

**Town and Country Planning (Amendment) Bill 2012**  
**Third Reading approved**

3. Mr Turner to move:

*That the Town and Country Planning (Amendment) Bill 2012 be read a third time and do pass.*

**The President:** We move to the Town and Country Planning (Amendment) Bill 2012 for Third Reading. I call on Mr Turner.

**Mr Turner:** Thank you, Madam President.

Hon. Members will be aware by now as to what brought this particular Bill before us. It was a Private Member's Bill moved in the other place, but it was not just about an individual case, which we mentioned at previous Readings, namely the old prison. That was indeed the case that highlighted the issue.

Sometimes a situation arises and the scenario is that it leaves no room for manoeuvre for the Minister for Infrastructure to deal with the situation of registering a building in the ownership of the Government. This Bill gives the Minister for Infrastructure another option, if he or she feels they need it, namely to refer a decision of whether to register a Government building to the Council of Ministers for their determination.

The effect takes absolutely nothing away from what is already *in situ*. This indeed is an extra process. It is purely about buildings in Government ownership; it is not about deregistering currently listed buildings. The Bill has been worked up with the assistance of the Director of Planning and the Conservation Officer from the Department of Infrastructure and also the Attorney General's Office.

Madam President, I beg to move that the Town and Country Planning (Amendment) Bill 2012 be read for a third time.

**The President:** Do we have a seconder?

**Mr Callister:** I will beg to second, Madam President and reserve my remarks.

**The President:** The Hon. Member, Mr Lowey.

**Mr Lowey:** I come back to the point I made, which is strengthening the Council of Ministers to make decisions. I think, as a parliamentary assembly, we have to be careful that we hold them to account. There is a law of what I would call unintended consequences.

I remember breaking my political teeth in 1976 on... There was an Act passed that gave the Government almost the right to put up oil refineries in the north of the Island at the time. It was called the Island Development Bill. It was for a specific purpose, but because of the way it was written, it was able to be applied virtually – and I use the point – that they could have put a cement factory on the Shore Road in Gansey – over my dead body, I may say, but those were the unintended consequences of passing that piece of legislation and I am concerned here that by a simple act, it could have an undesirable effect of allowing the executive more power than it has got already.

I have not heard the case yet for why it was deemed necessary for an independent, an individual Member, to move a strengthening of the executive's position on this particular item and I want to be reassured that there are no unintended consequences. I think, when we are doing primary legislation, it is very important that we get it right.

I did raise it last week and knowing the way in which my good friend does his homework, I am sure he has got the answers for me, but I think it is only right that I should repeat them again this morning.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

I shall be opposing this Third Reading for reasons I have stated previously, in the Second Reading. I really think this may be bad law. This has been made in haste to deal with one particular problem. It has openly admitted it was to do with the prison and that position has now been resolved without the need for legislation. That is now a dead and gone issue. I think making legislation like this for one specific purpose will lead to unintended consequences as Mr Lowey said.

There is currently legislation in place to deal with registered buildings, which, as far as I know, has worked well for many years. There has been no particular problems until the prison issue came up. I think that legislation, in effect, is based on the merit of a building, whether it should be registered or not, on the merits of the building itself. Once this becomes an Act in the future we may have buildings in Government ownership,

which might become, in years to come, registered because of their merit. Maybe the new building at St John's, the Agriculture building there might become a building that needs preservation.

A decision being passed on to Council of Ministers seems to me to be possibly based on financial motivation only, not on the merit of the building. In fact, the decision under the clauses is for a matter of general importance to the Island, which I can see the merit of that, but the second subclause is, 'or some other reason'. That leaves things wide open for any decision to be made for any reason whatsoever and I think that this is, in effect, bad law. It is not defined, it leaves it wide open for anybody to make any decision in any way they want about any facet of it. So instead of it being based on the merit of the building, it is being based on other factors which I think is wrong in this case.

I think making legislation at short notice for one particular reason is always going to be bad law, so I shall be opposing the Third Reading.

**The President:** The Hon. Member, Mr Callister.

**Mr Callister:** Thank you, Madam President.

Just moving on then from the previous speaker, he refers to the line 'And for some other reason' that goes on to say that:

'for some other reason the decision ought not to be taken by the Department.'

So that makes that a totally different view on that particular sentence. Regulations have to be produced as a result of this. We are just, really, bringing something in principle here and the regulations will have to describe the procedure that is to be used, they will have to have wide consultation on these issues. There will be issues of national importance, not some frivolous items that come forward and the regulations could, in fact, include a further requirement for Tynwald approval after the decision of the Council is made, so there it would become a parliamentary issue.

Nevertheless, I think, as the Bill has come to us with the support of the House of Keys and consequently the support of the Council of Ministers, I do not think we should really be in a position to oppose it at this stage, because there is a lot further, a lot of future moves to make, Madam President.

**The President:** Mr Lowey.

**Mr Lowey:** I go against that. There is never a... You are in the Last Chance Saloon and I think you should really be voicing what I would call the potential for defects in primary legislation. I still believe this is an instrument... I voted for the Second Reading, but you will notice I voted against the clauses, because I was concerned about them.

I am not reassured; I am waiting for the mover to reply, but I do not take the argument on board that, just because it has been passed by the House of Keys... Our job is a revising chamber. If there is a weakness there, we should air it and we should air it publicly and make the mover justify what he is attempting to persuade us to support.

**The President:** Lord Bishop.

**The Lord Bishop:** Madam President, I too am waiting for the mover to persuade me on this Bill, because I think there are serious questions to raise about the whole area of the protected buildings register on the Isle of Man and its lack of subtlety in defining what it means by protection. Those questions are being raised insofar, for instance, as the ecclesiastical buildings, all the ecclesiastical buildings on the Island, we have been in touch with the Department of Infrastructure, the historic buildings consultant with Manx National Heritage and we are all agreed that the present protected buildings register is far too blunt an instrument, in order to protect the buildings that need protecting on the Island.

Why? Some buildings are unique. They are not particularly special. There may only be one of them on the Island and they need protecting. Some may have historical reasons for protecting them. Those may be to do with the architecture, it may be to do with the significance of the place in the history of the Island and so on, but the matter is much more complex than the protected buildings register, as it is at the moment, is able to respond to.

So my question is not particularly related to the role of the Council of Ministers, though I do share that question in the back of my mind; my question is much more structural, relating to the protected buildings register. Why fiddle with something, when the whole thing needs a good clear look at?

**The President:** The Hon. Mr Downie.

**Mr Downie:** Although I have some sympathy with the Lord Bishop and the problem that we have with church buildings and other ecclesiastical buildings scattered over the Isle of Man, I think we have got to get back to realistics here.

This piece of legislation is about a building owned by the Department and I would err with the Bishop's view, it is overdue, the whole review of our protected buildings and our listed buildings and so on. There are a lot of anomalies in the system and if Government ever gets time to look at it, I am sure they will find that there are lots of issues that should be dealt with. But is it a priority in the present circumstances? Who knows?

I have just seen the list of proposed Bills that have come from the Chief Minister's Office and I do not really see much in there that appertains to the preservation of buildings. You could understand the dilemma here, where a building is owned by the Department and the Department itself has to step outside. There is going to be, as Mr Callister said, who is a Member of the Department, a proper consultation process taking place.

I did say at the last sitting that if, hypothetically, they wanted to demolish the prison, which is a Government owned building, it has now been transferred to the Department of Infrastructure, as I understand it, why not just put it to Tynwald and have the debate and we can have all the information before us and make the decision?

I think this Bill is a compromise, it is a way of trying to come up with an answer, but at the end of the day, if what Mr Callister was saying, that the regulations will have to be approved by Tynwald anyway, why not just cut out the middleman and put a motion to Tynwald and let Tynwald Court decide?

We just seem to be going round and round here, when, as I accept that there is some dichotomy with the present legislation, but I am minded to support this today and see what will come out when we have the regulations, because at the end of the day, somebody will have to make a decision about these buildings, whether or not they have very significant importance, there has also got to be money found to keep them in reasonable condition and one has to be balanced against the other. Whether we like it or not, there are other priorities for the Isle of Man's finances at the present time. This is where, as politicians, we have got to weigh up where we think money should be sensibly spent in this area.

So I am minded to go with the Bill at the present time.

Thank you, Madam President.

**The President:** Mr Wild.

**Mr Wild:** Thank you, Madam President.

I agree entirely with the viewpoint expressed by my hon. colleague, Mr Downie. I think I would rather look at the regulations and try and take it forward and I agree entirely that, from a listed buildings perspective, or a heritage perspective, we perhaps need to be doing more, when you look at what we have lost in terms of our architectural heritage, certainly over the past 36 years when I arrived on the shores of this Island.

Looking back beyond that, I do think we need to be, as a community and a Government, more creative in the way we look at our heritage buildings, because sometimes a part of the building can be retained and built into a new development; but at the same time, I also acknowledge the fact that in difficult economic times, we also have to have a reactive planning process that can aid the economy, which needs the aid at this point in time.

Thank you.

**The President:** The Hon. Member, Mr Braidwood.

**Mr Braidwood:** Thank you, Madam President.

I might as well make it a full house. *(Laughter)*

**The President:** You don't have to! *(Laughter)*

**Mr Braidwood:** I would just like to support Mr Lowey in his comments regarding the point which was posed by Mr Callister, in that we should not just accept it, because it has been accepted... it has gone through the Council of Ministers and through the House of Keys. We are a revising chamber and in many instances in the past, this Council has spotted, you could say, differences in legislation, which was revised here and went back to the Keys to make it good law, against bad law.

However, I will, unlike Mr Lowey, be supporting the Third Reading of this Bill.

I have taken into consideration what the Lord Bishop said and I can understand that. However, I do feel that, particularly on the clause which has already been mentioned, (2)(a) that the making of the decision requires the consideration of a matter of general importance to the Island and (b) that for some other reason the decision – which Mr Callister again continued with, because Mr Butt only said half the sentence – the decision ought not to be taken by the Department.

I think there are instances where decisions *have* to be taken. Mr Callister said that the regulations can come through, which might close that, it has to come through to Tynwald for approval. However, there have been

circumstances in the past, when a decision by the Council of Ministers should have been taken, instead of protracted, you could say, workings before a building came down or was taken off the register.

So I will be supporting the Third Reading, Madam President.

**The President:** The mover to reply.

**Mr Turner:** Thank you, Madam President.

I think this is actually helpful law and I think for those interested in the preservation of buildings, this actually puts an extra opportunity for them to have a say in what happens to the building. As Mr Downie pointed out, this is dealing with buildings in the ownership of the Department, where at the moment, the Minister could well refuse the registration of a building and next week it is demolished and that is the end of the matter.

Of course, what this does is, where there may be a case of a building which has certainly a lot of public interest in it, or its historical issues, the issue can under this amendment Bill go to the Council of Ministers, where there will be a proper consultation process. I think that gives hon. colleagues, Mr Butt and Mr Lowey the reassurance, because that means that the public can actually have a say. Whether the Council of Ministers listen to that, of course, is another issue, but there will be, according to the legislation, an opportunity, whereas there is not an opportunity at the moment. I think that is very important, that we put this into perspective. This is Department-owned buildings.

I take the point the Lord Bishop made about the wider issue of registration and that is not what this deals with.

Mr Lowey was interested in knowing why this was a Private Member's Bill in the other place and not one brought through by the Department. It was quite simply not in their legislative programme and certainly, having served on that Department when it was the Department of Transport, they had a very complex legislative programme and you would not have seen something like this, or indeed the wider issue that the Lord Bishop mentions. I do not think you would have seen that on the legislative programme, because the old cliché of lack of resources comes out –

**Mr Lowey:** And it was not a priority.

**Mr Turner:** – and it was not a priority for the Department. But there were issues of course, with the changes in the Government structure, the transition of the old prison from a different Department to this Department, whereby it suddenly became an issue for the new Department of Infrastructure and it may have been felt that that decision was best not taken by the Minister. Therefore it can be referred to the Council of Ministers.

So that was the reason behind it and of course, there have been other cases where Departments have endorsed Members bringing through Private Member's Bills to deal with certain provisions, because it is the most efficient way of dealing with it. That, I think is why it was brought through and I am sure I have convinced my hon. colleague, Mr Lowey – if I have not, I am sure I will hear about it as well!

Bad law, short notice: there is a tendency for that, but this has not been rushed through; this piece of legislation has been brewing for quite some time, so I do not think it is a case that this has been rushed through in five minutes. It has been lingering about for possibly over 12 months, I think, so it is something that has been around. I do not agree with my hon. colleague, Mr Butt, that it is bad law at short notice.

'Strengthens CoMin' was another comment that was made. I think in reality, officially or unofficially, they possibly had some sort of say in this anyway, where there could be pressure put on the Minister not to register a building now. This again gives the opportunity for it to be debated by a larger panel of people, namely, as Mr Lowey puts it, the canvas of the Isle of Man.

So I hope I have provided those reassurances and it may be that this piece of legislation never gets used.

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

**The President:** The motion, Hon. Members, is that this Bill do pass. Those in favour, please say aye; against, no. The ayes have it.

*A division was called for and voting resulted as follows:*

**FOR**

The Lord Bishop  
Mr Turner  
Mr Braidwood  
Mr Downie  
Mr Callister  
Mr Wild

**AGAINST**

Mr Lowey  
Mr Butt

**The President:** With 6 votes in favour, 2 votes against, the motion therefore carries.