

Town and Country Planning (Amendment) Bill 2012
Second Reading approved

4. Mr Turner to move:

That the Town and Country Planning (Amendment) Bill 2012 be read a second time.

The President: We move to Item 4. The Town and Country Planning (Amendment) Bill 2012. I call on Mr Turner.

Mr Turner: Thank you, Madam President.

The amendment that this Bill proposes is a very short, but very important amendment to the Town and Country Planning Act.

What the Bill proposes to do is to enable the Minister for Infrastructure to refer to the Council of Ministers for decision, whether a property owned by the Department should be entered onto the list of registered buildings. The reasons are the decision required is that of a matter of general importance to the Island or that, for some other reason, the decision ought not to be taken by the Department itself.

The Bill is not expected to reduce Government income; indeed, it well may be the case that it saves the taxpayer considerable amounts of money in some cases. It takes nothing away from the Department of Infrastructure; indeed, it is seen by the promoter of this Bill in another place, the Private Member's Bill, as giving the Minister another option.

With that, Madam President, I beg to move the Bill be read a second time.

The President: Mr Lowey.

Mr Lowey: I will second the Bill, but I will query something about it. Why was it felt necessary... if it is so important for the Department to have this power, was it left to a Private Member to bring in a private Bill?

This Bill will certainly strengthen the executive's position and that is something, when you strengthen the executive, you must have some safeguards for rights. I think this Bill has been introduced because it is felt that the rights of the majority are being overridden by – maybe a minority – I do not know. Perhaps the mover could explain that.

But on balance, this Bill should be supported and I will be supporting it, but I do think it should be done on a conscious basis that, we are strengthening the executive, we are saying to the Council of Ministers, that can be referred by a Department to a body that is here as a part of and therefore it is strengthening the executive. Is that a wise thing in this day and age?

I think, on balance, I will support the Bill.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

Previously, I have referred to the fact that I believe the motive for bringing this Bill forward by a private Member was the situation that arose over the former prison on the Isle of Man, the prison on Victoria Road. The prison was in the ownership of the Department of Home Affairs, and that was then transferred, as all properties went to the Department of Infrastructure. It was thought by some people in the Department of Infrastructure that the decision on the future of the prison was something that was likely to be a matter to go to a higher level on the Department, and the thought was that the Council of Ministers could be given – for not only that, but for certain important areas of planning – that the Council of Ministers should have the opportunity to deal with that.

Whether that is a good idea or not, I am not really in a position to say whether it was a good idea to bring this Bill forward or not to bring it forward. However, it was thought, I think, to be a way that might resolve the situation about the future of that specific building, but of course the Bill itself now applies to much more than that, much wider than that, of course.

The point that I made earlier was that the way it is written, the regulations provide for the Council of Ministers to make a determination on a building and then follow that with a public consultation, which is the horse before the cart, or the other way round. There is another expression I could use! That is the point that I think, if we are going to pass this Bill, needs certainly to be corrected.

However, I think I will wait now and see the views of others and see how we go on through the clauses.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

Unless I hear to the contrary, I shall be opposing this Bill. I think it was brought in for one particular reason, which was to deal with a problem over the prison, which is probably an internal Government dispute between Departments as to the use of the land in the future. Bringing a Bill in in haste for one particular reason is not always going to produce good law for the future, and I think there could be unintended consequences from this Bill. It may be that there are intended consequences and that actually it is a Trojan horse, in effect, to bring in some other things in the future.

We have to consider the future buildings, which are not registered now, which may need to be registered because of their merit. We have regulations at the moment which allow buildings to be judged on their merit and registered because of that. This will actually give the Department the option to actually pass the buck to the Council of Ministers to say, 'We cannot afford to maintain this building and it should be registered. The decision is yours.' They could then decide the registration on financial issues, rather than the merit of the building, and I think this could have unintended consequences, which would mean that say, for example, Laxey Wheel had not been registered – say it was still unregistered now (*Interjection by Mr Lowey*) – and suddenly somebody said we need to register Laxey Wheel, the Department would say, 'That will cost us millions to maintain – let the Council of Ministers decide its future,' and then the Council of Ministers may decide on financial matters, rather than the merit of the structure, that it should be not be put on the register.

So I think I will oppose this, because the regulations themselves may have issues in them which may give the Council of Ministers powers, which I see are not fully in the Bill here, to make decisions not to include things on the register, or even take things off the register. So I will oppose it. I think it is short term, a Bill to try and a deal with a problem... which we do not really know the effect of what will happen in the future on every other building.

The President: The Hon. Member, Mr Downie.

Mr Downie: Yes, thank you, Madam President.

Like the previous speaker, I do have some concern about this and there could be lots of buildings in Government ownership that are worthy of registration, but given that they will need some financial support and that is a thing that is in fairly short supply at the moment, they will simply go by default.

I do not have a problem with the old prison. I think if the Council of Ministers were up front about this, the whole matter should have been to Tynwald ages ago and we would have decided the fate of the old prison. We could have had the argument there and dealt with it accordingly. Why we are going round and round the houses now with a Bill like this, which at the end of the day could be so open ended, it could be detrimental to lots of other things which we genuinely want to keep, and where I understand there is a situation for a Department which may own that, and particularly if it is Infrastructure, there has always been a problem there, but we have just tied ourselves up in knots in the last few years with the planning process.

As Mr Callister said, it seems strange that we are not having consultation before the decision is made. Surely there should be the consultation and then the decision made. I will need to be convinced by the hon. mover that we are actually doing the right thing here today.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Yes, the Minister of any Department is the Department, I think, in law, and if the property is owned by the Department of Infrastructure, the Minister is automatically ruled out from making a decision.

Mr Downie: Not that I am aware of.

Mr Crowe: Or is he allowed to make a decision if the property is owned by the Department? I thought if the property was owned by the Department of Infrastructure, the Minister of the day is automatically ruled out.

Mr Braidwood: Only on a planning...

Mr Crowe: Just on planning? I thought it was on all matters to do with registered buildings, but I think this is, to my mind, just a variation on a theme and it is to give an option to a Minister, in effect, to say, 'This is a bigger picture than I wish to make a decision on: can we refer it to the Council of Ministers?' So there is a *may* element in there. It is not a *shall*; it is a *may* be referred.

So I think the intention is that it gets a wider opportunity to have it debated by a bigger committee, and if we look at the Council of Ministers' minutes which are coming up later, you will notice that often Ministers rule themselves out for various reasons. So they self-rule themselves out on certain issues. So I think it is to probably to tidy up and give a better committee basis for a decision.

The President: The Hon. Member, Mr Callister.

Mr Callister: I just wanted to revert to a comment from Mr Butt about the Laxey Wheel. It probably is not a good example, because the Laxey Wheel is owned by Government now; it has to maintain it, so the cost element would not change, if that became a registered – or vice versa – obviously it is registered, but if it were to become registered, the cost element would not be a factor, as far as Government was concerned.

The other point is, from Mr Crowe that the Bill does say – and we will come to that on clause 2 – that if the Department is considering whether or not to register a building, it could then move that decision to the Council of Ministers, if it feels that it is the appropriate thing to do. So there are very much areas for and against doing this, but I think that the regulations themselves, when they are brought forward could bring in safeguards for the thing going off the rails, as it were.

The President: Hon. Member, Mr Lowey.

Mr Lowey: If I may, Madam President, through you, just say that the regulations *could*. So what you are doing is really saying, ‘Trust me.’ Let’s be brutal: our present Council of Ministers are all worthy people and they would not do anything untoward – can you guarantee that in the future?

This Bill is brought in for a specific, i.e. the prison. As my friend, Mr Butt said, we have got repercussions that could follow in other areas that were not intended by this Bill, but this Bill could be used for it. If it was meant to be for a specific one-off thing, there could be a sunset clause in it that, once that has been dealt with it is then finished, but it is not, it is left in. I agree with Mr Downie that, if they wanted to deal with a specific awkward position – i.e. the prison – which had happened... Like Mr Downie, my own view on the prison, having run it for five years and been told it was a fire hazard and all the rest of it and should be knocked down, I have no difficulty where I would be voting if that came to all... But this Bill is meant to deal with a specific problem.

My concern, which I raised, was Mr Butt’s really – if you pass it, you really leave open-ended consequences that you would not have meant to have done in the first place, and that is why I am rather perturbed that it is a Private Member’s Bill and not a Government Bill to deal with a Government measure.

The President: Mr Turner to reply.

Mr Turner: Thank you, Madam President.

I did not think for one minute that the subject of planning would not generate a debate this morning. I thank all Members for their input. I will work through the points that have been raised as best I understand them.

Mr Lowey talks about strengthening the executive. I think we have to remember that planning matters regarding the Department, as Mr Crowe said, are already referred to the Council of Ministers for determination, so I think we do not have to get too caught up on this, because important matters do go to them – and indeed unimportant matters, as we have discussed before, like garden sheds in local authority housing, but anyway that is a different matter.

A Member: Seating round the harbour.

Mr Turner: Yes, and seating round the harbour. But generally more of the important high-end things – which could be schemes to do with major road widening, housing developments, telecommunication lines, gas pipelines etc – all go for determination at the highest level, which of course is the Council of Ministers.

What this is relating to is whether a Government-owned building in the ownership of the Department of Infrastructure is placed on the register. I think this gives Mr Butt the safeguards and Mr Lowey the safeguards, because what it does is it removes what could be the whim of the Minister of the time to register or not register and puts it in the hands of a committee, in effect, of varied people with opinions, namely the Council of Ministers. So I think, if anything, this strengthens Mr Butt’s argument, in that the Minister of the time could just say, ‘No, we are not putting it on the register. We are going to demolish a building.’ This at least enables the Minister, if they recognise that the site could be important for a variety of reasons, to say, ‘We think this is too big for the Department to determine. We are going to send it to the Council of Ministers.’

The other points that were made were to do with consultation. Of course, the regulations... is a permissive clause that the Council of Ministers *may* determine that a building is entered on the register and regulations *may* provide, so there are permissive prescriptions in here to do with the various clauses. So again, saying that the consultation is coming after the decision is not entirely right. The decision would be that the Minister passes it to the Council of Ministers and they *may* bring out regulations to decide how they are going to deal with at, so I think that, again, those concerns are met here.

With regard to Ministers ruling themselves out, there is good record that, under the procedures, Ministers dealing with things to do with their own Department do absent themselves from the Council of Ministers. That is an established principle and we see it all the time.

I think this is a sensible provision. It enables important matters to be determined at the higher level and I think it is exactly the sort of provision that may actually cut down on bureaucracy as we go forward.

Mr Lowey is right, it was centred around the old prison, Victoria Road, but there may well have been cases... For example, the old control tower at Ronaldsway may have been proposed and various other things that may be life expired that... We may decide that we would like to keep some of these things, but it may not be practical for the development of the Island because we have only got so much space and some of these sites do need freeing up.

I think that is all I will say at the Second Reading. I beg to move.

The President: The motion is, Hon. Members, that the Bill be read a second time. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR	AGAINST
Mr Lowey	Mr Butt
Mr Turner	
Mr Braidwood	
Mr Downie	
Mr Crowe	
Mr Callister	

The President: With 6 in favour and 1 against, the motion therefore carries.

Town and Country Planning (Amendment) Bill 2012 **Clauses considered**

The President: We move to the clauses.
Clauses 1 and 2.

Mr Turner: Thank you, Madam President.

Clause 1 of the Bill states the short title of the Bill.

Clause 2 is to amend the Town and Country Planning Act by inserting a new section, 14A, which will allow the Department of Infrastructure to refer a decision as to whether to enter a building which is owned by the Department in a protected register to the Council of Ministers in certain circumstances for determination by the Council of Ministers. It is a very short but significant amendment to the Act. It is only in respect of buildings in ownership of the Department and has nothing to do with and no effect on the deregulation of protected buildings, and takes nothing away from the Department.

Madam President, I beg to move clauses 1 and 2 stand part of the Bill.

The President: Do we have a seconder?

Mr Callister: I beg to second, Madam President.

Mr Lowey: I feel less inclined to criticise, having voted, Madam President, for the Second Reading, but I am perturbed. I am getting more uncomfortable by the minute.

First of all, is it the role of the Council of Ministers – the cabinet of the Isle of Man – to be dealing in planning matters? Not more being added to them, but less. In my view, they have got much more important work to do than sitting down, as was mentioned by the mover of the Bill, to deal with seats being placed round the harbour of the capital. That is not the role of the cabinet of the Isle of Man.

In the UK, the Cabinet deal with matters of *national* importance, i.e. nuclear industry sitings and that sort of thing, but they do not, as a rule... That is hived off to the Ministers who are responsible. Our Ministers should be responsible and not be afraid to take on what I would call the uncomfortable decisions.

This particular Bill is to deal with a problem with the prison, but having said that, I am uncomfortable. I *am* uncomfortable. I must tell the mover that I am uncomfortable with the thought that this will be easily dealt with by regulation. I do not think it will, and I think there are... When they *may* do this, there is no compulsion at all

on them. If you have given them a get-out-of-jail card, they will say, 'The law says we may do it – we are not doing it,' if it is to consult with people.

So, be very careful, when we are making primary legislation, that the consequences that flow from it are... there are checks and balances. I do not think the checks and balances have been put into place explicitly enough in this small Bill, and I think it we could come to rue the day we passed it.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I have a couple of queries and some comments. Firstly, in clause 2, it says the building is owned by the Department. What is 'the Department'? If the building is owned by the Department of Health, say, does that apply to them? If it is owned by the Department of Community, Culture and Leisure, does it apply to them? Or is this purely about the Department of Infrastructure, and does the effect of all the estates divisions being amalgamated now into that Department change the ownership of buildings? So, in effect, is the hospital now owned by Infrastructure, or is it still owned by the Department of Health?

The actual definition of 'Department' here causes me some concern, because it could be referring to only one Department, which would normally be the old DoLGE or Infrastructure; or is it to every Department which owns buildings in Government?

The other point –

The President: Hon. Members, may I assist, having been on the Planning...

Mr Butt: Yes, it is under section (4) –

The President: It is a Department which has the responsibility for the registration of buildings, so it is *that* Department that is referred to.

Mr Butt: That was my next point, that this is not actually... Although it is the Town and Country Planning Act it is under, it is not actually a planning matter; it is about the registration of buildings (**The President:** Yes.) which is a separate issue to planning, (**Mr Callister:** Yes.) and I think we are getting confused here about trying to influence planning decisions. This is purely about the merit of whether a building should be registered or not, (**Mr Callister:** Quite right.) not a planning matter. So we must not get confused by that.

So I still have doubts about whether the intent of the Bill is exactly what it says it is and whether it could not be used for something else in the future to stop a Government-owned building being registered, when maybe it should be in the view of many people who consider it should be.

The President: Again, can I just add, as a –

Mr Butt: Thank you for that clarification.

The President: – person who has been involved, that the essence of the Bill is in (2)(a), which gives a power to make a decision on a matter of general importance to the Island, which could overrule the normal criteria against which a registration is. So that really is the nub of it.

Mr Butt: Yes.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President. I think you have hit the nail on the head, in that it says 'a matter of general importance to the Island'.

I know Mr Lowey has mentioned about the Council of Ministers and generally they will oversee planning applications from Departments, and those Ministers have to move out. They also are involved with appeals procedures as well, from when there is an independent planning inspector, and again... but this is because of the legislation which is in place, so they have to abide by the legislation.

I can understand Mr Butt being uncomfortable and, as he said... He quoted such as the Laxey Wheel, and other Members have said this really is only brought in because of the prison, but you could have another situation where... We have just got a new lower school of St Ninian's at Bemahague and there is a premises in Park Road of a school which is 118 years old, and you might... My view is that it should go. I could not understand anybody would go for a registration, but there, where the Council... That, to me, is very important to the Island because that is strategic planning now, in that area where the Government also own the Bowling

Green pub, which is, in actual fact, although it is not registered, in the conservation area. The conservation area of Derby Square came across and encompassed the Bowling Green pub, and in actual fact, if people can remember, it really is only the building... Half the pub was demolished many years ago.

So I think I will support the clauses and the Bill, because I think, at times, we do not put the importance of the Island before people who go for a registration.

A Member: Hear, hear.

The President: The Hon. Member, Mr Callister.

Mr Callister: Thank you, Madam President.

This subsection (2)(a), which refers to the general importance of the Island, you could read that as in the national interests otherwise, because I cannot see the Council of Ministers, when something is confronting them, that they feel is not important enough, moving at all on this. I think it will only be in issues that are regarded as highly contentious, and whilst it may well have had the prison in mind initially, other buildings could come into consideration, but most of those, I think, would be dealt with by the present process without going to the Council of Ministers.

I assume it would not only apply to Government-owned buildings, but also private buildings as well.

The President: No.

Mr Crowe: No.

Mr Callister: Is that not the case?

A Member: Just Government owned.

Mr Crowe: It is just owned by the Department.

Mr Callister: Thank you. I am glad to be corrected on that.

Coming down to subsection (4), where it appears to say that the Council of Ministers make a decision and consultations would then be carried out, that is the order that is written in this Bill, but I presume when regulations are made that order could be changed. I would expect to see... because it makes no sense whatsoever for the Council of Ministers to make a decision and then send it out to public consultation, so I presume that would be... I am voting for that on the basis that that would be corrected, and the fact that it is in this order in the Bill need not necessarily be in that order in the regulations when they eventually appear.

Otherwise, I think it is worth having this, because there will be cases where there are highly contentious proposals to register buildings and they are probably best looked at by a higher body than the Department. Also, I wonder, after the Council of Ministers have come to their decision, whether Mr Lowey thinks it ought to be then passed to Tynwald for final confirmation.

Mr Butt: May I just comment on –

The President: Yes, Mr Butt.

Mr Butt: – subsection (2)(a). I see this decision in (2)(a); we also have (2)(b), though, which says:

‘that for some other reason the decision ought not to be taken by the Department.’

That could mean *any* other reason. It is really so open ended as to not provide a genuine... Well, I would not say genuine – a reason that it shows any importance or is in the national interest. So I think that (b) actually nullifies (a) to a large extent.

The President: Mr Crowe.

Mr Crowe: But isn't it simply that if there is a very hot potato, it is to allow the committee to look at this, rather than an individual Minister? I think it is to give an option of more than one pair of eyes looking at a problem. I think we may be finding unintended consequences where they may not exist. Again, time will tell, I guess.

Mr Downie: They can do that now if they –

The President: The mover to reply, please.

Mr Turner: Thank you, Madam President.
It may be that a hot potato shared is a hot potato halved –

Mr Lowey: It is still a hot potato, though.

Mr Turner: Well, yes. *(Laughter)*

Again, I thank all Members for the points they have raised. Mr Lowey is uncomfortable with this piece of legislation, and I suppose rightly so to raise it, because these are matters which do generate quite a lot of debate, particularly when it comes to some buildings which may be worthy of registration. I think the fear may be that this is a back-door way of getting rid of expensive buildings, when really there should be a duty to maintain them.

However, again there is another side to that, that if they were so important they probably should have been registered anyway. So I think it is important to put it that this is not dealing with buildings that are already on the register and that the legal framework is in place to ensure that those buildings, or structures indeed, are properly protected.

I thank you, Madam President, for clarifying the role of the Department, the query by Mr Butt, but it was interesting that, in the debate in another place, it was brought up about the ownership of buildings, and certainly the mover of the Bill said that at the moment, it is buildings just in the ownership of the Department of Infrastructure, but of course he did go on to say that most buildings in the Government estate will be coming under the Department of Infrastructure at some stage, under the Strategic Asset Management Unit, so it may well be that some of these other buildings referred to do come under the Department. I think, if that is going to be the case, then maybe it is even more important that this provision is brought in to ensure that it is not just the Minister for Infrastructure who has the say. There could be cases where then it does need to go to the Council of Ministers. So again, I would reiterate that this maybe is even more important, given that these buildings are coming under the one Department.

Mr Braidwood mentioned Park Road, and that is quite interesting because, of course, when the £30-plus million scheme was brought to Tynwald for approval, part of the whole overall package was that there was to be a new school. The old school had run its course – I think Mr Braidwood said it was 118 years old – and the site would be very strategically important for a variety of potential uses. It could be social housing, it could be regeneration of that area for first-time buyers –

Mr Braidwood: It could be another school.

Mr Turner: It could be a variety of things. It is in a very important part of the town. It would be rather unfortunate if the money was voted for a very expensive but nonetheless important project, namely the new school, and then to find that actually, after the event, part of that package, which was the clearing of the old site, was suddenly stifled and we ended up with a building, because you could have said, ‘We would not have bothered spending £35 million on a new school; we would have spent a lot less and made do and mended.’ So again, I think it is important that these provisions are there when it comes to strategic sites.

Mr Callister questioned the regulations, and I have a slightly different view on the order. He is right in saying as it is printed in here it flows in an order, but what the Bill does is it sets out the determination by the Council of Ministers, and then what is quite normal in a Bill is at the end it then suggests how the regulations are going to work. So, if you look at where it says:

- ‘(5) Regulations may provide for –
- (a) the procedure for –
- (i) the reference of a matter to the Council of Ministers;’

– that is effectively saying that that is going back to the start of the procedure. So the regulations would be made to tell the Minister of the procedure for referring to the Council of Ministers and any procedures that would follow suit, which could then include consultation.

So it is not that they determine and then they make regulations; the regulations would be made, presumably, when this piece of legislation is enacted, and a determination may come next month, next year, in two years’, five years’ time when the regulations would already be in place. So I think that gives Mr Callister some... It answers his concerns about the order in which these matters are going to follow suit.

With regard to bringing matters to Tynwald, that is not part of the Bill at the moment. It may be that on certain things the Council of Ministers may decide to table matters for the Court to decide.

With that, Madam President, I think I have answered all the queries, and I beg to move those two clauses standing in my name.

The President: Hon. Members, we have had some discussion, so I will put the clauses separately.

The motion is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2: those in favour, please say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Turner
Mr Braidwood
Mr Downie
Mr Crowe
Mr Callister

AGAINST

Mr Lowey
Mr Butt

The President: With 5 votes in favour and 2 votes against, the clause therefore carries.