commenced, however there had been no calls from the public to prioritise this particular workstream.

Use Classes

- 4.17 The *Land Planning and Development (Use Classes) Ordinance, 2007*, contains a schedule of 44 Use Classes¹⁴. Shepley received relatively few comments about the Use Classes Order however some people had felt the 44 classes set out were ‘*too many and too complex*’. Shepley therefore made a recommendation to address this:

SR16C:...Similarly I recommend that the changes to the Use Classes Order are monitored and further simplification should be considered after twelve months.

- 4.18 The Committee asked whether the Department had considered simplifying the Use Classes Ordinance. The Department stated in considering this, one of the

¹⁴ Use Classes are defined in the Ordinance to describe different uses of land or premises under broad headings including e.g. residential, visitor economy, retail and industrial.

key contributors to the debate was the Commerce & Employment Department. The Department confirmed at the public scrutiny meeting in March 2010 that:

“...the full Board met with the full Board of Commerce & Employment quite recently.....where these very issues were touched on, and where the need for clear policyin terms of these other Use Classes was identified as being....a guiding instrument in subsequent amendments to the Use Class Ordinance. So the debate has started.”

- 4.19 The Department later informed the Committee that a coherent policy on land use for industrial purposes was required prior to amending the use classes. Further work would be undertaken with the Commerce and Employment Department to resolve this.

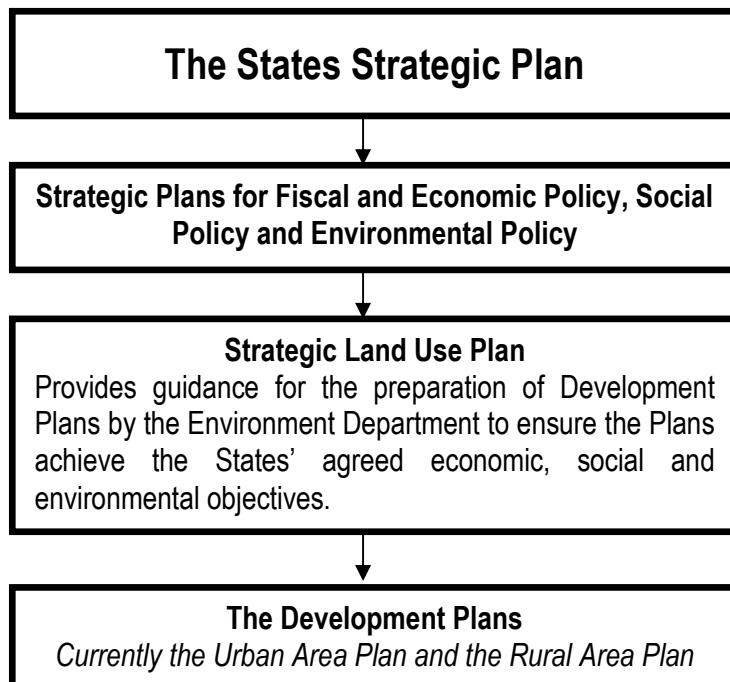
See Conclusions: ‘The review of the new Law’, paragraphs 11.1 – 11.3

5. Strategic Planning Policy

Policy plans

- 5.1 The Policy Council presented the Strategic Plans for Fiscal and Economic Policy, Social Policy and Environmental Policy in July 2009, which were approved.

Figure 1: Hierarchy of Plans



Strategic Land Use Plan

- 5.2 The SLPG is required under the 2005 Law to consider, from time to time, the Strategic Land Use Plan (SLUP) and to submit to the Policy Council, for consideration by the States, any proposed revised Plan or amendments to the Plan. The purpose of the Plan is to guide the Environment Department in ensuring the land planning system is responsive to the Island's economic, social and environmental needs.
- 5.3 The Guernsey Tomorrow¹⁵ initiative was undertaken to contribute to the review of the SLUP. The Summary Report was published in July 2010, and the Strategic Land Planning Group subsequently presented a report to the States outlining options for general planning and development of the Island.
- 5.4 The States resolved, on 29th October 2010, to note the programme for the preparation of a revised Strategic Land Use Plan, including the involvement of

¹⁵ www.guernseytomorrow.gg/

States Members in the development of a preferred strategy. It was originally intended that the revised Plan would be presented to the States for approval in February 2011, however the Committee was informed that this had been delayed to later in the year once the consultation process with States Members has been completed.

The Urban and Rural Area Plans

- 5.5 The former SLPG had requested Shepley assess '*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*'.
- 5.6 The two Development Plans, which set out the planning policies for the Island, are the **Rural Area Plan (RAP)** and the **Urban Area Plan (UAP)**. These documents are available to view at the Environment Department's reception at Sir Charles Frossard House, and online¹⁶.
- 5.7 The Development Plans are to guide the Planning Division in making decisions on planning applications, to encourage suitable development on appropriate sites, to protect the environment and to help guide public and private investment, amongst other purposes.
- 5.8 Shepley had considered these Plans to be good pieces of work which "*provide a solid basis for decision making*", and compared well with other such documents he had seen.
- 5.9 Shepley recommended the Department ensured the policies were written to prevent the Division spending too much time on the minor applications at the expense of those which would have a bigger impact on the Island.

SR22: I recommend that, with a view to achieving greater flexibility in the operation of the Development Plan:

- (a) *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;*
- (b) *secondly the amendments to the UAP to introduce greater flexibility, which are already under consideration, should be progressed as soon as possible;*
- (c) *and thirdly that the provision in the new Law for the production of planning guidance should also be used, judiciously, to introduce greater flexibility.*

¹⁶ www.gov.gg/ccm/navigation/environment/planning/planning-policy/detailed-development-plans/

- 5.10 The Department explained the concept of a ‘policy gateway’ which had resulted from the ‘Portholme’ case. This case had established that when considering an application for development, the Department must first consider whether there is a ‘positive policy gateway’ which would enable the development. If no policy gateway existed because a proposed development was either expressly or implicitly prohibited by the Plan, then permission was refused. Therefore, if no policy exists for a specific form of development requested, and where the development cannot be regarded as a minor departure from the Plan¹⁷, then the Department is unable to grant consent on an application.
- 5.11 However, the Department recognised that it was not possible for the Urban Area and Rural Area Plans to cover every eventuality, so flexibility was required in the interpretation and application of the policy. The Department believed this enabled individual cases to be determined on their own merit against the policies and, if appropriate, approved.
- 5.12 The Department stated this was one of the reasons it took proposed amendments through public inquiry in November 2009. A Planning Inspector was appointed¹⁸ to hold a public planning inquiry to hear submissions or representations on the proposed amendments to the Development Plans. The Department’s Report¹⁹ suggesting alterations and amendments to the UAP and RAP was presented to the States of Guernsey in April 2010. The Department had acknowledged the findings of the Shepley Report under section 2.1 of the covering Report:

“An important emphasis of the Interim Amendments is to respond to the recent introduction of new planning legislation and implication for certain forms of development and the application of policy to domestic development which was highlighted in the Review of Guernsey’s Planning Service by Chris Shepley. He recommended that the Department should look at the way the ‘policy gateway’ is applied to minor development and also, in more general terms, how the Plan might be interpreted in a reasonably flexible way”

- 5.13 The Planning Inspector had acknowledged in her Report²⁰:

“The Shepley report recommends a number of actions to achieve greater flexibility. It seems to me that the proposed additions to sub-section 2.3.1 and new Policies ED1 and ED2 (Change 8) go some way to achieving a more flexible UAP. The Environment Department argued that it has proved challenging to make amendments to the UAP which do not “pull the document as a whole apart”. A comprehensive re-drafting will be undertaken when the

¹⁷ The legislation provides for minor departures from the Development Plan.

¹⁸ The Planning Inspector was appointed in accordance with Section 9 of the *Island Development (Guernsey) Law, 1966 as amended*.

¹⁹ Billet d’Etat VIII, April 2010 – ALTERATIONS AND ADDITIONS TO THE URBAN AREA PLAN (REVIEW NO.1) AND THE RURAL AREA PLAN (REVIEW NO.1)

²⁰ Also published in Billet d’Etat VIII, April 2010

UAP and RAP are subject to further full review. I accept that it is difficult to make discrete changes on a subject such as flexibility, and that the future more comprehensive review would be the time to revisit the question more holistically.”

- 5.14 In respect of introducing flexibility to the Rural Area Plan, the Planning Inspector stated:

“I conclude that Proposed Change 1, especially parts (i), (ii), (iv) and (ix) would go far enough to increase flexibility in planning and development, without enabling inappropriate development or poor design which would be contrary to conserving and enhancing the rural environment.”

- 5.15 The report was approved by the States, further to amendment, on 29th April 2010.

- 5.16 Shepley made the following recommendation to set targets:

SR10E: ‘...relevant targets should also be established for the review of the RAP and UAP

- 5.17 The Plans have a 10 year lifespan under the new Law, with the RAP lasting until December 2015 and the UAP until July 2012. A short-term extension will be sought for the UAP. The review process of the Development Plans is on hold pending the approval of the SLUP in late 2011, however preparatory work has commenced.
- 5.18 Once the new SLUP has been adopted by the States of Guernsey, the Environment Department will commence a review of the Urban and Rural Area Plans to meet the new strategic agenda. The Director of Planning Policy stated that this review would be an opportunity for open debate on a number of policy issues for the future.
- 5.19 The Department further confirmed that the review would also provide the opportunity to Islanders “*to engage with the planning system at a detailed policy level and to participate in reviewing policies that people might think are no longer appropriate or applicable*”²¹.
- 5.20 In 2011, the Department is looking to develop a dedicated plan review website and newsletter. It will publish an online timetable for the plan review process, which will be regularly updated so that progress can be tracked online.
- 5.21 One of the main objectives of the review of the SLUP was “*to consider whether or not policies based on an ‘urban/rural split’ (which directs the majority of new*

²¹ Guernsey Press ‘Planning Meetings are set to open up soon’ – 10.01.2011

development to the urban area), remains a valid guiding principle for the next 10 to 15 years”²². The plans may therefore be replaced with a different form of Development Plan.

See Conclusions: Strategic Planning Policy, paragraphs 11.4 – 11.8

²² Extract from the 2009 States Strategic Plan – Billet d’État XXVI October 2009

6. Governance

- 6.1 The first topic for consideration by Shepley in the terms of reference for his review was: “*How effective are current organisational arrangements in setting strategic policy objectives for the planning system and ensuring that they are fulfilled?*”
- 6.2 Shepley concluded that the governance arrangements which existed at the time of his report were not very effective and had made recommendations accordingly.

The Strategic Land Planning Group (SLPG)

- 6.3 Shepley reported that 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*”. He had therefore recommended that:

SR2: ...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.

- 6.4 When the new Law was brought into effect in 2009, the SLPG was reconstituted as a statutory group rather than a sub-group of the Policy Council. This resulted in its mandate becoming more narrowly focused. It is chaired by the Deputy Chief Minister.
- 6.5 The SLPG is mandated under the Law to prepare the Strategic Land Use Plan and to advise the Policy Council on matters relating to the development of strategic land use planning/spatial policy that is in accordance with the strategic economic, social and environmental policies and plans of the States.
- 6.6 The Strategic Land Use Plan provides guidance to the Environment Department to ensure that the land planning system is responsive to the Island’s economic, social and environmental needs.

See Conclusions: Strategic Land Planning Group, paragraphs 11.9 – 11.11

New Policy Council sub-group

- 6.7 The SLPG had previously also been responsible for “*the promotion and coordination of major cross-departmental projects and initiatives where the achievement of corporate objectives, in spatial terms, requires sustained political leadership at Policy Council level*”, however this responsibility had

been removed from the SLPG following legal advice, as this was felt to present a conflict with the refined statutory role.

- 6.8 The Deputy Chief Minister informed the Committee that the Policy Council had decided to set up a new Policy Council sub-group tasked with taking on board the wider strategic land planning issues that the statutory SLPG could no longer consider under its mandate.
- 6.9 One such issue was Shepley's identification of the need for mediation between the Environment and Commerce and Employment Departments, which he had attributed to the SLPG but which would not fall within its new mandate:

SR7: *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.*

- 6.10 Shepley believed that many of the policy setting problems from which he believed the planners suffered at the time stemmed from the “*significant differences*” he observed between the Environment and Commerce and Employment Departments.
- 6.11 The Department informed the Committee that “*common ground does exist at present*” and the two Departments were working well together.
- 6.12 Shepley had identified that the ‘*GBP²³ provides an opportunity to tackle this difficult problem*’ and to bring the Departments together to ‘*understand one another’s problems*’.
- 6.13 The Chief Officer, Environment Department, stated that:

“If the States Strategic Plans set the strategic objectives of the States clearly, crisply, focused - then Commerce and Employment and Environment Department should be heading in the same direction without those tensions.

I think, at the moment, not only [is it] the will of the [Environment Department] Board to engage and...work these things out, but also the very fact that the States itself is trying to embrace the States Strategic Plan in a corporate way is making these things easier to resolve... ”.
- 6.14 The Committee is aware that, whilst Deputy McNulty Bauer has been appointed Chair of the Policy Council sub-group referred to in paragraph 6.8 above, its constitution and mandate are yet to be confirmed. The development of the group

²³ The Government Business plan – now superseded by the States Strategic Plan

has now been postponed until after the publication of the SLUP in late 2011, when its purpose and role will be revisited.

See Conclusions: ‘New Policy Council sub-group’, paragraphs 11.12 – 11.18

Responsibility for environmental policy and the planning function at a strategic and operational level

- 6.15 Shepley made some recommendations relating to governance, based on his observations and arising from his review, but stated in his report that:

“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”.

SR3

- A. *That the Planning function should not report to a sectoral political Board.*
- B. *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.*
- C. *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.*
- D. *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.*

- 6.16 In July 2008, Deputy Flouquet, as Chairman of the SLPG, sought clarification from Shepley regarding these recommendations. In his response, Shepley acknowledged that these matters extended beyond his remit, as in fact he had stated in his report, and he made the caveat that, whilst he had knowledge of planning, he did not have information about the way other parts of government operate in any detail and he was conscious of the implications of these recommendations for others.
- 6.17 Shepley stated: *“I do not intend the creation of a new Department. I picked up this misunderstanding during my visit [to discuss the report findings following publication] and I am sorry if it was not clear...But what I propose is simply the*

removal of the environment function to the centre – the existing Department then remaining largely unaltered...”

- 6.18 Shepley stated the purpose of this was most importantly to ensure that planning was not seen to be unduly influenced by environmental considerations:

“I consistently picked up a message, both internally and externally, that the planning function had begun to lean in a particular direction. It was favouring environmental considerations above others. The perception is more important than the reality here...Planning...needs to be, and to be seen to be, fair and impartial. Its special quality is that it can balance environmental, economic and social considerations in a fair and impartial way...The issue which seems to be perceived in Guernsey in that Environment makes policy (and sometimes quite radical policy) which is (at least) thought to affect planning decisions. It is widely thought that environment is placed ahead of, for example, employment.”

- 6.19 Shepley also considered that environmental policy should be a corporate activity and would therefore be better placed at the ‘centre’ to avoid being marginalised. He concluded:

“The simple aim is to remove planning from a position where it is, or is thought to be, biased in a particular direction. That is all. I hope my solution would do that without diminishing the importance of the environment and without creating an extra Department or extra bureaucracy.”

Strategic environmental policy

- 6.20 The Environment Department advised that, at the time of the Shepley Report, some responsibility for high level environmental policy already sat at the centre of Government, and this had been taken further as part of the States Strategic Plan (the ‘SSP').
- 6.21 The Committee noted that responsibility for high level environmental policy was under the remit of Policy Council, which is mandated to advise the States on matters relating to “*the formulation and implementation of economic, fiscal, human resource, environmental and social strategic and corporate policies to meet objectives agreed by the States*”. The Policy Council created a sub-group²⁴, the ‘Environmental Policy Group’, which it mandated to “*develop, co-ordinate and review corporate environmental policy, including the development, monitoring and review of the GBP [now SSP] Environmental Plan*’.

²⁴ Under Rule 16(A)(2) of ‘The Constitution and Operation of States Departments and Committees’, “*The Policy Council and any Department or Committee may, by resolution, constitute such Sub-Committees as it deems appropriate and for such purposes and with such membership and quorum as shall be specified in the said resolution, provided that the Council, Department or Committee shall remain responsible for any act done on its behalf*”.

- 6.22 The States of Deliberation approved the States Environmental Policy Plan on 15th July 2009, and considered and approved the ‘2010 Update’ at the States meeting in September 2010.
- 6.23 The Committee noted that the Environment Department’s mandate still includes responsibility for environmental policy as follows:

“(a) To advise the States on matters relating to:

- *Environmental policy including transport, energy and waste policy and policy for the conservation, enhancement and sustainable development of the natural and physical environment of the Island in accordance with the strategic economic, fiscal, environmental and social policies of the States;”*

Timeline of consideration on recommendations SR3A - D

2008: Joint consideration by Environment Department and the former SLPG

- 6.24 Minutes from a joint meeting held in October 2008 state Members of the SLPG and the Environment Department were asked to consider the creation of a ‘Planning and Transport’ department, and in doing so, relieve the Environment Department of those responsibilities:

“In an informal show of hands, the majority of those present indicated that they would wish responsibility for planning and transport to remain within the Environment Department”.

2009: Comments of the Environment Department in response to the Committee’s review

- 6.25 In the Environment Department’s initial response to the Committee in late 2009, it stated the political board, whilst recognising the challenges that could arise from reporting to a Board with sectoral interests, was *“not of the majority that this presents an unworkable option or that the Department should be split up”*. It stated that the matter was the subject of ongoing discussion between the Department, the SLPG and the Policy Council.

2010: Reconsideration by the statutory SLPG

- 6.26 The SLPG met in January 2010 and focused its discussion on the issue of where the political and operational planning functions should sit in the States of Guernsey. The Committee was informed it *“discussed and saw the merits in one committee having political responsibility for all 3 levels”*, referring to (1) the strategic (2) forward planning and (3) planning permission, and expressed an *“in principle majority view that this committee should be the Policy Council to maximise the opportunities for corporate working”*.

- 6.27 The Group considered that “*the involvement of politicians for planning permissions would only be needed for the largest or most controversial projects where it is ambiguous how to apply policies*”. It believed that operationally, the Planning Division could either remain in the Environment Department or be transferred to the Policy Council, although it acknowledged that this would not sit with the mandate or operation of the Policy Council.
- 6.28 It also identified other difficulties that would need to be overcome including establishing a body which would carry out the neutral functions currently carried out by the Policy Council as a ‘neutral body’ e.g. in regards to the Planning Appeals Panel, appointing Planning Inquiry Inspectors etc. Another difficulty identified was the extent to which moving the planning function to the Policy Council might “*result in a conflict of interest between wanting to promote certain developments and acting as the department considering planning applications and preparing plan amendments*”. It agreed that these, and other issues, would need to be more closely examined and therefore believed there needed to be a working group appointed by the Policy Council to investigate where political responsibility should be for the planning functions.

Creation of a ‘political working group’ to further consider Shepley’s governance recommendations

- 6.29 The Policy Council again considered the Shepley Report on 8th February 2010 and resolved to appoint a “*separate political working group*” to consult further with the Environment Department and other States Departments, as necessary, to review further the political responsibilities for strategic and corporate planning and operational planning. It agreed that the group will be under the chairmanship of Deputy McNulty Bauer.
- 6.30 The Policy Council informed the Committee that the working group would report back to the Policy Council with “*recommendations on where political responsibility for the planning function should rest in the future (including where the Planning Division of the Environment Department should be incorporated)*”.
- 6.31 The Policy Council agreed that the group should not commence its review until the States of Deliberation had been given the opportunity to consider a report from the Public Accounts Committee (the PAC) on governance issues.

Public Accounts Committee report on governance in the States of Guernsey

- 6.32 In May 2008, the PAC commissioned a report by the Wales Audit Office on corporate governance to identify whether the present system of governance in Guernsey provided value for money. The report entitled ‘*Review of Good Governance - The States of Guernsey*’²⁵ was published in September 2009. A

²⁵ www.gov.gg/ccm/general/public-accounts-committee/review-of-good-governance-in-the-states-of-guernsey.en

requête was placed in January 2010, resulting in the PAC being directed to report to the States during 2010 with recommendations for improving the governance arrangements of the States of Guernsey within the existing structure of government by committees and consensus and using as a benchmark the six recognised principles of good governance. In October 2010, the Public Accounts Committee informed the States of Deliberation that it required an extension for the presentation of its governance report to 2011, and it is expected that the Report will be published for debate in the March 2011 Billet.

- 6.33 At its meeting on 8th February 2010, the Policy Council considered that, as there was “*no current outcry about delays in the planning system or evidence that the dual Planning Directors structure is not currently working in practice*”, there was no imperative to progress the governance issues raised in Shepley in isolation from the wider States work on corporate governance.

See Conclusions: ‘Responsibility for environmental policy and the planning function at a strategic and operational level’, paragraphs 11.19 – 11.26

The creation of a ‘Chief Planning Officer’ role

- 6.34 Shepley also reported that a number of people, internally and externally, had stated the Planning Division suffered from the lack of a single professional head.

SR8: *I recommend that a Chief Planning Officer, or Head of Planning, should be appointed and should be a member of the Chief Officers Group²⁶.*

- 6.35 The Committee was informed that the Board of the Environment Department did not hold a majority view that a Chief Planning Officer or Head of Planning needed to be appointed. It did not consider that, at this stage, the Department needed to place a Chief Planning Officer over the existing Planning Directors, or to promote one of those directors to the position of Chief Planning Officer.

- 6.36 The Policy Council had also commented that there was no evidence that the “*dual Planning Directors structure is not currently working in practice*”.

Crown land administration

- 6.37 The Environment Department’s responsibility for administering Crown Land was an issue which the former SLPG had asked to be examined as part of the Shepley review.
- 6.38 At the time, the Chief Officer of the Environment Department had considered there was no problem with the Department retaining responsibility for Crown

²⁶ The Chief Officer Group is the six-weekly meeting of Chief Officers from each Department in the States of Guernsey.

Land and also the planning function. He argued that the Department would not determine an application differently if it were Crown Land. Shepley stated he had not seen evidence to the contrary.

- 6.39 However, Shepley believed '*the perception is as important as the reality here*' and that a contrary view had been put to him by the then HM Receiver General²⁷, who felt the administration of Crown Land should be transferred to the Treasury and Resources Department.
- 6.40 Shepley had acknowledged in his report that not all Crown Land is administered by the Department. However, he concluded that there should be a '*visible separation between the administration of Crown Land and the planning function*' in order to make it clear that decisions were being made on policy and not on any other grounds.

SR9A: *I recommend that, however achieved, there should be a separation between responsibility for planning and responsibility for Crown or States Land.*

- 6.41 When questioned by the Panel, the Department maintained its original stance, stating the Board, by a majority, did not hold the view that the perceived conflict between land management and planning was any different to the conflicts which could exist, for example, between traffic management and planning.
- 6.42 The Committee wrote to the current HM Receiver General to request his views on this issue. In his response to the Committee, HM Receiver General explained that the Chief Officer had written to his predecessor setting out the Department's position, and that further to reviewing these papers he was reassured by the practicalities of the matter. He therefore did not share Shepley's view that the perception was as important as the reality, and would not be seeking to change the current position on behalf of the Crown.
- 6.43 HM Receiver General added that, should the States of Guernsey wish to propose to the Crown that the responsibility for Crown Land administration be transferred to another department, he would not be inimical to discussion. He stated that he felt a clearer statement of expectations as to how these areas are to be administered on behalf of the Crown was required. He therefore committed to following up this action.

²⁷ The HM Receiver General functions: "*Our functions in that capacity include the collection within the Bailiwick of Crown revenues, and the administration of Crown property, which include Jethou, the foreshores (in those places where the Crown owns the fiefs contiguous with the coast), and the seabed.*" (quote taken from the Law Officers written submission to Lord Carswell as part of the "The Review of the Roles of the Crown Officers" in Jersey, March 2010.

States owned land

SR9B: *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.*

- 6.44 The Department confirmed that this issue was largely resolved by the new Law, which places the States in largely the same legal position as any other developer.
- 6.45 The Strategic Property Services unit of the Treasury & Resources Department is in the process of drafting directives on estate management issues, which derive from the Rules that were approved by the States in 2009²⁸, and will make reference to planning policies where appropriate.

Planning as a corporate resource

- 6.46 Shepley quoted a comment made to him in the course of his review, which he believed to be succinct and convincing, that “*the planners are not seen as a corporate resource; they are seen as the property of the Environment Board*”.
- 6.47 At the public scrutiny meeting, the Chief Officer of the Department stated, that historically, at times, government had not seen the planning service as a corporate resource, instead viewing it as something to be “*fended off*”.
- 6.48 Prior to the introduction of the new Law, a non-statutory protocol had been put in place, further to States Resolutions in July 1991, on proposals from the former Island Development Committee (IDC) entitled ‘*Developments by the States*’²⁹.
- 6.49 The Resolutions provided that all States Departments should forward their proposals for development to the IDC for comment before carrying them out, and that development must not proceed unless the IDC had commented that it was in favour or unless the proposal was subsequently approved by the States of Deliberation. The Department explained that due to the non-statutory nature of the protocol, some Departments tended to comply more readily than others.
- 6.50 The Department informed the Committee that under the new Law, ‘*Departments now have to come to us for planning approval*’, which had inevitably led to Departments increasingly seeking pre-application advice from the Division.

²⁸ Billet d’État XXXI, November 2009, Article XIII – Review of Administrative and Accounting Guidelines and States Financial Procedures

²⁹ Billet d’État XX, Article X, July 1991

- 6.51 The Department stated that improvements had also occurred as a result of guidelines issued by the States Property Services section of the Treasury & Resources Department. Planning staff have regular six-weekly meetings with staff of the States Property Service to facilitate liaison at an early stage on proposals for major States' development projects.
- 6.52 The Department believed it liaised well with all departments which had responsibility for public sector development and even before the introduction of the new Law, some departments had followed the correct processes in accordance with the 1991 States Resolutions.
- 6.53 The Committee questioned whether the Department operated a policy of facilitating planners in liaising with other departments regarding future developments. The Department confirmed that it did support this and liaised with other departments as early in the process as possible. It also added that in respect of emerging developments and strategies e.g. through the Corporate Housing Programme, close working relationships existed and continued to develop.

7. Planning division operations

Separation of planning and building control

<p>SR19: <i>I recommend that the proposal to separate the planning and building control processes, which is already in hand, should be implemented.</i></p>
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- 7.1 The Department confirmed that the separation between planning and building control processes had been completed.
- 7.2 The Committee asked what benefits had been realised from this separation, and what improvements had been made to the overall process as a result. It was explained that under the previous system the Division was trying to balance two applications which were for two different processes, which could result in delays.

Staff resources

- 7.3 The issue of resources ran throughout Shepley's report and many contributors had made comments regarding what they perceived as understaffing and a lack of resources. The District Audit had identified resource issues in 1998/9 and Shepley had stated in practice, there had not been any staffing level increase. He agreed that the weight of the Division's workload at the time of the report meant that the Division was overstretched, which had (unsurprisingly) led to a deterioration in performance.
- 7.4 Shepley stated he had given careful consideration to the level of resources which might be required to improve the Division to manage its workload and focused his recommendations on the areas he perceived to be under the greatest strain. He recommended:

<p>SR24: Resources</p>
<p>A. As a minimum, there should be one experienced planner added to each of the two development control teams</p>
<p>B. There should be one extra administrative post to support development control and reduce their vulnerability to sickness absence etc</p>
<p>C. 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,</p>

<i>though some of the work relates to development control issues.</i>
<i>D. In my view these figures are minima. They should be kept under review and if the workload increases, or does not reduce</i>
<i>E. The source of finance should be the fee income from planning applications</i>
SR15D: <i>The administration staff should be combined into a single team.</i>

- 7.5 The Committee noted the Department had combined the administration staff as recommended, recruited the additional staff as listed above with the source of finance coming from the fee income from planning applications, and that the Department had committed to keeping staffing numbers under review.
- 7.6 However, the Committee has noted the Department had been affected by staff shortages in its conservation and design team, which had impacted on its ability to make progress on two of the actions contained within the Environmental Plan of the States Strategic Plan, namely to:
- (a) Develop positive planning guidance generally and specifically in respect of listed buildings and conservation areas.
 - (b) Review policies for the determination [*scheduling*] of listed buildings.

Staff retention and recruitment

- 7.7 Shepley outlined what he perceived to be the problems of planning officers being allocated five-year Housing Licences. He acknowledged it was a problem for other States Departments and for the private sector, and that the process was under review. He had recommended:

SR23...*that appropriate consideration is given to providing planning officers with housing licences for longer than five years to improve recruitment and retention.*

- 7.8 The Department stated it had generally been able to secure seven-year licences (albeit often only as extensions to initial five-year licences). The Chief Officer commented:
- “...that whole process of managing licences, managing trainees, managing succession planning really is a very, very delicate balancing act...[the Director of Planning Control Services] and I meet probably three or four times a year and look at all of the licence expiries, the retirements, the dates the trainees are*

coming through and whatever...to see if we can...manage that process...It's very complex. There's no simple answer."

- 7.9 The Committee recognised the difficulties the Department faced in this area and this recommendation was one which could not be taken forward by the Environment Department alone. It noted the work being undertaken in the Financial Transformation Programme, under Ref no. HR_B to:

"Review the impact of the Housing License regime on the recruitment and retention of staff across the States and the associated costs pressure this creates"

- 7.10 In the ‘executive summary opportunity reports’ contained within the ‘Fundamental Spending Review: Phase 2 - Annex’ document, it states:

"A systematic review and appraisal of the causes and factors that adversely affect staff turnover and recruitment across the States (including Housing Licenses) will produce a number of benefits. These include;

- *Improved clarity over factors that influence recruitment and retention rates*
- *The ability to develop a targeted strategy to address the issues that impact on recruitment and retention rates*
- *Recognition of barriers to recruitment that may be caused by Housing Licenses*
- *Lower staff turnover rates*
- *Improved interdepartmental relationships*
- *Better long term planning”*

- 7.11 The report states the recommended approach is to undertake a 4 stage action plan over a 2 year period.

- 7.12 The current Housing Control Law expires in December 2011. The Population Policy Group launched its ‘Managing Guernsey’s Population’ consultation in January 2011, to run until 31st March 2011 to assist the group in the development of the Island’s strategy on population management. The strategy and population control regime eventually formulated by this Group will replace the current Housing Control Law.

Staff morale

- 7.13 Shepley stated that morale in the Division was low. He referred to the 2007 employee opinion survey which showed the Department scored ‘worse on almost all measures than the staff of the States as a whole’. In the course of the report, Chris Shepley identified various reasons which could have contributed to the ‘low morale’ of staff in the Division.

- 7.14 Shepley had acknowledged that some of the recommendations in the report would assist in improving morale e.g. increasing resources, communication and more delegation. He had also made a specific recommendation:

SR18A: *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.*

- 7.15 The Chief Officer's view was that staff morale "*is not significantly better or worse than in other areas of the Department or across the States as a whole*". He questioned the employee opinion survey as a method of measuring staff morale as he believed certain questions could lead the employee in certain directions, and that it was a formulaic approach to measuring morale and therefore did not necessarily identify the issues to be addressed.
- 7.16 The Committee questioned whether the Department felt morale had improved since the release of the Shepley Report and the introduction of the new Law. At the public scrutiny meeting, the Department asserted morale had "*improved dramatically*" and that it took the issue of morale "*incredibly seriously*". It also stressed that the staff were its key resource in the Division and, if staff morale was low, it could affect the efficiency and effectiveness of the section. The Department argued that unfair criticism in the media was the most '*demoralising and demotivating thing*' for staff (communication and the relationship with the media are covered in Section 9 of this report).
- 7.17 The Department stated it had made concerted efforts to improve communications internally as well as externally, and progress with the new Law was a major motivating factor within the Department. The Director of Planning Control Services stated:

"People have seen positive change and they've actually reaped the benefits of positive change as well in terms of efficiencies and being able to do their job more easily and better...and have been congratulated for doing their job better as well, through feedback and success in performance generally."

- 7.18 As stated in Section 9, the Communications Officer will also be working with all the teams within the Environment Department to '*aim to achieve excellent internal communication*'.
- 7.19 In respect of the recommendation to set targets for the improvement of morale, the Chief Officer argued creating a programme targeted at staff morale specifically, with targets for morale measurement and improvement was, in his opinion, '*a bureaucratic and fruitless exercise*':

"My issue with the Shepley recommendation was...I don't believe you can set a target for morale, and set a strategy around it with that target, I think that's a false premise. Morale is managed day-to-day in light of whatever it is that's happened and surrounds that. That's my issue with Shepley; it's this perception of a target: 'I'm going to increase morale by 15% this year'...I don't buy into that. Managing morale - I do".

See Conclusions: 'Staff morale', paragraphs 11.27 – 11.33

8. The planning application process

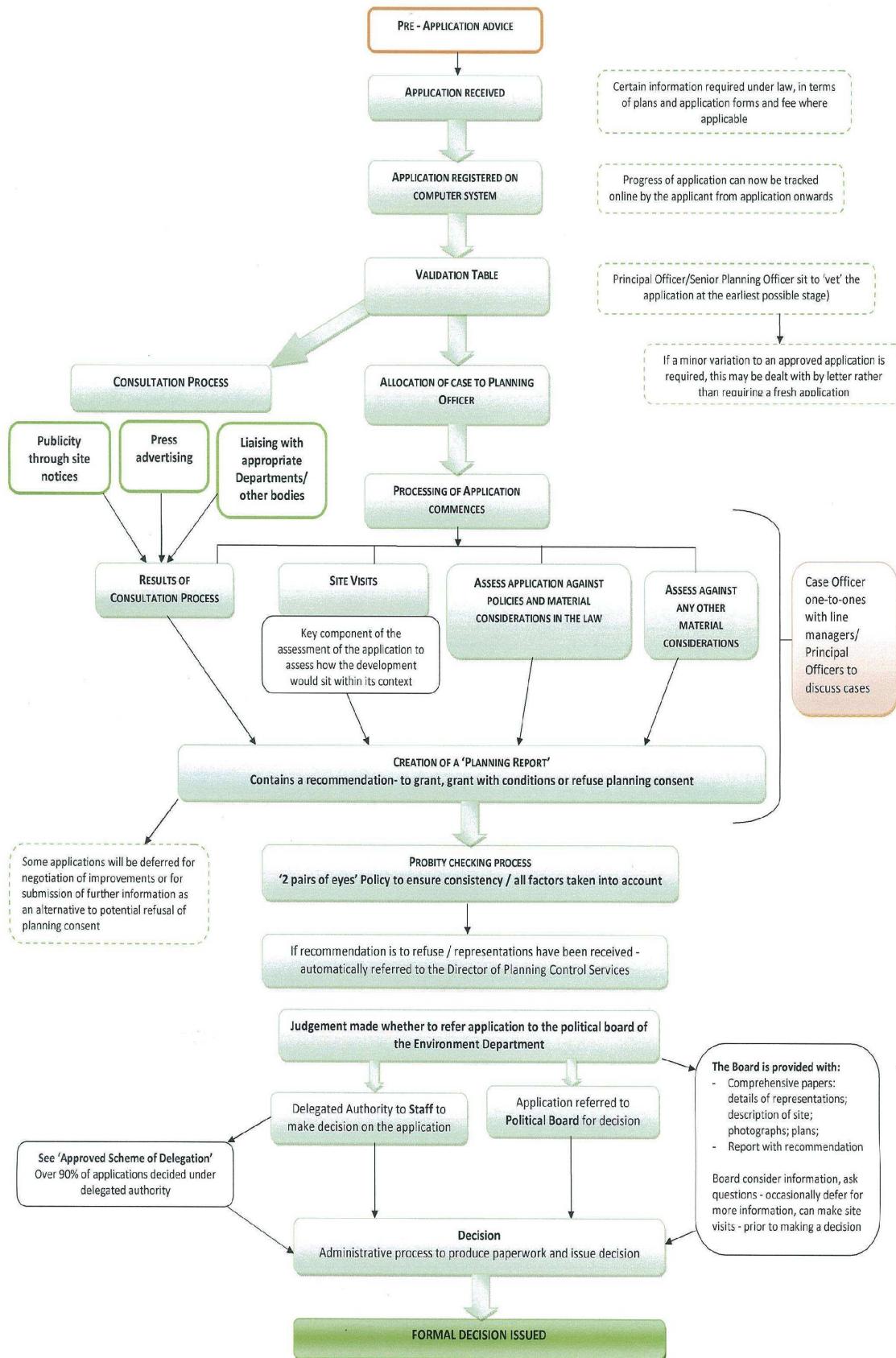
- 8.1 Shepley identified a number of issues with the application process including: delays, a lack of transparency, too much attention to detail, that the Department was '*too negative*', and procedural problems.
- 8.2 The Director of Planning Control provided an overview at the review hearing of the process applications went through when being determined. For ease of reference, the Committee has organised this information into a flow chart, as presented on page 49.

Interpretation of policy

- 8.3 The Committee asked who had the responsibility within the Department for delivering advice on the flexible interpretation of policy. The Director of Planning Policy commented that the policy team she headed up provided advice to the development control staff about how the policies should be interpreted. However, she stressed that:

"It's important to remember that it is a legal obligation to follow the policies, unless the departure is only a minor one, so we don't have huge leeway in that respect".
- 8.4 It was stated the Department was very keen to try and introduce ways of ensuring staff were spending more of their time on high impact applications. It added it was involving people in discussions to try and '*disseminate that attitude to use reasonable flexibility within policies*'.
- 8.5 The Committee questioned how the Division strove to achieve consistency in decision-making whilst exercising flexibility. The Department responded that it sought to achieve this through discussion, training sessions, mentoring junior officers and the '*validation and checking*' process, where policy could be interpreted and the acceptability of development proposals could be judged.
- 8.6 The Committee asked how the interpretation of the policy was communicated to the applicant. The Department representatives stated if the decision was a minor departure from the policy, it would make it clear that the application had been accepted as a minor departure from the Development Plans.

THE PLANNING APPLICATION PROCESS



'Attention to detail' issues

- 8.7 The Department going into too much detail on planning applications was a common complaint which Shepley believed was justified, and one which he had attributed to the 'risk averse' stance of the Planning Division. He stated it was difficult to make a recommendation on this point as it was a cultural issue rather than a procedural one.

SR12A: *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.*

SR12B: *Secondly, I recommend that revised procedure guidance for development control officers is produced alongside that report and implemented through internal training and debate.*

SR12C: *Thirdly I recommend that the change is monitored in a structured way to ensure that it is embedded in the culture.*

- 8.8 As explained in Section 5 of this report, the Development Plans had been amended in April 2010 to allow a more flexible interpretation when applying policy on planning applications³⁰. Recommendation SR12A is essentially superseded by the fulfilment of SR22A and B.

- 8.9 The Department stated that the drafting of in-house guidance to assist in this area would be supported by the new Communications Officer.

- 8.10 Department representatives had responded that to monitor change in a structured way required the application and monitoring of performance indicators which would generate an additional resource burden. The Chief Officer stated the section was small enough for the Principals and Directors to be able to know whether or not the approach to minor applications was improving in flexibility.

SR15A: *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*

³⁰ Billet d'État VIII, April 2010 – ALTERATIONS AND ADDITIONS TO THE URBAN AREA PLAN (REVIEW NO.1) AND THE RURAL AREA PLAN (REVIEW NO.1)

<i>officers/administrative staff.</i>
SR15B: <i>Reports should be as short and concise as possible and usually need not repeat the policies in the RAP/UAP in full.</i>
SR15C: <i>Where possible minor alterations or revisions or variations to approved applications should be dealt with by letter rather than requiring a fresh application.</i>
SR15F: <i>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.</i>

- 8.11 Shepley had explained the “two pairs of eyes” principle operated by the Department in checking applications, in which “*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)*”. At the time, decisions were “*vetted at a higher level in a search for consistency and fairness*”, however Shepley also stated this added to the time taken to process a case.
- 8.12 The Department initially responded that a formal policy had not yet been documented and that extending delegation downwards (i.e. allowing more staff to make decisions) was being progressed cautiously. However, the Department stated that incremental steps had been taken to reduce the attention to detail described. These steps had included using training sessions, revised internal consultation procedures, regular meetings to discuss marginal cases and a team approach to development briefs and major applications.
- 8.13 It explained that whilst the Department had maintained the ‘*two pairs of eyes*’ policy at present, report checking was being devolved to case officers. The Department was confident that this approach would be expanded as staff gained the necessary experience.
- 8.14 The Department stated the report template had been amended to assist in ensuring reports, which set out the justification for decisions and recommendations on each application, are as short and concise as possible. The new IT system had also assisted Officers and helped streamline the report generation process. It stated that reports are considered to meet the balance between being brief and meeting the needs of the Courts and/or Tribunals in determining appeals.
- 8.15 The Department confirmed that minor alterations, revisions or variations to approved applications were dealt with by letter instead of a fresh application being required.

- 8.16 Reports have been submitted to the Environment Department Board who endorsed the changes to try to reduce the ‘attention to detail’ approach of the Department.

See Conclusions: ‘Planning application process’, paragraphs 11.34 – 11.37

Approved scheme of delegation

“The Law and the approved policies of the States determine the way in which the Department approaches planning applications. It adheres to guidance regarding probity issues, and has an approved scheme of delegation to appropriately qualified staff, which is publicised on its website.”

Minister, Environment Department

- 8.17 The terms of reference for the Shepley review had posed the following question: *“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?”*
- 8.18 The Department operates an ‘Approved Scheme of Delegation’, which had been reviewed and revised in November 2008, in anticipation of the commencement of the new legislation.
- 8.19 The purpose of the scheme is to enable the Board of the Environment Department to delegate authority to the Planning Directors, and staff under their supervision, to carry out the planning functions of the Department, in accordance with the Law, with regard to specific functions of the Planning Division.
- 8.20 Shepley believed the delegation agreement produced by the Department was entirely sensible, and along the lines of those he had 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”.*

SR20: *I recommend that the delegation agreement is published.*

- 8.21 The Department agreed and published the scheme on its website³¹.

Decision making at political level

- 8.22 The Department estimated that the Board considered approximately two or three applications at each fortnightly meeting of the Board:

³¹ The Department’s ‘Approved Scheme of Delegation’ is available at:
www.gov.gg/ccm/environment/planning-division/approved-scheme-of-delegation.en

"there is a judgement made as to whether...[the application] is referred to the political Board, or is determined under delegated powers, and...that delegation agreement....determines what goes to the Board and, effectively, what we can deal with under delegated powers. At the moment, over 90% of applications are dealt with under delegated authority, as Shepley points out in the report".

Director of Planning Control Services

- 8.23 Senior staff advise the Minister on applications that might be regarded as contentious and which should be referred to the Board. The Department stated the Board received the complete list of all applications that had been approved, rejected or deferred which provided the Board the opportunity to question the decisions made and to retain an overarching involvement in the decisions taken by staff. The Department stated Members made their own judgement on whether to request an application be considered by the Board, and an application could be added to the meeting agenda as a result.
- 8.24 At the public scrutiny meeting, the Minister read out the advice the Department had received regarding the role of a quasi-judicial Board:

"It's best understood by thinking it of requiring to act in decision making like a Court. Board members must decide only that which is before them and may take into consideration only those matters that can legitimately be taken into account and always ignoring legally irrelevant matters. Individual members of the Board should not apply their own personal agenda, or propose alternatives to the matter being considered, or favour advice that departs from that given by a statutory consultee where applicable....Or to raise concerns of other people unless those concerns were submitted through formal representations. More importantly the Board member must approach the decision with an open and unbiased mind and conduct himself or herself impartially. Of course, any personal conflicts of interest must be declared, and the Board Member, if conflicted, must refrain from participating in the decision-making process"

- 8.25 The Minister highlighted a Board Member may, therefore, find themselves having to vote for an application that would go against the '*apparent public view*' or against '*his or her own political agenda, manifesto and/or beliefs*'.
- 8.26 At the February 2010 States Meeting, Members of the Environment Department announced they were abstaining from voting on the Lowe amendment to the '*Residual Waste Treatment - Contracting with selected preferred bidder*' requête³², as the Board were in the process of considering a planning application from Suez Environnement regarding the proposed energy from waste plant.
- 8.27 In the light of this, the Committee was interested to learn what process would be followed if all the Board Members were, or were perceived to be, compromised

³² Billet d'État IV 2010 - Wednesday 24th February 2010 - www.gov.gg/ccm/policy-and-hr/billets--resolutions/2010/february/billet-detat--iv-2009-february.en

or conflicted in relation to an application received and, therefore, unable to make a decision on an application. The Environment Minister responded there were two options: for the Board Members with the lesser perception of bias to make the decision, or for the staff to make the decision on the application with delegated authority. He stated his preference would be the latter option.

- 8.28 The Chief Officer of the Environment Department further explained that the Department was acutely aware of the need to be mindful of any actual or perceived interests of Board Members, and that in his role in helping set the Board's meeting agenda, he and his Directors ensured that Members who might have (or be perceived to have) a conflict of interest did not receive the relevant papers. In respect of the entire Board being perceived to be conflicted, he added:

"If it was perceived that the whole of the Board was biased then our starting point would be to say 'Is there a quorum of Members where the perception of bias is far, far weaker than with another part of the Board' and, if this is the case, we always try to take that approach to ensure that that contentious application was determined by the political members input. But, if the perception of bias is so strong across the whole Board, then really the only thing that is left is to do it...[at] delegated officer level...through that whole process, we make sure we have legal advice".

Code of conduct

- 8.29 The '*Review of the Island Development Committee*' report released by the District Audit in 1999 stated it was important to have the correct guidelines and procedures in place so that planning decisions were made in an "*open, structured, fair, equitable and consistent manner*". It believed the Guernsey system would be strengthened with the adoption of a planning code of conduct. It had therefore made the following recommendation:

District Audit Recommendation:

R25 Establish a planning code of conduct. This should govern:

- Declaration of interests
- Policy on accepting hospitality
- Committee membership and people who have frequent contact with developers
- Lobbying and approaches from developers or applicants
- Meetings with developers
- Site visits
- Reasons for decisions, especially rural and urban area plans.

- 8.30 Shepley noted that this recommendation had only been partially implemented.

SR4: *I recommend that the District Audit recommendation in favour of a Code of Conduct for political Board Members should be implemented in full.*

- 8.31 The Department stated it followed the principles set out in the Local Government Association publication '*Probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters*' (2009), which covered the issues which would be included in a planning code of conduct. The Department accepted that whilst this would not be entrenched in a 'local context', it was in line with UK best practice, and was referenced by the legal advisors to the Department.
- 8.32 The Department confirmed the code of conduct was being finalised to be implemented and published prior to the commencement of open meetings in February or March 2011.

Conflicting advice

SR11D&E: *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.*

- 8.33 The Committee asked whether a study had been undertaken. It was confirmed that the Department's Planning Directors had investigated this claim, stating, "*We looked into this following Shepley because this was news to us that it was a problem when Shepley identified it...We've looked into it and quite honestly, we can't...find the evidence to support that one*".
- 8.34 The Department said all advice given at a pre-application meeting was without prejudice to any subsequent decision. The staff aimed to give the best possible advice but it was important to note they could only do so based on the information available at the time. In the application process, new information could come forward through the consultation and publication processes, therefore the final decision could only be made at the end of the process when all information had been taken into account. The Director of Planning Control Services therefore concluded that it was "*possible that the advice that was given at the beginning may prove to be incorrect, but as I say, having looked into it very carefully, we don't think that that's a...significant issue*".
- 8.35 The Department also added that if it became aware of a mistake having been made in the advice provided to an applicant, a representative would meet with the applicant to explain what had occurred and explain why their advice had changed.

- 8.36 The Department looked at this issue again as part of its Customer Satisfaction Survey³³ and learnt that 61% of the respondents had a pre-application discussion with a planning officer. Of those who met with a planning officer, 86% stated the decision reflected the advice given. However, 14% indicated that the decision was “*not consistent with the advice provided*”.
- 8.37 The Department stated that the matter required further investigation due to the relatively high figure of reported inconsistency. It was explained that a protocol existed in Development Control that all Planning Officers looked at the pre-application advice given to applicants and flagged up any inconsistencies for their line manager to investigate. A further protocol was in development to issue copies of meeting notes to the applicant to reduce the possibility of misunderstandings of the advice tendered in pre-application meetings.

Caseloads and targets

- 8.38 One of the key drivers for the SLPG commissioning the review of the Planning Division had been reported delays in handling planning applications. In his report, Shepley stated:

“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”.

- 8.39 At the time of Shepley’s Report, the Division did not have a formal set of targets, although it had *normally*³⁴ sought to deal with most applications within a period of 8 weeks from registration. Shepley recommended that some form of publicly available performance statistics were necessary and needed to be monitored effectively.

SR10A: *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 (e.g. 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).*

SR10B: *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.*

³³ The customer satisfaction survey ran between July to October 2010.

³⁴ Shepley had stated in the report: “*It (the Department) 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’.

- 8.40 The Committee noted the National Indicator Set ‘*Processing of planning applications*’³⁵ measured in England. These indicators measured:

NI 157a	Planning Applications : Major Applications	Percentage of major applications determined within 13 weeks
NI 157b	Planning Applications: Minor applications	Percentage of minor applications determined within 8 weeks
NI 157c	Planning Applications: ‘ Other applications’	Percentage of ‘other’ applications determined within 8 weeks

- 8.41 The Committee was therefore interested to learn whether the Department had adopted similar targets to measure their performance.
- 8.42 The Department acknowledged that one of the biggest complaints it had received historically was in regard to the speed of decisions, however it stated this had improved since the introduction of the new Law and revised processes and procedures.
- 8.43 In the Department’s initial written response, it reported that targets had been set, published and recently reported on. They added the targets were set out over a three year period and were linked to fees income and resources.
- 8.44 The Committee questioned exactly what the targets measured and where they had been published. The Department responded that performance targets for planning applications had been established in parallel with the changes of application types and the introduction of fees. The targets measured in 2009 – 2010 are as follows:

Guernsey Planning Division’s Performance Indicators: April 2009 - 2010						
% of Planning decisions issued within:	Target	Qtr 1 ³⁶	Qtr 2	Qtr 3	Qtr 4	Year Total
13 weeks	70%	100%	83%	81%	80%	81%
8 weeks	60%	89%	50%	39%	48 %	49%

- 8.45 The Department first published a report in July 2010 on the first quarter from April to June 2010. The figures for 2010 – 11 are:

Guernsey Planning Division’s Performance Indicators : 2010 - 11					
% of Planning decisions issued within:	Target	Qtr 1	Qtr 2	Qtr 3	Qtr 4
13 weeks	80%	90%	89%	90%	-
8 weeks	70%	74%	70%	72%	-

³⁵ Previously labelled Best Value Performance Indicators - BVPI 109a/b/c – www.communities.gov.uk

³⁶ Quarter : 06.04.09 – 05.07.09; Quarter 2 : 06.07.09 – 05.10.09; Quarter 3 : 06.10.09 – 05.01.10;
Quarter 4 : 06.01.10 – 05.04.10

- 8.46 The indicators measure the period between the receipt of a **valid** application³⁷ and the **actual issue** of the decision (i.e. the posting of the decision to the applicant).
- 8.47 The Department stated the targets had been set on the basis of all applications (as opposed to splitting them between major and minor applications as is the case in England – as shown previously). The Department explained that the targets in England had only recently been split between major and minor applications. It had decided to keep to the more simplistic 8 and 13 week targets initially, however in future if evidence suggested there would be a benefit from splitting the targets further, this would be considered.
- 8.48 In the Department's press release of October 2010 for the period between 6th April to 5th October 2010, alongside the 8 & 13 week statistics, the Department produced the following information:

Total number of applications received	1,037
Total number of applications decided	998
Refusal rate (as a percentage of total applications decided)	11%
Percentage of planning appeals dismissed ³⁸ (since commencement of current appeals system)	77.3%

- 8.49 Shepley had also recommended that, over the next three years, a gradually tightening series of targets should be set. When questioned, the Department confirmed that it had set these targets and stated the Departments targets for 2010 - 2011 were to issue 70% of decisions within 8 weeks and 80% within 13 weeks. In April 2011, this would be increased by a further 10% in each category, with targets set at 80% of planning decisions to be made within 8 weeks and 90% of planning decisions to be made within 13 weeks.
- 8.50 The Department had stated that the refusal rate was approximately 10%.

Analysis of the 2009 - 2010 performance information

- 8.51 As shown in the table held at 7.37, the Department did not meet the eight-week target for 2009 - 10 but stated it had evolved '*a number of methods which we're moving forward on to actually meet that eight-week figure*'.

³⁷ The information required to submit a 'valid' application is explained in the 'Making a Planning Application' guidance note

³⁸ 'dismissed' in this sense means that the decision of the Environment Department has been upheld by the Planning Tribunal.

- 8.52 The Department explained that there had been an increase in the quantity of applications received immediately prior to fees (both building control and planning) being introduced in June and October 2009. The fees were introduced³⁹ to charge for services and functions provided under the *Land Planning and Development (Guernsey) Law, 2005*.
- 8.53 The Department explained that the three-week advertisement period associated with site notices also had a general impact on the figures.
- 8.54 Another factor which impacted on the eight-week figure was the Department's decision to defer some applications, where appropriate, for negotiation of improvements or for submission of further information as an alternative to refusal of planning consent.
- 8.55 The Department therefore also measured the proportion of 8-week applications which had been deferred, which it stated was around 16%. This had received positive feedback from planning agents who had indicated that this was a much valued approach. The Department highlighted that this also kept their refusal rate low, which had the consequence of fewer appeals being lodged.
- 8.56 The Department also stated that it was plotting performance weekly in order to monitor individual and team performance, and how cumulatively that is having an impact on the 8 and 13-week targets for the year as a whole.
- 8.57 The Department stated that in the light of the mitigating factors, it would have been content from a customer service perspective with a final year-end outcome of 50% in the 8-week category (which would fall at 10% under target) and 80% in the 13-week category (which would be a 10% improvement on their original target). As shown in the table below 7.41, the Department approximately achieved these outcomes.
- 8.58 The Department informed the Committee that performance information was published quarterly. However, the Committee had been unable to find evidence of this through its research prior, or immediately post, the public scrutiny meeting.
- 8.59 The Department subsequently commenced publishing news releases on the Planning website providing quarterly updates from July 2010.

Targets for consultees

- 8.60 Point 5 of the terms of reference for the Shepley Report asked him to assess:

³⁹ Billet d'Etat XX, Article XV, September 2007

“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”

- 8.61 Shepley stated through his research that little was said on this point, however, one important issue arose; some of the organisations which the Department needed to consult “*are very slow in replying*”, which he stated held up the processing of applications. He therefore recommended:

SR10C: *It may be necessary to set targets for consultees to respond on planning applications in order for the planners to meet their own targets.*

- 8.62 The Department stated that consultees had agreed to realistic timetables. However, under current legislation, responses within required times could only be gained through mutual assistance and co-operation and could not be enforced. The Department argued that it “*must be recognised that the alternative of operating in the absence of a consultee response is not conducive to good planning decisions*”.
- 8.63 Department representatives discussed the consultation process in more detail at the public scrutiny meeting. They stated the need for consultees to respond in a timely manner had been emphasised. It explained that it understood the resource issues which could affect consultees’ ability to respond promptly, however it believed consultees had a responsibility to reply expeditiously:

“the whole process of bringing it (the application process within the 8 & 13 week targets), it’s hindered to a certain extent by the need in quite a few cases to go out to consultation”.

- 8.64 The Director of Planning Control Services further explained that the Department had been in discussions with all of their consultees “*to try and learn, improve performance, and for them to recognise the timescales that we’re working to*”. He stated this had been successful and the Department had formulated targets for the vast majority of consultees. The Department had also adopted a ‘*more project team approach*’ with regard to large applications to ensure early notification and provision of information to consultees, so when the consultation process commenced, the relevant parties were well-informed to be able to respond promptly.

Quality assurance measures

SR10E: *I recommend that appropriate quality assurance measures from the list I have described should be introduced once timeliness is under control.*

- 8.65 The list in Shepley’s report included:

- (a) *Analysis of the number of comments/complaints received*
 - (b) *Survey of service users to measure their response*
 - (c) *Case reviews*
 - (d) *Peer review*
 - (e) *Revisiting sites post-decision*
- 8.66 In its written response, the Department stated that this element was under consideration and would be developed once planning fees had been implemented and target times were under control. At the public scrutiny meeting, the Panel wished to discuss the suggested measures in more detail, and questioned what consideration had been given to them by the Department.
- 8.67 In the Scrutiny Committee's '*Complaints Policies and Appeals Procedures Update Monitoring Report*', November 2007, the Environment Department had informed the Committee that it had nominated a member of staff as a 'Complaints Registrar' who kept a register of the formal complaints received. Department representatives confirmed that it did analyse the number of comments and complaints received, and submitted a report to the Board each month.
- 8.68 In respect of customers' surveys, the Department had responded that it "*can and will look at a more structured method of eliciting feedback in future*", however in terms of prioritisation, the Department, at the time of the meeting, was not at that stage. However, in June 2010, the Department informed the Committee that it had committed to undertaking a survey of service users, and had tested a pilot survey to ensure this was progressed effectively.
- 8.69 The Department held its customer satisfaction survey from July to October 2010. It informed the Committee 700 survey forms had been sent, with a total of 84 replies received, which equalled a response rate of 12%. Whilst the Department stated it was a lower response rate than it would have hoped, it felt it was a sufficient number of responses to form valid conclusions for service improvement. The results of the survey are discussed in Section 9.
- 8.70 In respect of the recommendation to hold case reviews, the Director of Planning Control Services stated that there was a case review section as part of the agenda for the team meetings, to provide the opportunity to discuss lessons learned, what had worked well, where improvements could be made etc.
- 8.71 The Department had no immediate plans to progress the recommendation to have a peer review.
- 8.72 The Committee asked whether the Department had conducted post-decision visits for a selection of sites to examine results on the ground. The Department responded that the current, and past Board(s), had visited a variety of sites and said "*to be honest, with any development, it is usually quite possible to find*

things that could have been done better but overall... it's always been a very positive result because you're actually seeing the building being put to the purpose for which it's been designed".

- 8.73 The Department confirmed it did not operate a formal policy of conducting site visits, however when site visits occur the Department follows the UK best practice guidance on how these should be carried out.
- 8.74 In terms of monitoring general quality assurance, the Department stated, "*it's assured through the checking process that we've* (the Department) *put in place*" however it recognised there was a potential to look at quality assurance measures in a more structured way.

Review of the application process through the FTP

- 8.75 The Department informed the Committee it would be embarking on a Financial Transformation Programme (FTP) 'Value for Money Workstream' from July to December 2010. The purpose of this was to look at the Planning Control Services and to map processes to improve efficiencies.
- 8.76 The Department envisaged that '*improving the alignment of processes to the new system*' could reduce the administrative burden on staff and customers.
- 8.77 The Department has identified a number of benefits for the Department and customers through this process, which culminated in the Division formulating an 'action list' of areas including the delegation of "submission checks" on Development Control applications to the administrative team, providing feedback to agents on their 'performance' and other improvements to administrative functions across the Division.

The Planning Appeals Tribunal

"Previously, the idea of approaching the Royal Court in an appeal put a lot of people off and I think that's unfortunate because...if somebody believes they have a right to appeal, they should be able to have that appeal – and I believe that under the system we've got now, they now can do that."

Minister, Environment Department

<p>SR17A: <i>I recommend that the Appeal system as proposed in the new Law is brought into force, in order to avoid further delay.....</i></p>

- 8.78 *The Land Planning and Development (Appeals) Ordinance, 2007* came into force on 6th April 2009.

- 8.79 The Committee wrote to the Policy Council seeking to learn how it would monitor the performance of the appeals system, and to ascertain what consideration had been given to the recommendations Shepley made in this area.
- 8.80 The Policy Council clarified that, whilst it had a statutory responsibility under the *Land Planning and Development (Guernsey) Law, 2005* to establish a Planning Panel (from which Planning Tribunals are drawn) and were required to appoint a Secretary to administer the tribunal system, no further role in relation to the appeals system was defined.
- 8.81 It explained the Appeals Panel currently operated at '*arms' length*' from the Policy Council as an independent statutory body, however the letter from the Scrutiny Committee had led the Policy Council to further consider arrangements for monitoring the performance of the appeal system in future, including reference to Chris Shepley's recommendations.
- 8.82 The Policy Council, in conjunction with the Secretary to the Appeals Panel and the Environment Department, co-ordinated a response to the Committee.

Number of planning applications and subsequent appeals

- 8.83 The Environment Department advised that it received 2,384 valid planning applications between 6th April 2009 and 27th April 2010. In this period, 216 applications were refused (under the terms of the new Law only), which the Department stated is approximately 10% of cases (in fact 9.06% of cases).
- 8.84 The Appeals Panel Secretary reported that 22 appeals had been received between 6th April 2009 and 9th April 2010, which was around 1% of all applications received over the year.
- 8.85 The Department published performance figures in January 2011 which showed of the 1,500 valid applications received between 6th April 2010 and 5th January 2011, 1,492 had been decided, with a refusal rate of approximately 10%.
- 8.86 The Department published the overall percentage of planning appeals dismissed since the current appeals system has been in operation as 81%. The Department was asked what analysis it gave to planning decisions overturned by the Planning Tribunal. Representatives stated it subsequently considered each case to identify any 'lessons learned' from the process and to discuss why the decision of the Department had been overturned.

Guidance

- 8.87 The Committee asked whether the Policy Council had produced guidance to assist appellants in understanding and accessing the appeals system. It was informed that guidance material was being produced by the Appeals Panel itself which would be published in March 2011.

- 8.88 In an article produced in the Guernsey Press in July 2010, it was indicated that the planning appeals panel would also be launching its own website in the future. The development of a specific appeals panel website has not been prioritised by the Panel. All the relevant information on appeals is currently available electronically through the Environment Department's '*Planning Appeals*' and '*Planning Applications & Appeals Websearch*' pages.

Performance management

- 8.89 The Committee was interested to learn how the Policy Council would monitor the performance of the appeals system. The Policy Council responded that it has yet to consider this but that it understood that the Appeals Panel proposed to produce an annual report which could be used as the basis for such monitoring. In the February 2011 Billet III, the report from the Policy Council entitled '*Planning Panel – New Members*' stated:

"The Policy Council anticipates that the Planning Panel will submit a report on its activities at an appropriate time which will provide a basis for assessing how the system is working"

- 8.90 At the time of writing, the Policy Council was unable to provide a timeframe for the production of this report.
- 8.91 The Committee was also interested to learn what feedback the Policy Council would seek from appellants and the Department in order to ensure ongoing improvements to the accessibility and usability of the appeals system. This was an area that the Policy Council stated was yet to be discussed.

Single adjudicator

SR17B & C:*...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.*

- 8.92 The Committee was mindful that the appeals system is still in its relative infancy. However, it was interested to learn whether the above recommendation for certain classes of appeal to be dealt with by a single professional member, on the basis of written representations, had been considered.
- 8.93 The Policy Council responded that the Appeals Panel has yet to propose classes of cases which might be eligible for consideration by a single professional member, but that it has started to identify suitable cases. In April 2010, the Policy Council approved the first request submitted by the Chairman of the Panel for an individual case to be dealt with by a single professional member.

- 8.94 The Appeals Panel highlighted that the popularity of this appeal route may increase following the introduction of fees for appeals, when appeals fees are introduced later in 2011, as it would be a lower cost option compared to a tribunal hearing. The Policy Council stated it will put in place administrative arrangements to ensure that there is no delay with further requests from the Chairman of the Panel for individual cases to be dealt with by a single professional member.
- 8.95 The Policy Council discussed the topic at its meeting on 1st November 2010 and agreed a further report should be prepared on the subject of single adjudication appeals following staff level discussions with the Planning Panel Chairman. A timeframe for the production of this report is not currently known.

Third party appeals

- 8.96 The Committee noted that Shepley briefly considered third party appeals⁴⁰ and concluded he would not recommend they were introduced. The Committee was conscious that such an appeal option was available in Jersey, and was interested to learn whether the Policy Council concurred with Shepley's view or whether it would give consideration to third party appeals in the future.
- 8.97 The Policy Council responded that, as the Scrutiny Committee had highlighted, the new Planning Appeals system was still in its infancy and would take time to mature. It stated that when the Appeals Panel Chairman and members have had more experience of the way the process operates, they would be likely to identify areas for improvement and it would anticipate that the Policy Council would see this as a greater priority than any possible introduction of third party appeals.
- 8.98 The Policy Council added that third party appeals were problematic and could introduce added uncertainty and delay into the development process, as Shepley had outlined.

⁴⁰ A third party, for example a neighbour of an approved development application, making an appeal against that decision.

9. Communication and openness

- 9.1 The Planning Division is often subject to criticism – from the public, the media and from within the States of Guernsey itself. The Shepley review and the introduction of the new Law, at least in part, set out to address some of the criticisms.
- 9.2 Shepley quoted a view put forward to him by one body in the course of his review, who stated:

"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".

- 9.3 However, Shepley highlighted there had been some successful public consultation exercises by the Department, e.g. through development briefs. The view was also expressed *'from within the Division that public involvement was not well developed in Guernsey'*. He stressed that the staff recognised the importance of implementing better external communication.
- 9.4 The Committee was particularly interested in assessing how the Department had tried to improve understanding of the planning service. This section details the initiatives the Department has or will progress in making the service more open to the public.

The role of the Communications Officer

- 9.5 Shepley recommended that one additional person should be appointed for a period of twelve months for the purposes of improving external communications. In its original written response in late 2009, the Department informed the Committee that it would be recruiting a Communications Officer to assist in various workstreams, including the creation and delivery of a communications strategy.
- 9.6 The Department initially advertised the post in 2009, a recruitment process which had been delayed through an unsuccessful attempt to recruit locally and the subsequent process of obtaining a housing licence for the post. The Communications Officer was appointed and commenced employment with the Division in August 2010.
- 9.7 In light of the delay in recruiting a Communications Officer in post, at the time of the public scrutiny meeting the Committee had questioned whether any of the communication workstreams had been reallocated to other posts within the Division, in order that progress could be made. The Department said that some workloads had been reprioritised, with the agents' forum being progressed prior to the Communications Officer being in post, whilst other proposals had been deferred.

- 9.8 Further to information provided in correspondence and the public scrutiny meeting, the Committee noted the large number of workstreams assigned to the Communications Officer post:

Recommendations to be taken forward by the Communications Officer:

No	Shepley Recommendation
5A	<i>Outreach sessions for the public</i>
5B	<i>Development of a strategy for dealing with the media</i>
5C	<i>Design Guidance (and other guidance as the Department may decide)</i>
11A	<i>Briefing meetings for States Members</i>
11B	<i>Guidance for States Members</i>
12B	<i>Revised procedures guidance for development control officers</i>
13	<i>Development of the Architects Panel and Design Awards</i>
14B	<i>Guidance on the planning application process post submission</i>

- 9.9 The Department explained the appointment of the Communications Officer was not simply a case of employing someone with ‘PR’ experience. It believed the role required a person who understood the system and laws of planning to create a planning communication strategy, and to create a framework for communication. The main purpose of the role was:

“To co-ordinate and facilitate the implementation of the Planning Division’s communication plan, a two year programme of events, publications and outreach to increase understanding of the planning system, its purpose, procedures and benefits in order to enable the public, elected representatives, stakeholder organisations and professional groups to engage effectively with it”.

- 9.10 The Committee was interested to learn why, when the Department had identified the need to consistently engage with stakeholders, and the large amount of identified areas proposed to be progressed by the Communications Officer, the duration of the post was only for two years. The Department responded that Shepley had originally only recommended one year for the post, however the Department had concluded that this was an unrealistic timescale in which to take forward the various workstreams. As shown in the table above, and reiterated by the Chief Officer at the public scrutiny meeting, *“So much comes back to the Communications Officer post”*.

- 9.11 The Department hoped that if the Communications Officer could provide a solid structural base, the Department would be able to continue effectively communicating within the normal staff workload. However, the Chief Officer concluded the realism of this expectation could only be tested once the Communications Officer was in post. The Director of Planning Control Services stated that, whilst the Communications Officer would be tasked with progressing communications work, this would be undertaken with the assistance and

guidance of the Planning Directors to prioritise how the work would be taken forward.

Guidance

- 9.12 Shepley had identified, at the time of his review, that information on planning policies, processes and procedures was not easily available, which led to the perception of a closed, inaccessible system. The lack of guidance available was a key theme to which Shepley returned throughout the report.

SR5C:	<i>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.</i>
SR14A:	<i>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.</i>
SR14B:	<i>In addition information should be published which explains the process through which planning applications go after submission.</i>
SR11C:	<i>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.</i>

- 9.13 The Department introduced guidance notes to coincide with the introduction of the new Law in April 2009. The Department had produced seven guidance notes which have been published online on the Planning website, with printed copies available in the Department's reception, along with eighteen specific guidance notes on exemptions.
- 9.14 The Committee noted that the first three guidance notes listed in SR5C above had been produced and published, however the task of producing notes on 'design guidance' had been allocated to the Communications Officer post.
- 9.15 The Committee attended the 'eyesore debate' (discussed in greater length later in this section) and noted the number of attendees who commented, during the subsequent 'question & answer' session, on the lack of design guidance currently available. The Department stated initial drafting had commenced in the absence of a Communications Officer but further work was required, prior to consultation and eventual approval.

- 9.16 The Committee noted that the Department produced post-application process guidance in accordance with SR14B in 2010.
- 9.17 The Department had produced the '*Meeting with Planning/Building Control Staff*' note to meet recommendation SR11C, which contains instructions on how an applicant could effectively prepare for planning meetings. It stated that the greater scope for pre-application discussions had led to improved submissions and a lower level of appeals. It later reported, further to the results of its customer satisfaction survey, that 61% of respondents had taken up the opportunity to hold pre-application meetings with a planning officer.

Future guidance

- 9.18 The Department stated that guidance issued to date had been favourably received by the professional agents involved in the planning process, and that it had compiled a list of further guidance that was required. This included the intention to draft guidance in 2011 covering the topics of archaeology, protected buildings, design (householder, industrial and commercial), Dower Units, tree protection on building sites, industrial development, conversion/re-use of buildings, working from home and a 'frequently asked questions' guidance note.
- 9.19 The Committee was pleased to note that, in light of public confusion over the rules relating to display-boards, the Department announced in the media in August 2010, that it would be producing a guidance note to provide clarification on the law and the rules in this area. The Communications Officer stated:

"At the moment there seems to be an issue with people not knowing what the rules are or where to go for advice. The law has always said what people can and can't do. But, because of recent events, we've identified that there is a need to put together a user-friendly set of guidelines as a priority".

- 9.20 The article was concluded with the sentence "*If more guidance is needed, contact a planning officer at env@gov.gg or call 717200*".
- 9.21 The Department intends to hold a review of the guidance in autumn 2011 in order to identify any information gaps.

Open meetings

- 9.22 In August 2007, the late Deputy Bill Bell, then Minister for the Public Services Department, had suggested that planning meetings be open to the media, further to his Department allowing reporters to attend its waste meetings:
- "I believe if we open up the planning aspects of....[the Environment Department's] responsibilities then the public will have a better understanding*

*of the decisions it is making and why they are made. It will help to build a partnership with the public”*⁴¹

- 9.23 Shepley believed the introduction of open meetings would have numerous benefits, including improving public understanding and confidence in the system:

SR6A&B: *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.*

- 9.24 Public meetings have been in place in the UK and Jersey for many years.
- 9.25 Open meetings were mentioned in an interview conducted with a Council member of the Guernsey Society of Architects, featured on Channel Report on 16th February 2010 in relation to the “eyesore” petition launched in February 2010:

“There is a proposal later in the year to have public meetings where planning decisions are made and I think that would be very good indeed. That’s the norm in Jersey now and also the UK. So that would give people an opportunity to express their feelings, certainly, so I think more could be done on that score...”

- 9.26 At the start of the Scrutiny review, open meetings had not yet been introduced. The Department had informed the Committee that it wished to form a better view of the process, and the resource implications of such a system. To do so, Members intended to visit some authorities which carried out open planning meetings, before confirming what action to take.
- 9.27 The Department stated that whilst consideration of open meetings had not been deliberately delayed, other recommendations had been granted higher prioritisation in the Division’s forward work programme, such as the introduction of the Law. The Director of Planning Control Services stated:

“...we’re very supportive of open meetings, we feel it’s a way of getting the planning system more easily understood out there in the public consciousness and accepted as....a fact of life”

- 9.28 The Department subsequently confirmed that its political Board had visited Jersey and Fareham District Council in March 2010 to observe how open meetings operated in practice. The Department felt useful lessons could be learned from the approach adopted in these examples.
- 9.29 The Department provided the Committee with sight of a report it had considered when agreeing that open meetings would commence in autumn 2010. The report

⁴¹ ‘Planning meetings could go public’ - The Guernsey Press, 30th August 2007

detailed the action plan for implementation and stated its intention to review and extend the meetings after a year if they proved to be successful. However, the commencement of the meetings had been delayed in order that a protocol for their operation, including the completion of probity guidance, could be devised. The first open meeting is currently scheduled to take place in February or March 2011.

- 9.30 The Department will make the agenda, reports and minutes from the planning open meetings available online.
- 9.31 Attendees at the November 2010 Guernsey's agents forum meeting had discussed the possibility of live broadcasts of open meetings via a webcam. The Department has indicated it will give consideration to the use of webcams and alternative technologies in the future, following the introduction of open meetings.

Outreach sessions

SR5A: *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;*

- 9.32 The Department informed the Committee in its written response that “*under the ambit of the new legislation this work has commenced with a 2 day conference and the first phase of guidance material*”.
- 9.33 Whilst it acknowledged the above, the Committee felt the 2-day conference was not targeted to the public and questioned what consideration had been given specifically to outreach sessions for the **public** to raise and discuss planning problems. The Chief Officer indicated at the public scrutiny meeting that this would be a task for the new Communications Officer to consider.
- 9.34 The Chief Officer commented from his experience and observations throughout the States, that the vast majority of the general public did not engage with the Division unless they were directly involved as an applicant or in submitting comments as a third party, and that this was one of the key issues for the Department in relation to improving communication.
- 9.35 The Chief Officer stated the Department had a ‘duty’ to permanently reinforce the key messages it wished to communicate. He stated this was one of the reasons the Communications Officer role had been created, in order to put in place structures to keep the public informed of the role and work of the Planning Division.
- 9.36 In early 2011, the Department announced its intention to hold Planning surgeries, in conjunction with Building Control, which would provide residents

the opportunity to speak with officers on planning issues on an informal basis. The first session would be held in February or March 2011.

- 9.37 The Department's representatives plan to hold further meetings with parish representatives to discuss applications, as it had done in 2010 with parish representatives from Torteval and Castel. In seeking to communicate with 'parishes', a series of articles for local parish newsletters are planned.
- 9.38 It also intends to hold an 'Environment Activity Week' in the summer of 2011 including exhibitions, possible lectures or films.
- 9.39 Presentations are also planned for 2011, to be held at schools and colleges explaining the role of planning and giving information on planning as a career. A presentation will also be held as part of the Workers Education Association 2011 programme.

Obtaining feedback from the public

- 9.40 In June 2010, the Department informed the Committee that work was underway to create a customer satisfaction survey targeting anyone who had come into contact with the planning process, whether by formal application or any other means. The survey ran from July to October 2010, and the results were provided to the Committee in January 2011. The publicly available report summarising the findings may be found on the Planning webpage⁴².
- 9.41 The purpose of the survey was to assist the Department in improving the quality of its service by sending a questionnaire through at the decision stage of the planning process to applicants, agents and any other party who made a representation to the Department. Questions asked for feedback on the pre-application meetings, the level of service, the information available on the States website and requesting suggestions on how the Division could improve its services.
- 9.42 The Environment Department Board was presented with a report from Senior Planning Staff on the findings and conclusions of the Customer Satisfaction Survey in December 2010. The Department identified areas for service improvement from customer feedback, including:
 - Consistency of application outcome relative to pre-application advice received;
 - Keeping people better informed about the progress of their application;
 - Fair and polite treatment.

⁴² <http://www.gov.gg/ccm/environment/press-releases/2011/planning-customer-results-show-service-improvement.en>

- 9.43 The Board approved the Division's intention to investigate these areas further, and seek to make improvements further to customer comments. The Department intends to use the results as a benchmark against which future surveys can be measured.
- 9.44 The Department stated its intention to conduct customer satisfaction surveys annually, and to take steps to increase the rate of questionnaire responses.
- 9.45 In 2011, the Department intends to produce a planning information note on 'community involvement in planning' which will set out clearly how individuals and groups can interact with the planning system, to cover both policy – in respect of the plan review – and development control processes.

"Over the coming year we need to build on the work that has already been done. We are investing a lot of effort into involving the community in planning, to improving public understanding of and confidence in the planning system. We want to help Islanders to gain a better understanding of decisions that the Department makes and why they are made"

Deputy Peter Sirrett, Minister, Environment Department⁴³

Access to planning application reports

- 9.46 In November 2010, the Department has commenced publication of the Planning Officer reports for refused planning applications on the States of Guernsey Planning website. The Department hopes to extend this in 2011 by introducing planning reports for approvals for planning permission on the website.

Public access to previously approved plans

- 9.47 In August 2010, the Department publicised its new policy to enable members of the public to see the drawings for approved plans for a period of one year following the approval date. The request for viewing will be recorded.
- 9.48 The press release also detailed proposed future changes, such as extending the property search process to include details of approvals for adjoining properties. As the Minister stated in the press release:

"Our new policy of enabling access to approved plans is another important step forward in terms of the openness and transparency of the planning process.

We are also looking in the near future to expand the Department's property search service to include greater access to details of decisions concerning neighbouring properties. This will be of particular interest to prospective

⁴³ <http://www.gov.gg/ccm/environment/press-releases/2011/planning-customer-results-show-service-improvement.en>

purchasers who currently have limited access to information about approved developments in the vicinity of their future home or business premises."

Communicating with interest groups

- 9.49 The Minister commented that Board Members also attended meetings of various 'interest' groups, to increase communication between the Department and the public e.g. attendance at the Living Streets AGM, Guernsey Bicycle Group, Bus User Group etc. The Department also confirmed it has held meetings with parish representatives to discuss planning applications.
- 9.50 In 2011, the Department intends to establish a general 'planning forum' with representatives from various interest groups.

The Guernsey Arts Commission: 'Architecture Today'

- 9.51 The Committee noted that the Guernsey Arts Commission had held a series of events in 2010 which was aimed to encourage Islanders to discuss design. It believed this was further indication of the interest in the Island in planning matters, especially in relation to architecture.
- 9.52 As part of this series, Members of the review panel had attended the 'Eyesore Debate' held on Thursday 22nd July 2010 at Beau Sejour, in which the proposition for debate was "Architecture is ruining Guernsey". The debate was well attended, with approximately 230 members of the public present, watching representatives from the Planning Division, the 'eyesore petitioners' and two architects presenting their views on the subject, followed by a question and answer session.

Communicating with and through the local media

- 9.53 The Committee monitored media coverage received by the Planning Division in 2010. It noted the decisions made by the Division featured in the Guernsey Press, and/or other media outlets, on an almost weekly basis. Whilst some articles showed the Division in a positive light, most were negative.
- 9.54 Shepley considered the role of the Guernsey Press in the Island and concluded a more open relationship on the part of the civil service and a less hostile approach by the Press would help both parties, and the Island, immeasurably.

SR5B: *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.*

- 9.55 When questioned on the Department's relationship with the media, the Minister acknowledged that improvements could be made by the Department in communicating with the media, and vice versa. He stated that, historically, the

Department had suffered from ‘bad press’ on some issues which, he believed, the media had misinterpreted or misrepresented.

- 9.56 An example of negative press occurred in February 2010 when the Guernsey Press questioned the decision-making process within the Department, in a full-page article on Saturday 20th February, topped by the following headline:

We approved ‘eyesores’ – but won’t tell you why....

....Environment refuses in face of independent advice to be transparent

- 9.57 Whilst the Department subsequently strongly refuted the claims, in a response published five days later on 25th February, the subsequent article did not receive the prominence of the first article. The article was published on a Thursday, and was located in the bottom right hand corner of page 6 of the newspaper:

Environment always ‘willing to explain and justify its actions’ over ‘eyesore architecture’

- 9.58 When discussing with the Committee how the Department was seeking to improve relations with the Guernsey Press, it explained it had met with the Editor to discuss planning matters, and that it would be working with the newspaper to assist it in producing articles on the planning process. The Director of Planning Control Services stated:

“I’m very hopeful personally that the new relationship that we’re striving to obtain with the Guernsey Press, for example,...will actually reap benefits and that when there is criticism it’s actually deserved criticism - obviously we’ll try and avoid that - rather than undeserved or ill-informed criticism”

- 9.59 The first two page article regarding the planning process appeared in the Guernsey Press on Monday 19th July 2010, and detailed the introduction of open planning meetings, the aims of the new planning law, the decision making process, the appeals system and the appointment of a Communications Officer.

- 9.60 The Committee questioned whether the Department would be developing a media strategy, and whether part of the Communications Officer’s role would be to act in part as a press officer. The Department responded that the role would not be to act as a press officer, but, as previously mentioned, to ensure appropriate communication structures were in place. In 2011, the Department intends to adopt a planning and building control media strategy that is currently in development, and will seek to develop a plan for promoting positive news stories. It also intends to build on communication with members of the media through scheduling regular meetings with media contacts.

- 9.61 The Chief Officer added at the public review meeting that the Department had always tried to develop positive media relationships:

"we've invited journalists into the Department, showing them around the planning process, they've spent a day with the planners, seeing how the system works, we've had agreements with the media that there's...a senior lead journalist to the Department, we've met with them...on a three monthly or a six monthly basis, where we've gone through what we've considered to be high profile issues that are coming up so that they can be an educated journalist when they ask their questions and similarly that they can raise with us and say well, this is brewing in the background and we are going to be coming to you and asking you and so on".

- 9.62 The Committee noted the Minister and Director of Planning Policy had appeared for a Q&A session on BBC Radio Guernsey on 8th April 2010, alongside a local architect.
- 9.63 The Department will also analyse how the work of the Division is presented through the media through a quarterly media audit to assess the positive, neutral and negative coverage it has received.

Communicating with States Members

SR11A: *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...*

SR11B: *...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.*

- 9.64 Shepley had identified a poor level of understanding of the planning process within the States of Guernsey. He had therefore recommended that briefing meetings were held for all States Members after the election.
- 9.65 The Department had responded that such meetings were held for the new Board members, and that States Members were invited to planning seminars on the application of the new law. The Committee therefore concluded from the Department's response that such 'briefing meetings' for States members as recommended had not taken place.
- 9.66 The Committee did, however, note that a presentation to States Members was held on 13th April 2010 prior to the debate on the '*Alteration and Additions to the Urban Area Plan (Review No.1) and the Rural Area Plan (Review No.1)*' contained in Billet d'Etat VIII of 2010. The Director of Planning Policy and the

Minister provided further explanation and clarification of the policies and held a ‘Question & Answer’ session with States Members.

- 9.67 The Department stated that States Members who followed planning matters were given the opportunity to meet with the planning staff to discuss individual cases and concerns.
- 9.68 The Committee had asked whether the Department had or would produce written guidance for all States’ Members. The Chief Officer had responded that whilst the existing planning guidance is available for everyone to access, there were areas where advice was specific to Deputies e.g. probity issues of how the Board operates, inter-departmental workings etc. He stated there needed to be ‘*specific planning, briefing, guidance notes for Deputies in those areas*’. He added it would be an important part of the Communications Officer post to identify clearly the ‘*audiences*’ for certain types of guidance notes.
- 9.69 In 2011, the Department is considering the development of a ‘States Member training programme’. This will be accompanied by guidance documents or a ‘planning pack’ providing information on planning processes and procedures.
- 9.70 It also aims to produce educational publications, published on its website, provisionally entitled ‘The Planning System in Guernsey’. This aims to provide States Members, and those outside the Planning System, to have a greater understanding of the planning process.

Communicating with the industry

- 9.71 The ‘industry’, in the following context, may be broadly defined as agents submitting planning applications.
- 9.72 During the public scrutiny meeting, the Minister commented that most applications received were from architects’ offices (apart from very minor applications). The Minister informed the Committee he believed the relationship between the Division and the ‘industry’ was probably better at present than it had been for a very long time.
- 9.73 The Department had developed an ‘agents’ forum’ to consult, advise and communicate with the industry, and to provide an arena to receive feedback. As the largest stakeholder group, the Department stated communication with the industry was crucially important for service delivery and service improvement in the future.
- 9.74 The Committee questioned how work on the agents’ forum was being progressed and what type of feedback the Department had received. Department representatives believed the forum represented a strong cross-section of the ‘industry’, and it was stated it had received a positive response to the initiative from agents.

- 9.75 The Scrutiny Panel attended the first agents' forum on 20th November 2009 as observers. The first meeting sought to explain the changes the Department had made to the planning process since the adoption of the new Law. A second meeting had been held in May 2010, which had been a smaller agents' forum, and a third meeting held in November 2010. It was intended to hold a series of six-monthly events involving people who regularly submitted planning applications. The Department had also held workshops on topics such as planning fees and charges, and planning and design statements.



* Still from the presentation given at the agents' forum held on 20th November 2009⁴⁴

- 9.76 It added that the Department planned to make the forum more interactive as it developed, with attendees giving presentations, perhaps through joint seminars, or visits to offices. The Committee was pleased to note the Department had created a forum webpage⁴⁵ which held the list of members of the Forum, meeting dates and minutes and updates for general access.
- 9.77 In 2011, the Department intends to develop a quarterly newsletter and will consider further options such as expanding the group to include more planning agents, holding further workshops including presentations and facilitation by agents.

Architects' Panel and Design Awards

SR13: I recommend that an Architects' Panel is re-formed along the lines described in this report, and that the Design Awards are reinstated.

⁴⁴ A full copy of this presentation is available online at www.gov.gg/planning

⁴⁵ PlanForum webpage: www.gov.gg/ccm/environment/planforum.en

- 9.78 The Department expected that the Design Awards would be reinstated in a new format, within a series of seminars with architects and other stakeholders on aspects of design. This is likely to be launched during the 'Environment Activity Week' in the summer of 2011. The delay in implementing this recommendation had been due to resource and financial costs, which had now been resolved.
- 9.79 The Department also planned to meet with the Guernsey Society of Architects regarding the proposals for restarting the Architects' Panel, as outlined by Shepley in his report. It was explained that the Panel had not ceased to exist, however it had been under-used in recent years and its purpose would be reviewed. It stated these workstreams would be taken forward by the Communications Officer.

Communicating using the internet

- 9.80 The Division operates its own webpage on the States of Guernsey website - www.gov.gg/planning - where information can be found on the Law, policies and practices followed by the Department; information on planning and building control applications, conservation and design, planning media releases etc. The Committee noted in late 2010 that the website had been refreshed and made more accessible.

The Planning website

SR21: *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.*



New Planning and Building Control online search launched

Latest step in Environment's planning openness policy. Search for planning and building control applications using a new map-based search facility.

[Click here to find out all about it](#)

- 9.81 The Committee noted one area key to improving communication and accessibility of the planning system has been the introduction of the planning and building control websearch and webmap pages on 11th February 2010.
- 9.82 Facilities available through the website include:
- Planning Applications Websearch
 - Planning Applications Webmap

- Building Control Applications Websearch
 - Building Control Applications Webmap
 - Weekly Register of Planning Applications Received
 - Protected Trees, Buildings and Monuments Websearch
 - Protected Trees, Buildings & Monuments Webmap
 - Enforcement Notices Websearch
 - Planning Appeals Websearch
- 9.83 The website is intended to make the planning process accessible and transparent, addressing the problem Shepley expressed in his report that “*People simply did not know what happened to their application once it had been submitted*”.
- 9.84 As the site had only been running a matter of weeks at the time of the review hearing, it would have been difficult to quantify its success at such an early stage. The impact that its introduction would have on the overall operation of the Planning Division would not be able to be assessed until sufficient data could be collected.
- 9.85 The 2010 customer service survey asked service users ‘*Did you access the online information on the States website?*’ The Department learnt that only 51% of respondents had used the Planning webpage, which held the ‘Planning Application Websearch’ where people could track the progress of their applications, amongst other functions.
- 9.86 The Department resolved to seek to raise awareness of the online Planning system. It stated that work was continuing on the website to improve the information provided, and the accessibility of that information.
- 9.87 The Department intends to continue its ongoing review of the website and will be seeking to implement improvements to the content and structure. Potential improvements being considered include an online fees calculator and online planning applications.

Internal communication

SR18B: *I recommend that the mechanisms for liaison between the two sides of the Planning Division are reviewed and refreshed.*

- 9.88 As previously stated, the Department confirmed that internal communication and liaison between the two sides of the Division was being addressed through training sessions, revised internal consultation procedures, regular meetings and a team approach to development briefs and major applications.
- 9.89 Principal Officer meetings were re-established and held on a monthly basis in 2010, with notes of key issues discussed subsequently circulated to all staff for information. Team meeting notes were also distributed across the Division

- 9.90 An internal newsletter for staff was established entitled ‘Environment Update’ which provided each team the opportunity to give an update of existing and forthcoming work.
- 9.91 The Committee later learnt that the Division was undertaking a comprehensive review of internal communications. In 2011, further initiatives will include the possibility of staff participating in other team’s meetings in order to share information and give presentations on items of mutual interest. There will also be consideration of job rotation and work shadowing between teams, or potentially within the Department as a whole.

See Conclusions: ‘Communication and openness’, paragraphs 11.38 – 11.48

10. Change management

SR25: *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.*

- 10.1 Shepley believed it was important to produce a 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*'. He stated this was complex because the actions involved the central departments (i.e. the Policy Council), as well as the Environment Department.
- 10.2 The Department had highlighted that this was not solely a matter for the Environment Department. Many of the workstreams relating to the recommendations had commenced prior to the Shepley Report publication. The main driving force for the Department planning change had been the requirements of the new Law. The Department had already undertaken preparation for the practicalities of its commencement e.g. the new IT system, developing planning guidance etc. It provided the Committee with sight of the internal staff 'action plan' to address the operational recommendations contained within the report. This detailed how workstreams would be put to the Department's political board and progressed.
- 10.3 In 2011, the Department intends to produce a 'Planning Annual Monitoring Report' to be published on its website, which will provide details of improvements made to the planning service.
- 10.4 Since Shepley's recommendations relating to governance have not yet resulted in agreed changes, there is not currently an action plan for implementation. See Section 6: '*Governance of Planning Strategic Policy Objectives*'

11. Conclusions

The review of the new Law

- 11.1 The Committee understands that time was needed to allow the '*Land Planning and Development (Guernsey) Law, 2005*' to bed in and for the Department to accurately assess how the Law was operating in practice. It further appreciates the review of the Law will have no clear beginning or end and will be a continuing process as planning policies and practices develop and issues are identified. It is reassuring to note that the Department has been monitoring the practical implications of the legislative changes and has not identified any major difficulties to date, with only minor modifications anticipated.
- 11.2 The Committee appreciates the need for a formal and structured approach to reviewing the appropriateness of the legislative provisions and for compiling desired amendments. It would also suggest that setting a deadline for reporting to the States on this matter would provide focus to such a plan, ensuring that appropriate time and resources are dedicated to it and so that appropriate consultation with stakeholders can occur in a timely manner. This should include planning for review of exemptions and use classes, identified by Shepley as particular areas for attention.
- 11.3 **The Committee recommends that the Department draw up an action plan, in consultation with relevant stakeholders, for review of the legislation, including the extent of exemptions and the number of use classes, aiming to report to the States suggesting any desirable amendments by April 2012.**

Strategic Planning Policy

- 11.4 Further to considering the April Billet VIII, 2010, 'Alterations and additions to the Urban Area Plan (Review No.1) and the Rural Area Plan (Review No.1)', and the comments of the Planning Inspector, the Committee is content that the changes to the Urban and Rural Area Plans, as an interim measure prior to the full review of the Plans (pending the introduction of the new Strategic Land Use Plan), provides the necessary flexibility in the policies. It believes this should also provide the Department with the ability to reduce the 'attention to detail' approach on minor applications.
- 11.5 The Committee noted the Strategic Land Use Plan will not be presented to the States of Deliberation until late 2011, which will have a consequent effect on the timing of the review of the Development Plans. However, it was pleased that the Environment Department has begun preparatory work in looking to develop a review website, newsletter and timetable. It has also publicly announced that it will be providing the opportunity for Islanders to engage with the review and have an input into planning policy.

- 11.6 The Committee is aware that the States Strategic Plan and Strategic Policy Plans are still in development, as is the review of the Strategic Land Use Plan and Development Plans. Therefore the ‘golden thread’ of policy and how these plans inter-relate is not yet evident.
- 11.7 **As part of the educational publications the Department intends to produce, the Committee recommends it provides an explanation of the hierarchy, purpose and relationship of the plans, further to the approval of the Strategic Land Use Plan and prior to the 2012 General Election.**
- 11.8 **The Committee further recommends guidance be published providing a clear explanation of the various roles, responsibilities, and where accountability rests, for planning policy, forward planning and operations.**

Governance

Strategic Land Planning Group (SLPG)

- 11.9 The Committee noted that the role of the Strategic Land Planning Group had been reconstituted as a statutory group, rather than a Policy Council sub-group, further to the introduction of the new Law. Whilst the SLPG is not chaired by the Chief Minister in accordance with Shepley’s recommendation, the Committee concluded this would have no impact on the ability of the group to fulfil its mandate and believed this recommendation arose from Shepley’s misunderstanding of the powers of the Chief Minister.
- 11.10 The ‘new’ SLPG came into existence in April 2009, however the changes to its mandate and membership have not been updated in the *‘Rules relating to the Constitution and Operation of States Departments and Committees’* which contains the mandates and membership of Departments, Committees and sub-groups.
- 11.11 **The Committee recommends the Policy Council make the necessary amendments to the published mandate of the SLPG (as revised in April 2009 as a consequence of the introduction of the new Planning Law) as expeditiously as possible, to prevent any misunderstanding of the role and constitution of this statutory group.**

New Policy Council sub-group

- 11.12 To date, no further action has been taken to formalise the constitution and mandate of the new Policy Council sub-group, formed to take on the wider strategic land planning issues excluded from the revised role of the SLPG. The Committee has noted that further consideration of this has been put on hold, until the Strategic Land Use Plan is debated and approved.

- 11.13 The specific responsibility excluded from the statutory SLPG's mandate was “*the promotion and co-ordination of major cross-departmental projects and initiatives where the achievement of corporate objectives, in spatial terms, requires sustained political leadership at Policy Council level*”.
- 11.14 At officer level, coordination of development projects appear to be carried out by a cross-departmental group led by States Property Services, Treasury and Resources Department. As any development carried out by States departments now requires planning permission under the Law, the Environment Department ensures development projects meet the States corporate objectives through the application process and in applying and interpreting the provisions of the Development Plans. The Environment Department liaises with stakeholders pre-application and in the early stages of consideration being given to a major project.
- 11.15 A particular issue highlighted by Shepley, but that would no longer fall within the SLPG mandate, was the need for mediation and a corporate focus in the relationship between the Environment and Commerce and Employment Departments. The Committee recognised the potential for tensions to arise from these Departments pursuing their separate mandates: the former promoting the interests of all sectors of the economy and the Environment Department having to balance social, economic and environmental considerations when considering planning objectives.
- 11.16 However, from the information provided to the Committee, there did not appear to be a current requirement for mediation.
- 11.17 Given the above evidence, the Committee was not able to identify a clear need for the proposed new political group.
- 11.18 **The Committee recommends the Policy Council review the need for this group and, if it is required, it should clearly define its mandate and constitution and publish it alongside those of all Departments and Committees⁴⁶, in accordance with principles of good governance.**

Responsibility for environmental policy and the planning function at a strategic and operational level

- 11.19 Shepley's 'governance' recommendations, which largely fall to the Policy Council to progress in consultation with relevant parties, have not been implemented, with a lack of political consensus to date on how to take these forward. The evidence provided to the Committee suggests the SLPG and the Policy Council, when discussing the governance issues arising from Shepley and considering how to progress these, have focused on where responsibility for the planning function should lie. However, this focus would appear to be a

⁴⁶ The 'Rules relating to the Constitution and Operation of States Departments and Committees' contains the mandates and membership of Departments, Committees and sub-groups.

misinterpretation of Shepley's recommendations, which in fact suggest that responsibility for environmental policy, and not the planning service, should be moved to the 'centre'.

- 11.20 Shepley acknowledged in his report that his recommendations in respect of governance were matters which went beyond what he was asked to do and were made without detailed knowledge of the local government structure or other departments that would be affected by the recommendations should they be implemented. He confirmed that the underlying problem he had identified and was attempting to resolve was that, at the time, there was a perception that planning was unduly influenced by environmental considerations and his strong view was that the Division's impartiality, and perception of impartiality, needed to be protected.
- 11.21 The Committee is mindful that the operation of the planning service has changed considerably since the implementation of the new Law and this, combined with the progression of many of the recommendations in the report, may have overcome many of the problems previously facing the planning service, including the perception of possible conflict between planning and environmental responsibilities within the same department. In particular:
- The SLPG is now a statutory body with its role enshrined in legislation and with responsibility for preparing the Strategic Land Use Plan and advising the Policy Council on matters relating to the development of strategic land use planning / spatial policy that is in accordance with the strategic, economic, social and environmental policies and plans of the States;
 - The Policy Council is mandated to advise the States on matters relating to "*the formulation and implementation of ... environmental ... strategic and corporate policies to meet objectives agreed by the States;*"
 - The Department has developed and published its approved scheme of delegation, which provides transparency of responsibilities for decision-making;
 - The Department has sought legal advice and extended its application of a Code of Conduct for Board Members in making planning decisions, which is being further developed and entrenched in the local context;
 - The planning application process and decision-making has become more transparent and accessible, through the production of guidance notes, and the IT webpages. The planned open planning meetings will further assist in this area;
 - Decisions of the Board on planning applications are now easier to challenge with the formation of a Planning Appeals Tribunal, which provides an accessible and affordable opportunity for people to have their refused

applications considered by an independent Panel, which tests the justification of those decisions;

- Planning reports for refusals are published on the planning website and it is intended to publish reports for approved schemes in 2011.
- 11.22 The Committee considers that as planning decisions are now more transparent and becoming increasingly so as further initiatives are developed, the Department is able to demonstrate, and the public judge for themselves, whether the process and decision-making is impartial.
- 11.23 The Committee also noted the conclusions of both the Environment Department and the Policy Council that the current system seems to be working well in practice, with no urgency or identified impetus for change.
- 11.24 Given the above factors, the Committee was minded to conclude that the concerns of Shepley regarding the Environment Department's dual responsibility for environmental policy and planning had, or were being, largely addressed. The only outstanding point that the Committee felt worthy of note was that, whilst strategic environmental policy is developed by the Policy Council, the Environment Department retains responsibility for advising the States on matters relating to "*environmental policy including transport, energy and waste policy for the conservation, enhancement and sustainable development of the natural and physical environment of the Island...*". The Committee wondered whether there might be an overlap in these mandates and considered that the governance for environmental policy may require further clarification.
- 11.25 The Policy Council had agreed, at its meeting of 8th February 2010, to set up a new political group with a mandate to advise further on the political responsibilities for both strategic and corporate planning and operational planning. It was agreed that the group would begin work pending the publication of the Public Accounts Committee's anticipated report on governance in case that report has any bearing on the group's consideration. The Committee was mindful of additional information provided by Shepley to the Chairman of the SLPG in 2008 in which he clarified the intention behind his recommendations relating to governance. The Committee remains concerned that the group established by the Policy Council may fail to address issues identified by Shepley, if indeed those issues remain relevant, due to a misunderstanding of Shepley's recommendations.
- 11.26 **The Committee would advise that any further review of the governance issues arising from the Shepley Report, whosoever may conduct it, would need to first identify whether there are any problems that would need to be addressed in the present day governance of planning and environment policies and operations before further consideration can be given to possible solutions. This might include consideration of whether it remains a**

perception that the impartiality of the Planning Division is compromised and whether environmental policy is given adequate prominence corporately, which were the problems that Shepley had identified in 2008.

Planning division operations

Staff Morale

- 11.27 The Committee shared some of the concerns of the Environment Department Chief Officer with the difficulty of setting ‘targets’ in relation to improving staff morale, which is an intangible concept that is therefore difficult to measure empirically. The Committee would have liked Shepley’s recommendation in this respect to be more explicit in how he defined the problem of low morale and how this might be addressed. However, Shepley formally drew the attention of the Department to the dissatisfaction of its staff and the probable impact this would have on customer service and productivity. Whilst the Committee considered setting targets would have been inappropriate, it would have expected to see more conscious steps being taken to improve the perceived morale issue that Shepley identified.
- 11.28 As noted by Shepley, the results of the Employee Opinion Surveys (undertaken in 2003, 2005 and 2007) provided a useful indicator for departments to identify areas for improvement. A formal process might have included engagement with staff through discussion sessions and through the formal appraisal process to identify critical actions against issues identified by staff as factors affecting their job satisfaction and, by extension, the group morale.
- 11.29 As no formal assessment of issues affecting staff morale was undertaken at the time, and the general employee surveys in that format were discontinued after 2007, there is no baseline from which to monitor the extent to which this situation might have improved. Anecdotally, management believe that morale has improved. The improvement of processes and procedures under the new Law; the improved customer information; and the more proactive approach to challenging negative attitudes towards the Department expressed through the media, would have had a positive effect on morale.
- 11.30 **The Committee suggests that the Chief Officer should oversee the implementation of a structured process for engaging staff in identifying issues that may affect the quality of the service they provide and identifying critical actions for improvement. The Department Board might expect formal reports on general progress against these actions, at least on an annual basis.**
- 11.31 Staff morale is an important issue that all Departments need to consider as part of their staff and performance management functions and the Committee would suggest a formal and structured approach.

- 11.32 The Committee acknowledges there is no evidence to determine whether the Department currently has a significant problem, over and above any other department, caused by low staff morale and it would be beyond the remit of this review for the Committee to seek to establish such evidence.
- 11.33 The Committee understands that it is the intention of the Policy Council's Human Resources Unit to re-establish some form of employee survey in the future once appropriate benchmarks for Guernsey can be drawn up and as resources allow, which would provide tangible evidence of the need for any remedial measures and identify whether a more specific direction for action might be required.

The planning application process

- 11.34 The Department has shown it has put measures in place to try to reduce the 'attention to detail' issues identified. It has extended delegation downwards cautiously and aims to expand this as staff gain the necessary experience. Whilst this may not be as large a shift as Shepley had promoted, it is positive that the Department has embarked on a course of action to move in this direction.
- 11.35 The Committee believed that making the performance statistics publicly available would help generate confidence among the public that applications were being dealt with in a timely fashion, and to help counter any perception that the service was still blighted by long delays.
- 11.36 The adoption of the 8-week and 13-week targets, with the Department plotting performance weekly in order to monitor individual and team performance, and how cumulatively that is having an impact on the targets for the year as a whole, should result in the Department having empirical evidence of whether the minor applications are being progressed faster.
- 11.37 **The Committee recommends the Department takes a structured approach to monitoring the flexibility and 'attention to detail' applied to minor applications e.g. through case-study analysis and/or the recording of separate targets.**

Communication and openness

- 11.38 The introduction of guidance, as recommended, will have undoubtedly aided members of the public in explaining the processes involved in planning applications and should engender greater understanding of the planning service as a result. The Department has demonstrated it is committed to continuing to provide guidance, through identifying topics themselves or reacting to requests from the public. The Committee welcomes the Department's commitment to formally review the effectiveness of guidance in 2011.

- 11.39 The recommendation that had attracted particular public and media attention was the introduction of open meetings, which will be launched in February or March 2011. Whilst the Committee cannot speculate what impact they will have until they have been in operation for a period of time, it believes this is a vital move in opening up the decision-making process to the public and should increase understanding of how decisions are made.
- 11.40 The opportunity for members of the public to raise and discuss planning problems is being realised in 2011, with the introduction of planning surgeries for people to meet with officers to discuss planning issues and officers meeting with parish representatives. The Committee welcomes the launch of customer service surveys, to be held on an annual basis, as a means of the Department receiving direct feedback on the experiences of service users to aid improvement of services.
- 11.41 Planning decisions are often the subject of intense media scrutiny, with stories appearing in the Guernsey Press on an almost weekly basis. Due to the nature of the role of the Planning Division, this is not surprising. However it was apparent at the time of Shepley's review more could be done by the Department to effectively develop and communicate with the media. The development of a planning and building control media strategy should aid this and the Committee believes it is important that the Department maintains its commitment to communicating effectively with media contacts.
- 11.42 The Committee was pleased to note the Department provided a specific webpage for planning media releases⁴⁷ which it believed was a useful tool for providing access to information. However, it also observed there were a number of comments and press releases issued by the Department which had featured in the media in recent months, but which were not available on this page, therefore concluded this facility might not be being used to its full potential.
- 11.43 In respect of communication, the local media is undoubtedly one of the main sources of information for the Guernsey public. Many stories in the local media regarding the Planning Division will have been instigated by the media. The information provided to the media is subject to editing in respect of the story the journalist is producing; therefore, the media has control of how the information provided by the Department is disseminated.
- 11.44 **The Committee recommends the Department ensures it reproduces all information released to the media on its own website in case a member of the public wishes to seek clarification on the position of the Department.**
- 11.45 The Committee was disappointed that the Department had not sought to engage States Members through briefing meetings subsequent to the 2008 election, and initiatives to engage with political members in a structured manner were

⁴⁷ <http://www.gov.gg/ccm/navigation/environment/planning/media-releases/>

delayed. However, it is pleased to note the initiatives the Department intends to deliver in developing a ‘States Member training programme’ in 2011.

- 11.46 **The Committee recommends the Department ensures it schedules specific induction seminars for States Members following the 2012 elections, to ensure all Members are aware of the purpose and function of the planning system within the States of Guernsey.**
- 11.47 Shepley had commented that “*People simply did not know what happened to their application once it had been submitted*”. This fed the perception of an inaccessible system, and was one area the Committee was particularly interested to see resolved. It is pleased to report that the launch of the new Planning webpage has now ensured that the status of all valid applications can now be tracked. Aside from this important development, transparency has been increased through the array of information held on the site – from the policies, procedures and web maps available, to the publication of Planning Officer reports on refused applications.
- 11.48 Whilst some communication initiatives were not assigned the highest priority to progress prior to the recruitment of the Communications Officer, the Planning Division did make progress in that time on key areas such as the new web search and web map facilities, Guernsey’s agents forum and the production of guidance. Following the appointment of the Communications Officer, the Division intends to launch further initiatives to engage its stakeholders, which should improve how the planning system is understood.

Summary

- 11.49 The Committee would like to conclude this report by repeating Shepley’s conclusion, which was one of the Committee’s reasons for undertaking this review:
- “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”.*
- 11.50 The Committee has been pleased to demonstrate through its review findings that the Environment Department has made considerable strides in taking forward many of the operational recommendations and has made changes to how planning functions and is understood by its stakeholders. Further work is still required, which the Committee is sure the Department itself would acknowledge, however, the Committee is confident in asserting the Department has made significant, positive long-term changes to the operation of its planning service.

- 11.51 The ‘governance’ recommendations, which largely fall to the Policy Council to progress in consultation with relevant parties, have not been implemented, with a lack of political consensus to date on how to take these forward.
- 11.52 The Committee would like to make a general comment about reports being commissioned and published without the commissioning body providing a clear direction of how and when they will be considered further to publication.
- 11.53 Whilst the Committee’s report demonstrates that extensive action has been taken against many of the Shepley recommendations, prior to this report no action plan or update had been published.
- 11.54 In early 2010, the media had reported that the Environment Department had not adopted open planning meetings as recommended. The Department had responded in the public scrutiny meeting that whilst it was supportive of introducing open meetings, it had not originally prioritised this workstream over more pressing initiatives. However, it would not have been unreasonable for the public to assume that the recommendation had been disregarded or rejected, as they would be unaware of how and why the Department had chosen to prioritise certain workstreams.
- 11.55 The Committee considers it should be part of the political culture that departments publish information on how they will address recommendations and findings from reports. Not to do so hinders the public’s ability to hold the States of Guernsey to account and can subsequently engender a lack of faith in the Government – that whilst it will identify problems, it will not produce and initiate solutions.
- 11.56 This report aims to provide a constructive update on what has happened since the publication of the Shepley Report. It should be the duty of each department, when commissioning and publishing reports, to be transparent and open on whether and how they will be addressed, with clear action plans devised against achievable timeframes, and with a commitment to keeping the public informed of progress at regular intervals.

Appendix A



SCRUTINY COMMITTEE

THE STATES OF GUERNSEY

Scrutiny Review Meeting* *Review of Guernsey's Planning Service

TERMS OF REFERENCE

INTRODUCTION

In February 2008, the Strategic Land Planning Group (SLPG) commissioned Mr Chris Shepley to carry out an independent review of Guernsey's planning service. He delivered the 'Review of Guernsey's Planning Service' Report in April 2008, which suggested numerous structural and operational recommendations for the Environment Department and the SLPG to consider.

The *Land Planning and Development (Guernsey) Law, 2005* came into force on 6th April 2009.

OBJECTIVE

To review the action taken by the Environment Department and the SLPG in addressing the recommendations contained in the Shepley Report.

The Panel wish to determine:

- how recommendations included in the 'Review of Guernsey's Planning Service' Report have been considered, implemented (in full or in part) or rejected, and the rationale for these decisions;
- what indicators, monitoring processes and action plans have been introduced to ensure policies are effectively implemented, performance managed and reviewed, with particular emphasis on:
 - communication
 - customer satisfaction
 - procedures and processes
 - performance management
 - resources