



**STANDING COMMITTEE  
OF  
TYNWALD COURT  
OFFICIAL REPORT**

**RECORTYS OIKOIL  
BING VEAYN TINVAAL**

**PROCEEDINGS  
DAALTYN**

**ENVIRONMENT AND INFRASTRUCTURE  
POLICY REVIEW COMMITTEE**

**Planning System**

**HANSARD**

**Douglas, Friday, 10th May 2019**

**PP2019/0098**

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**Members Present:**

*Chairman:* Mr R E Callister MHK  
Miss C L Bettison MHK  
Mr C R Robertshaw MHK

*Clerk:* Mr R Phillips

*Assistant Clerk:* Miss F Gale

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# Standing Committee of Tynwald on Environment and Infrastructure Policy Review

## Planning System

*The Committee sat in public at 10 a.m.  
in the Legislative Council Chamber,  
Legislative Buildings, Douglas*

[MR CALLISTER *in the Chair*]

### Procedural

**The Chairman (Mr Callister):** Good morning and welcome to the public meeting of the Environment and Infrastructure Policy Review Committee.

I am Rob Callister MHK and I chair this Committee. With me are Clare Bettison MHK and Chris Robertshaw MHK, the other members of the Committee, along with our Clerks.

5 Today we are taking evidence for our inquiry into the operation of the planning system and the issue of planning enforcement in particular.

Before we begin could I please ask to ensure that all mobile phones are off or on silent so they do not interrupt with the proceedings. For the purpose of *Hansard* I will also be ensuring that we do not have two people speaking at once.

### EVIDENCE OF

**Hon. Geoffrey Boot MHK, Minister;  
Mr Richard Lole, Chief Executive Officer; and  
Miss Jennifer Chance, Director of Planning and Building Control,  
Department of Environment, Food and Agriculture**

10 **Q1. The Chairman:** Thank you for attending this morning. For the record could I ask each of you to state your name and the capacity in which you are attending today?

**The Minister for Environment, Food and Agriculture (Mr Boot):** Good morning. I am Geoffrey Boot, Minister of DEFA.

15 **Mr Lole:** Good morning. I am Richard Lole, Chief Executive Officer of DEFA.

**Miss Chance:** I am Miss Jennifer Chance and I am Director of Planning and Building Control.

20 **Q2. The Chairman:** Thank you and good morning. Would you like to make any brief opening statements before we start?

**The Minister:** I would appreciate doing that if I may, please. **(The Chairman:** Yes.)

25 I would like to thank the Committee for the opportunity of making an opening statement. I became Minister for the Environment, Food and Agriculture at the beginning of this administration in 2016, and appointed a Member to have specific responsibility for enforcement. Mr Baker has taken his appointment seriously and has endeavoured, along with myself, to deliver changes to both the aims of the Programme for Government and address the general concerns of the wider community, one of which is the level of planning enforcement.

30 I believe we have achieved a great deal so far but accept that there is still a way to go. It needs to be recognised that planning is and always will be an emotive subject where there is normally a winner and a loser whichever way the decision goes. That we cannot solve, but what we can do is deliver a better, clearer and more efficient service and provide a better explanation of what we do and the reasons why we do it.

35 Being non-mandatory, planning enforcement has long been under-resourced with a single enforcement officer holding the ground for many years. Support was clearly needed and I understand that a part-time support officer was provided at some point around 2015, before my administration. The enforcement function was aided by the Head of Development Management whose responsibilities were split between determination of applications, managing and advising the Planning Committee, dealing with registered building appeals and general governance of the Division. At a point in 2016 that post-holder also held responsibility as interim Director of Planning and Building Control, following the departure of the previous director – a strained resource to say the least.

45 Subsequently, a new post of Principal Planner for Enforcement was created and the post-holder was in place by June 2017. Initially this was intended to be a temporary post with a view to improving procedures, consider the outstanding cases and bring planning enforcement back on track. It was soon realised that the issues were more complex and the amount of ongoing work so great that this post has been made permanent.

50 Turnover of staff is an issue. There is a shortage of trained staff UK wide and much demand for their services. Retaining staff can also be difficult, particularly as they are under constant scrutiny and criticism. We have reacted to this and made changes within the structure to provide for assistant posts and career grade posts in order for these to be more attractive to recruit to and provide more resilience for the future.

55 What we are trying to achieve also needs to be seen in the context of the wider objectives of the Programme for Government and the results of the planning review. This provides for a very challenging set of outcomes and the planning team are focusing on this. Yes, there is a need to enforce planning regulations; otherwise there is no point in their existence. The goal is compliance, not punishment. Such an approach can be, and is, resource hungry but so can prosecution or the service of Enforcement Notices, which also have cost implications for the taxpayer and under a proportionate escalating Enforcement Policy formal legal action should be the last resort.

60 There are many reasons why a breach of planning has occurred: this can include people being badly advised, often the case for householder development where sheds or conservatories are too large or too close to neighbours; permitted development in the UK is sometimes used as a guide and there permitted development is more relaxed than ours on the Island; sometimes breaches can knowingly take place, for instance, where a developer has come across an unforeseen circumstance and makes a risk-based assessment to continue work when an application is being considered, rather than lay off workers or not meet a deadline.

70 There is often concern raised at the time it takes to undertake enforcement investigation. I accept that these are taking longer than I would like, some of this is due to resource issues but most of it is a result of the inevitable time it takes to investigate and pursue a breach of planning.

We have now formally refreshed and published our Enforcement Policy which clarifies we will prioritise and investigate all cases reported where concern is identified. We then meet the

75 perpetrator to discuss those concerns. They may choose not to accept that concern, or cease, or  
address the concern, or seek retrospective planning permission. The planning process is likely to  
require plans to be drawn up and applications to be submitted, advertised and determined. The  
decision is often subject to appeal, irrespective of the outcome of the process.

80 By this point, around a year or more may have passed. If there is no change after a failed  
planning application or if the perpetrator does not accept the concern to be valid, we reach the  
point of liaising with the Attorney General's office regarding Enforcement Notices and  
consideration of the scope for potential prosecution. Once served, a reasonable time must be  
allowed for compliance prior to a decision to commence a prosecution process. Even in the  
event of a court decision in favour of the notice, we may still need to prosecute for non-  
85 compliance, by which point we will normally be over two years into the process. Many believe  
that the Department should serve a notice to immediately stop work while a matter is  
investigated and this is an appropriate response to all complaints. In reality, many complaints  
relate to matters that are not a breach of planning at all and in some instances whether or not a  
breach of planning has occurred is a complex legal test. The implications of forcibly stopping  
90 work, particularly if it is found that the work is being lawfully undertaken are, of course, huge. It  
can be common for complaints to be raised by objectors to original applications who remain  
aggravated at the original decision, and some are in effect neighbour disputes with no legitimate  
planning aspects.

95 In 2018, 48 cases were found not to be planning breaches, after investigation. However, all  
cases are investigated to clarify their status. In the same year 46 cases were resolved by actively  
ceasing or the breach being removed, whilst just 37 cases were closed out of 228 for not being  
expedient. This is a dramatic reduction in the period 2011 to 2014, when an average of 64 cases  
were treated as not expedient. The reasons for closing recent cases have varied: some are only  
marginally over permitted development, heights and windows in a different position; some were  
100 minor non-compliance; some were replacements of pre-existing developments, such as air  
conditioning units and fences; two were referred to the Attorney General for prosecution or  
enforcement of legal agreement, the AG was not satisfied there was sufficient evidence or public  
interest to take it further.

105 I hope the increased resource dedicated to enforcement, the development of a new  
Enforcement Policy, and increased use of the database assures you that there will be greater  
political commitment to planning enforcement than there has been over previous years. The  
new team have done lots of work to establish a robust system and process and I believe this is  
now having an increasing impact.

Thank you, and I am sorry that was a bit longer, than short.

110

**Q3. The Chairman:** That is absolutely fine, Minister, thank you so much.

There is a lot of detail in there and some of that we may have to take away to actually go  
through in a little bit more detail, rather than within the time we have allotted this morning.

115 I suppose the first point is, as a Committee we are extremely grateful for everyone who has  
given the Committee written evidence, but I think a starting point would be the common themes  
that have come out of that particular correspondence. I will read them out because they are  
pretty much all the same. These include: a lack of response; slow to take action; policy not fit for  
purpose; delay in dealing with complaints; a lack of engagement; a lack of communication and  
updates by the Department; and an inconsistency in the approach taken by the Department.  
120 Now, that is not going into any particular case, but that is a common theme that is in all of the  
correspondence that we have received. So I suppose the opening question would be is, what is  
your response to those common themes?

125 **The Minister:** Well, I think there is obviously a perception whenever you are dealing with this,  
and I did allude to the fact there are winners and losers in all stages of planning, and if you are

on the losing side or you feel that action is not being taken, then you will think there is a lack of response or the policy is not fit for purpose.

130 I think the reality is, since we have introduced a new operational policy, all complaints are investigated, and perhaps I could ask Miss Chance to give some context in that respect in terms of if we receive a complaint how it is dealt with.

**Miss Chance:** Thank you, Minister.

135 I think in response to those points and to what the Minister said, I am aware that there are the views that there is a lack of response, there is a lack of communication and there is a lack of action and what the Minister is referring to is how we are trying to address that.

140 The two aspects to it are one, there has historically been a lack of communication and a lack of quick action, and that was due to resource issues that we are trying to address. The second aspect of that, I believe, is that there is a misconception amongst the public about the powers that planning has to react to enforcement complaints. I believe there are many people out there who feel that if they have made a complaint we can go out and we can stop work straight away or that we can make somebody pull something down straight away, and the law is not set out like that. The law is set out so that there is the means for us to negotiate, to provide a resolution for something and that formal action should only be the last resort.

145 In terms of new enforcement policies the Minister referred to, this has set out much more clearly timescales, so the times in which we do an initial response to people and we can provide information in terms of our new data statistics as to how quickly we do get out a response to the initial complaint, because there are now more staff. There used to be one person in the team, and as you are now aware there is a principal officer, a planning officer and a part-time administrative officer, plus we are training somebody in. So the number of staff has almost been 150 trebled in Enforcement. That means we are hoping that the communication, in terms of keeping people updated with what is going on, is going to improve.

**The Minister:** Okay, thank you for that.

155 Just building on that, the Planning Act makes enforcement non-mandatory so it is something that is an expediency question. I think it is fair to say, if you look at the UK, due to their austerity, for want of a better word, there have been some authorities that have carried out no enforcement at all. I think there was a case prior to this administration where cost cutting resulted, as I alluded to in the opening speech, that there was very little enforcement activity. Now, around 25 to 30% of our staff in the Planning Department as it were, active planning 160 officers, are involved in enforcement so we are making great leaps forward.

165 Miss Chance alluded to data capture: we have improved the way we are capturing data so we can find out and look at ways of improving how we are dealing with things but it is always difficult because you referred to inconsistency, no two cases are the same. However you look at things there will be differences and that leads to a perception of inconsistency, when the reality is the officers are just acting with the available information and what has happened on site.

**Q4. The Chairman:** Can I just ask two small questions on this: the first one is do you feel that enforcement, as a Department, was at a lower priority back say in 2015-16 compared to what you are doing now, because you submitted a document, the High Level Strategic Review of 170 Planning in the Isle of Man, a Report by the Council of Ministers. Now in that you said that annually there were around 300 enforcement submissions made to the Department.

I guess the other question on that is how many today or in the last year have been submitted? Has the number increased, has the number decreased? And is it as a priority as it should have been maybe in the past than what it is today?

175 **The Minister:** Well, I think it is important to acknowledge that if there is no enforcement then it is worthless having planning regulations, so enforcement is an important tool in ensuring that people do work within the Planning Act.

I think it is absolutely fair to say it was a much lower priority when I took over the Department. I was very much aware of that and with Mr Baker we have set out to address that issue.

180 With regard to outstanding cases, I think we have some statistics here. Miss Chance, would you like to?

**Miss Chance:** If I may. You referred to the number of cases that we received each year. There is still on average between about 225 to just over 300 cases that are received. It is going slowly down each year. I am not sure whether that is an indication of people doing less enforcement because they know we are maybe going to be more active on it, it might not be. The number of open cases which have been worked on by the team are slowly dealing with the historical cases. So those historical cases are beginning to close and so that has got an impact on what the statistics look like in terms of numbers that are being dealt with.

**The Minister:** I was just going to add to that getting publicity around what is going on in terms of what we are doing in enforcement and even Keys Questions raise the profile. I think people are then more aware that we are more proactive than we were and that helps reduce the number of cases.

195 But there is a consistency about this, isn't there, in terms of the number that are coming through? So I think there is no simple way of addressing that because there will always be people that are potentially going to inadvertently breach the regulations and some that do it deliberately.

200 **Q5. Miss Bettison:** In item 2.3 of the Operational Policy on Planning Enforcement, the section entitled, 'How to report an alleged breach', I wonder if you could outline the sort of breaches that you might expect to be reported?

205 **The Minister:** I think in terms of the sort of breaches any potential breach is worthy or could be worthy of reporting.

Statistics show that a number of breaches are not breaches at all, or they are inadvertent breaches, and this is one of the difficulties in planning enforcement. People are not always carrying out miscreant behaviour on purpose, they make genuine mistakes or neighbours or interested parties report them for perceived breaches that are not breaches at all.

210 I think it is fair to say that people do not necessarily understand the system and if they go online and look for permitted development, for instance, they get the UK website come up and the permitted development in the UK is somewhat laxer than it is on Island. We are looking at Permitted Development Orders at the moment in the new Planning Bill and they get the wrong information. Now that is not deliberate; it is inadvertent.

215 But going back to what can be reported, if there is a perception of a breach it can be reported but it does not mean it is a breach.

Did you want to add to that?

220 **Miss Chance:** If I may, Minister.

As part of the improved data collection we are now, as of last year, recording breaches by a type and I could list those types. What that does is that helps let us know whether they are domestic, commercial and everything.

225 Can I humour you in telling you the types? (**Miss Bettison:** Yes.) So the breach type can be: deposit of refuse or waste materials; building preservation notice, which is to do with registered buildings; unauthorised adverts; whether conditions are not being met; works not in accordance

with approved drawings; whether it is an agricultural breach; change of use commercial or domestic, and of those domestic is by far the highest number of breaches that are reported.

230 **Q6. Miss Bettison:** I wonder also on the annexes to the Operational Policy is the Harm Assessment Form. And I just wonder how the harm assessment scale was developed and how the trigger score of 5 for action was reached?

235 **The Minister:** I think I will defer to Miss Chance on that one – operational policy and your domain.

240 **Miss Chance:** The assessment of harm is related to the strategic plan policies as to what are material planning considerations and the extent to which that breach is Government's overall goals in terms of protection of the environment, protection of people and that sort of thing.

245 **Q7. Miss Bettison:** And how does the assessment of harm scale tie in with the timescales for site visits in the category priorities? Are there numbers that would be attributed to each or would there be some degree of crossover?

245 **The Minister:** The operational policy does say depending on what is the timescale anticipated. Have you got a copy of that?

**The Chairman:** Do you need a copy, Minister?

250 **Miss Chance:** We have got a copy of the policy here. Could you –

**Miss Bettison:** Section 3.1 for the priorities and then the appendix is where the Assessment of Harms Form and the purpose is described.

255 **The Minister:** Section 3.1, Categorisation and Prioritisation, it does lay out our response and we initially acknowledge receipt of any request to investigate within three working days and then depending on the category of priority, Type A B C or D. High priority cases will be visited on the first working day after receiving the request to investigate; medium priority, that is B, within 15 days; low priority, C, within 30 days; and very low priority within 60 days. Not all necessitate a site visit. Our enforcement officer has been doing a lot of work with local authorities informing them of how the process works so when they receive reports of breaches now frequently they send in photographs of the potential breach and some of these can be closed without a site visit. So there is a way of ... We try to prioritise and move things forward more quickly.

265 **Q8. Miss Bettison:** So once something has been referred in it will be assessed based on the priorities first, that will then decide what action takes place and then the Harm Assessment Form will be completed and a score attributed to each case?

270 **The Minister:** I assume that is the way you operate?

**Miss Chance:** Yes, so we receive a request to investigate. The first thing that is done is to work out what priority type it would be and then ... apologies.

275 **The Minister:** Can I just for the record say that it is our enforcement officer who is very familiar and perhaps we should have had her with us here.

**Mr Robertshaw:** She is clearly enforcing this. *(Laughter)*



280 **Miss Chance:** First we would find out what priority it was given, depending on the type, and that would be the speed of time in which you would go out. After visiting the site, having a look at it, then after that harm assessments are carried out in accordance with the policy for Type C and D.

**Q9. Miss Bettison:** Okay.

285 And for the very low priority – the Minister just mentioned that in some cases there may not be a site visit, even the very low priority it says:

Wherever possible cases will be visited within 60 working days of receiving the request to investigate.

I wonder if you could advise in what circumstances you would not conduct a site visit?

290 **The Minister:** Well, I think I mentioned the fact that we are working with local authorities now, if they send photographs in if someone reports a breach to them, we can sometimes determine very quickly whether they are in conformity with their planning consent or there has not been a breach because it is simply not something that would be a breach.

295 Looking at ones where we visit, obviously an assessment is made on site and then determination of the way forward. Sometimes breaches are very minor and it is not expedient to take action. Other times breaches are more serious and, rather than go straight to an Enforcement Notice, our procedure is to try and get people to conform and it is better to do that then end up in a confrontational situation, which results in a lot of extra work, not only for the Department but cost as well in taking formal action. That is frequently ... well, it is the last resort.

300 **Q10. Miss Bettison:** And would you agree that often the expectation of the complainant is that any breach will be both investigated and acted on, however trivial?

**The Minister:** All reported breaches are investigated.

305 **Q11. Miss Bettison:** So then obviously within the law, the law in section 23 of the Town and Country Planning Act, section (2), states:

Any person who commences or carries out any development in breach of planning control is guilty of an offence...

310 Now, I appreciate it is around the enforcement and which ones you pursue to that but very much everything that people are reading and people are seeing would suggest that when there is a breach, however trivial, there is an expectation from their point that a criminal action has been taken.

**The Minister:** Well, the Planning Act – and I cannot refer to it specifically here, but perhaps Miss Chance can – it does not make enforcement mandatory, so it is whether it is expedient or not.

315 There is a perception that everything should be prosecuted, every minor deviation should be remedied. It would be impossible from a resource point of view to do that, and we have to take a practical approach.

320 Most people who commit breaches of planning are not criminals and we do not want to criminalise people for making minor breaches of the Planning Act. Consequently there is a holistic approach to how we deal with these things, and I think it is fair. And sometimes that does not play well with people who think things are being ‘got away with’, but I think I can reassure the public that where there are real issues they are tackled head on and the officer team now is sufficient in resource to actually tackle those things.

325 **Q12. The Chairman:** Can I just ask a question on that, because it does relate, there is a lot of  
conversation, you turned around and said a lot of things are very minor, they can be dealt with  
through the local authority and very low priorities, 60 days. But if you know, very quickly, that  
this is not an enforcement issue and it can be cleared off, I am guessing you will send out  
330 correspondence a lot quicker than 60 days in order to close that case down and keep your focus  
on the high priorities?

I suppose the other question, Miss Chance, is we are talking historic as well, a lot of the  
correspondence we have received relates to historic cases. Again, we are not going to talk  
specifically about those, but as a Department what sort of timescales were you responding to  
people previously, before you had this new policy in place? A lot of people, again, said there was  
335 a major delay of actually communicating with your Department, with your section, in relation to  
actually getting some feedback from when they did submit and what they felt was an  
enforcement issue.

**The Minister:** Yes, I will let you answer that.

340 **Miss Chance:** Anecdotally, because we were not using data collection at that point in the  
same way that we are now, so we would not be able to give you statistics, but having been  
somebody who is involved in planning enforcement the time, it was very much something that  
was one of the extra jobs that we had to do, it was something that fitted in when I was able to  
345 do it. So I would say that the criticisms in relation to the speed of responding to people are fair.  
Sometimes it would take some considerable weeks and some considerable months because it  
was work additional to other work that we were getting on with, which is why it is now more  
dedicated.

Elaborating on that, we would still get back to people when matters were either not planning  
350 or were not particularly large or difficult ones far more quickly. But when you had enforcement  
cases that were very complicated, a really complicated enforcement case takes an awful lot of  
legal research, it is very resource hungry, you need to do a large number of site visits, you need  
to gather an awful lot of evidence, and that takes up quite a lot of time. And now we have got  
the ability to do that, which we did not have, certainly four or five years ago.

355 **The Minister:** Can I just add to that. Frequently from a public perception point of view – and I  
said in my opening speech that sometimes these things take two or three years to actually clear  
up, because of what Miss Chance was alluding to in terms of the processes required – the public  
looking at that think, ‘Oh, they got away with it, nothing has happened.’ Well actually, there is  
360 something happening but it is behind the scenes. We clear up most cases, in fact some are  
deemed not expedient to deal with, but those that we pursue they are often cleared up and  
moved on and sometimes the public do not know that we have moved on and there is no way of  
actually publicising that you have solved this case, unless someone asked a question.

365 **Q13. Miss Bettison:** On the Request to Investigate a Suspected Breach of Planning Form, that  
is obviously the form primarily used for people referring things in, it is the one referred to in  
your operational policy. I wonder whether there may be some opportunity within that to maybe  
encourage self-assessment based on the assessment of harm scales to give people some sort of  
expectation management for complainants. I feel the form is just very straightforward, you refer  
370 it in and then you just hope for the best, and yet there is no referral specifically within the form  
to the priority scaling, the timeframes and the assessment of harm. Has that been considered in  
the past?

**Miss Chance:** I think it is a very good point that you made and I could make a note of it and  
375 most definitely consider it ... Oh, it is on the list of things to do apparently! *(Laughter)*

We would like to go electronic, we would also like to have the stages of where we are at in an enforcement investigation online so people can access that more speedily as well, so it is a good idea.

380 **Q14. Mr Robertshaw:** Okay, so if I was trying to summarise the progress, the journey here. If we go back a number of years we had a planning system which was absolute, this is prior to permitted development coming in in the way that we know. That was introduced successfully and allowed your Department to start focusing down on issues which were beyond permitted development – that released resources. The next stage, since your administration started, has  
385 been this increased focus on enforcement. I just wonder whether we can expand a little bit more on Clare’s point about engaging the public more in the sense that you are not an absolute organisation, that you might wish to try harder to embrace the public in terms of where they have an interest to understand what is possible and what is reasonable and what is rational and that sort of treats the public with greater respect I think in some regards and it is about  
390 perception. We are politicians, most of us here in the room, and it is about people understanding that planning is not an absolute science, it is an art. It requires interpretation and if it becomes possible to encourage people along Clare’s lines that you need their help to get to a point so that they can understand the degree to which they might expect your urgent or immediate attention. I do not know whether you want to comment on that point at all?

395

**The Minister:** I am happy to. I think you make a good point – greater respect; we are not the enemy. One of the things that we have been focusing on really is trying to be more interactive and making more information available on our website, we would like to go electronic, as it were, in terms of what we do. There are always some people that will not do that. One of the  
400 drivers has been to improve the process, to make it more transparent, so that people can see what happens and see operational policy, these people can now, and it may require some tweaking, and thank you very much, Miss Bettison, for pointing that out to us, but it is on the to do list. So we are being more interactive.

I talked earlier about going around and seeing all the local authorities. I think that was a big  
405 step forward because they now know what to expect in reaction from us as the Planning Department, whereas before they would flounder a bit. I remember when I was a local authority chairman, not me particularly, but I think the board tended to view the Planning Department and enforcement as, not the enemy, but similar to that. We were not getting the reaction we wanted, we did not know what they were doing, we did not know why they were not doing it  
410 and that is never a good place to be and I can understand where you are coming from.

**Q15. Mr Robertshaw:** Is it reasonable to say that a further review of permitted development – you just alluded to it there – might attempt to release more resource, because it is always going to be limited and it is a question of degree of focus?

415

**The Minister:** That is in process.

**Q16. Mr Robertshaw:** What sort of timescale are we talking about?

**The Minister:** It is like everything, resource required, the Planning Bill etc. I would think probably six to 12 months, but it is in process.

420

**Q17. Mr Robertshaw:** Will it take us closer to the degree of permitted development you see elsewhere, or not?

425

**The Minister:** It is certainly going to be a move forward and –

**Mr Robertshaw:** Jennifer, say no if you want to. *(Laughter)* I think enforcement is required here! *(Laughter)*

430

**The Minister:** I would be pre-empting what is coming through if I said too much, but it will be progress not regress.

**Mr Robertshaw:** All right.

435

Thank you, Chair.

**The Chairman:** Clare.

**Q18. Miss Bettison:** Going back to Miss Chance's earlier statement about the fall in reporting, I wonder whether you feel that that is related to that expectation management and people may be having some disappointment with the outcomes and the delays that people previously have experienced?

440

**Miss Chance:** I think it is too early to say yet, it could possibly be. We would need to monitor that over time. I would say that one of the distinct changes from previously is that officers have far better open communication face to face with both people who have complained and people who have been complained about, which I think in this instance is a much better way of dealing with the human impacts of both of these things than before when we did an awful lot by letter. And that very formal ... is not helpful in these kind of situations. I think a greater explanation of what we can do and why we do it can only reap benefits.

445

450

You indicated earlier about expectation of the public, it is against the law, why aren't we doing something about it? There is that expectation. Of course, the flip side to that is that if we then did prosecute or did serve Enforcement Notices on things that many people think were minor there would be a very different reaction to Government dealing with things that people did not think that they ought to really be dealing with things, they might think it is overkill. So I think that it depends where you are in public perception at the time as to what the reaction is going to be.

455

**The Minister:** I think you are probably underselling the improvements in process which have led to far better communication. I think we should acknowledge that planning is a community function, it is there for the good of the community. But you need to engage with the community to let them know that is why planning is there. I think a lot of people realise that, but we sometimes undersell ourselves generally and publicity in terms of planning, the bad bits get a high profile publicity wise. The good stuff that goes on every day with the enforcement officer meeting face to face with perpetrators, as it were, or people who have reported enforcement breaches or potential breaches is the way forward and it certainly stops a lot of this adversarial ... You cannot solve all cases like that, but it works.

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**Q19. The Clerk:** Just earlier, Minister, you did mention the role that local authorities play. Do you think that they have sufficient resources available to them to play the proper role that you would hope in the planning process? Some of them have very limited staff ...

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**The Minister:** Local authorities are able to raise their own precepts tax base and how they resource what they do is up to them. If they think that planning should be given higher priority and higher resource, then I would encourage them to do just that. We will certainly support them and we are trying to do that, but it is up to local authorities to resource as they feel is necessary.

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**Q20. Mr Robertshaw:** And do you encourage them to share resource?

480 **The Minister:** Well, they are able to tap into the expertise available within the Planning Department. I am sure Miss Chance would confirm that if we get a call from a local authority clerk or a member, they will do their best to assist.

485 **Q21. The Clerk:** I am sure *you* would, but I am not looking in any particular direction when I say this but, of course, they are quite mixed in size and in resources and sometimes people do not know they need more help. *(Laughter)*

**The Minister:** It is difficult for us to anticipate it, isn't it?  
All I can say is we are available with a resource to help them if they need it but by reaching  
490 out as we have done, particularly on enforcement ... but I know in the past there have been initiatives to explain the process and where they sit in that process. We can only do so much.

**Mr Lole:** Can I just build on that as well, because I do not think we are trying to say it is their role to do this. I think we are trying to say that they are often one of the stakeholders involved in  
495 these situations and that by helping them understand the system and helping them therefore put forward their concerns or their constituent's concerns in a more effective way, we are more likely to get to a good place quicker.

So we are not trying to say they should be doing enforcement work and that they should be  
500 resourced to do that. The work in the sessions with them has been about helping them understand how we do the enforcement so that they are better able to deal with those concerns when they are expressed to them, because they are often a really key stakeholder in the process.

**Q22. The Chairman:** Mr Lole, can I just ask as a continuation question, it is very clear within  
505 the Operational Policy on Planning Enforcement Document, dated August 2018, it clearly outlines the exemptions, the ones that are not what you would consider matters to be dealt with through enforcement. Is the Department good enough to actually go back to these people and say we do not think, for example, a neighbour dispute is an enforceable issue and you close that down very quickly and explain the reasons? Again, this is communication.

510 A lot of the things historically have been communication and engagement. And, as you rightfully said, some of your aims include openness, transparency and engagement. These are failings in the past, I would say, but now I am really encouraged by what you are saying this morning with regard to now you have got up to three officers, you are now taking enforcement as a priority. But in the past people would have disagreed and I am encouraged by what you say.

515 So when you do get these lists of where you feel they are not reasons that are possible to deal with by the Department, are you quick enough to respond to these and say we will not deal with neighbourhood disputes, we will not deal with squatting and trespassing, etc.?

**Mr Lole:** Quick enough is a really hard question to answer, isn't it? We would say we are  
520 trying to respond much quicker than we were doing and we are trying to go back with a clear message on that.

What I cannot answer is whether we are meeting their expectations, but we are keeping  
track of our pace of response and we do believe we are doing a much faster job than we used to.

525 **Q23. The Chairman:** But that lines up with my colleague, Miss Bettison, who actually clearly said, before submitting this form, is it within this boundary and if it is, then we will not deal with it, and it is very clear. So if I went to make a submission, I felt I was having a neighbour dispute and I went on to them, 'I am going to make a complaint.' Suddenly, straight away, it said 'Before you look at this please note the exemptions, please note we will not look at these,' straight away  
530 it may reduce it; and again you will not have to take officers' time up by looking at something

and then responding by clearly saying, 'It is not within our remit' – again something that could be helpful in going down the line in the future?

535 **Mr Lole:** I think you are absolutely right, but I think any enforcement policy actually treads quite a difficult balance, because the purpose is to try and be as clear as possible about how we will address cases and manage the expectations and manage our own behaviours by agreeing this is how we will do it. The more and more transparent we are, the more people understand how they can play a game. So there is a risk that those who are cynical in breaching planning standards, the clearer the enforcement policy is, the clearer they understand where the  
540 boundaries are about how far they can flex the situation to suit themselves.

So I am not saying we have got the balance right, but it is a challenging balance. When we introduced the policy we did say we would review it and refresh it, and I am sure we will find there are areas where we can flex it a bit more, but it is quite a narrow balance.

545 **Q24. Miss Bettison:** Just on the form again, just to echo my colleague's comments, whether it might be useful to state on the form, in bold, that work will not be ceased during the investigation. Again, it is about expectation management.

I am not sure if I have got an old form, but I did print it off only an hour and a half ago so I am hoping it is the current one, off your website

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**Mr Lole:** I can check.

**Miss Bettison:** – but it does not have anything about the assessment of harm, so I am not sure if we are on a different page but, again, it is about that information giving. It is in the  
555 operational policy but if someone does just get the form and fill it in, it would be helpful to have the key information around expectation management within that form.

**The Minister:** I think that is a fair comment and we will take that on board.

560 **Mr Lole:** Absolutely. Again, the one challenge is we probably would not want to say we will not issue a Stop Notice because the perpetrator then knows they have got a period in which to continue.

**Miss Bettison:** We may not.

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**Mr Lole:** That is the balance, isn't it?

**The Minister:** Just to add to that, because there are some cases when the enforcement officer goes out and there is potentially going to be a breach or there is a breach that has  
570 commenced, that is quite serious, and it is better to have a conversation at that point and tell them they could be facing a £10,000 fine if they continue, stop please. I think the experience is that most people stop at that point without going through the formal process of issuing a Stop Notice, and that is working with people.

575 **Q25. The Chairman:** Can I possibly ask how many Stop Notices the Department actually issues, how many of them proceed towards actual legal proceedings and how many have actually resulted in a successful conviction?

**Mr Lole:** In a given period?

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**The Chairman:** In a given period, yes, apologies.

**The Minister:** Very few, and this is probably an example of the way the Department does work with people. Have we got the formal statistics there? We have somewhere.

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**Miss Chance:** If I may, Minister?

**The Minister:** Yes.

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**Miss Chance:** To my knowledge we have served three Stop Notices in about the last six years. I cannot remember when the first one was, in that instance the person stopped and stopped permanently so there was no need to do anything further on that. In the other two cases related to the same site work did stop and the issue is being resolved. Stop Notices on Island have to be served at the same time or after an Enforcement Notice. So you have already had to go through the Attorney General's to be certain that what you are doing is serving an Enforcement Notice on something that you have actually determined is a breach.

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Sometimes we are asked to serve a Stop Notice whilst we investigate, and if you can imagine what the implications would be to stop work on something that actually is lawful, it would be very serious for the Department to do so you need to be very careful.

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**Q26. The Chairman:** I was going to say, because if we based it on your figure previously of 300 complaints submitted in respect of enforcement issues per annum, that means there are only three out of 900 in a three-year-period, that is an incredibly low percentage.

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**The Minister:** But that is probably down to the expertise of the Department itself in managing some of these. I mean, not all of those are going to be serious breaches, as we are aware, and some are not even real breaches so – do you want to add to that?

**Miss Chance:** Sorry, Minister.

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We would really only serve a Stop Notice in an instance where irreversible harm is likely to be to result from the activity. So that would be damage to the environment or something like damage to a registered building. In other instances, most work can be removed or rectified in some way. So Stop Notices are usually only served when something would result in irreversible harm.

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**Mr Lole:** Just to build on that a little further, if I may.

There was a comment earlier that said an awful lot of the results come from that very quick initial visit to the high priority cases where we talk about the implications and somebody mentioned a £10,000 fine. We very often manage to get the work stopped very quickly in the high priority cases simply by making sure people understand the implications of what they are doing.

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**Q27. The Chairman:** So they have done it voluntarily – you have just basically gone on in and that is it? (**Mr Lole:** Yes.) Okay.

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**Mr Lole:** So I would not want the perception to be that we are not trying to stop the work, but that is done in a conversation through a very quick visit to the highest priority cases.

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**Q28. Miss Bettison:** I just wonder if we could touch on the opportunity for appeal when people are uncomfortable with the final decision that is taken to not proceed with enforcement, and what process there is in place for that?

**The Minister:** Well, there is no formal appeals procedure. To be fair, if we had an appeals procedure we may find that we were dealing with an awful lot of appeals on minor cases, so

635 within the Act there is no appeals procedure. But the ultimate appeal is a Petition of Doleance, a  
judicial review, and that is there in all cases and if someone feels suitably aggrieved that is the  
way forward, the way to solve the problem.

**Q29. The Chairman:** But could I ask, Minister, is that a fair way, given the costs involved in a  
640 Petition of Doleance? A lot of people do not have the cash or funds available in order to present  
that when they do feel aggrieved at the end of the process.

**The Minister:** Well, you could take that view on nearly anything we do in terms of  
governance in most spheres.

645 I am just reading this – the Attorney General’s office often advise on whether we should take  
action or not, sets out general principles applied and the prosecution codes and whether we  
should pursue things. There is an evidential test and a public interest test applied to the  
decision-making process that we are involved in.

650 So it is an escalating process in terms of where we get to before we decide what we are  
doing, and if people feel that we have not taken action, we have probably used a robust process  
to assess whether we should be taking action or the action has resulted in a result and it is the  
enforcement that we are going to take.

655 So if people feel that that system is not robust enough, then I go back to a Petition of  
Doleance as the way forward. I mean there has to be a benchmark at every level as to whether it  
is that important because otherwise we could be bogged down in frivolous appeals for appeals’  
sake.

**Q30. Miss Bettison:** Do you think that there is any perception of conflict, where the  
Department is engaging in both the planning administration but also the planning enforcement?  
660 Separation of powers, I suppose.

**The Minister:** I do not think so. It is not a criminal code this, it is not like having a police force  
policing it. We are internally policing the Planning Act, as it were, and there are processes to go  
through so I do not think there is a perceived conflict. There may be in some cases, people do  
665 not believe what officers tell them, but I think officers act in good faith and they do not close  
cases because it is expedient for them to do so. If there is a breach, they will follow it through.  
So I hope that is not the perception out there.

**Q31. Miss Bettison:** Just expanding on that point briefly – and this is not unique to DEFA, this  
670 is across Government in a number of things – do you feel not having an appeals process in a  
situation where your planning body is engaged in both granting permission and enforcement  
actually just could enforce that position that there is not a separation of powers for people who  
have a grievance against their outcomes?

675 **Mr Lole:** There is a complaints process and so there is another process which people can use  
to make sure the decision, that the process was undertaken fairly, and that we have complied  
with that Enforcement Policy and that we have been through due process, and that is used quite  
frequently.

680 **Q32. The Clerk:** Does that complaints process allow for a change of the verdict or a  
rehearing?

**Mr Lole:** It could allow for change in the verdict if we had not followed due process or come  
to a decision that was not reasonable, yes.

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**Q33. The Clerk:** Oh, so it is effectively then a semi-appeals process?



**Mr Lole:** It is a review of the file and the way we dealt with it.

**Miss Bettison:** Okay.

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**Q34. The Clerk:** And has that ever resulted in, say the last five years, a reversal of –

**Mr Lole:** I am not sure I can answer the question now, but we will come back to you.

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**Miss Bettison:** Thank you.

**Q35. The Chairman:** Thank you so much. We had allotted an hour which I think is a perfect junction for us to close this session.

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Can I thank you this morning for coming in. I do not know if you would like to make any closing statements, Minister, Miss Chance or Mr Lole, or are you okay?

**The Minister:** No, thank you very much.

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I think that was a good overview of where we are and I do hope that you go away with the view that we are making progress, we want to make progress and we want to engage with the public and make sure we provide the best possible service.

**The Chairman:** Okay, thank you.

We will now sit in private and then we will come back with the second session in a few moments. Thank you very kindly.

*The Committee sat in private at 10.54 a.m.  
and resumed its sitting at 11.02 a.m.*

**EVIDENCE OF  
Dr Alex Allinson MHK;  
Mrs Daphne Caine MHK; and  
Mr Lawrie Hooper MHK**

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**Q36. The Chairman:** Good morning, we will now continue to take evidence on our Inquiry into the operation of the planning system and the issue of planning enforcement in particular.

Good morning and welcome. I was wondering if you could just state your name and the capacity in which you are appearing here today.

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**Mr Hooper:** Thank you very much, Mr Chairman.  
Lawrie Hooper, Member of the House of Keys for Ramsey.

**Dr Allinson:** Dr Alex Allinson, Member of the House of Keys for Ramsey.

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**Mrs Caine:** Daphne Caine, Member of the House of Keys for Garff.

**Q37. The Chairman:** Before we start, would you like to make any opening brief statements?

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**Mr Hooper:** No, other than just to say thanks very much for having us in to chat through the letter that we originally sent to yourselves back in December last year. I am grateful for the opportunity.

**Q38. The Chairman:** Okay. Thank you, Mr Hooper.

I was wondering if we could start with the letter.

730 Apologies, Mrs Caine.

**Mrs Caine:** I have got three example cases to share with the Committee, if the Committee would like to hear it at whichever point you are ready to.

735 **Q39. The Chairman:** Well, we can start with those, but maybe if you could give us an overview of your letter dated December 2018 which asked the Committee to look at planning enforcement in particular, because you have highlighted that. So that may be a good overview to start with?

740 **Dr Allinson:** Perhaps I can start. Certainly as a constituency MHK, working with Mr Hooper, it has come to our attention on a number of occasions from residents of the North that there seems to have been an inconsistency regarding the enforcement of planning applications in terms of the Department, and also some mixed messages coming out from that which have left people being really quite confused to the point where they have consulted their MHK for clarification and to try to take things further.

745 That is why Mr Hooper wrote the letter, and certainly I was happy to sign it, to bring this to the attention of the Committee to try to get some clarity in terms of how the planning process works, when it works. But also particularly in terms of enforcement, when people are put in the position of not being happy with either something that has been built already, or something that has been erected, or is about to be erected – where they go to, and what their rights and abilities to complain are, and how, then, that is dealt with by the Department. As I said there seems to be a little bit of inconsistency there.

750 So that is certainly my perception, but I would be very grateful obviously with the Committee looking into this in more detail, to see if this is a genuine problem and whether it is my perception, or whether it is a systematic problem within the Department itself and the way it operates.

755 **The Chairman:** Thank you.

Mrs Caine, before you start to go into your examples, can we just be very careful not to talk about specific cases? We are looking at actual policy – the procedure. Is there an issue, as Dr Allinson has rightfully said, with enforcement?

760 We have just taken evidence from the DEFA Department and they have obviously given us an overview of what they felt was historic in the problems they face; and they have given us an overview of what they have changed over the last two or three years. So can we talk about it generically if we can and not get too focused on individual cases?

765 **Q40. Mr Robertshaw:** Would it be possible, where the Members have touched on this issue about inconsistency, could you describe some sort of way in which that inconsistency is exhibiting itself and at what level?

770 **Mrs Caine:** Well, if I could mention one of the cases that has completely concluded, that is Rhanfa, which is the fencing photos that you have in front of you. This was a constituent in Maughold dating back to 2016 when an elderly resident erected a replacement fence. It was a six-foot wooden fence replacing a six-foot wooden fence. The only difference was the previous one had been a post-and-lap wooden fence and this is a lollipop stick-style lower maintenance, that required a very marginal move out to avoid the pre-existing posts – the previous fence posts – and also a small amount of hedge was removed. However, the full weight of enforcement was put on this elderly resident. Despite lots of correspondence, the Planning

780 Officer for the area never took up the invitation to meet on site or attend. She was forced to put in a retrospective planning application, even though it was a replacement wooden fence.

To cut a long story short, it went to appeal, the appeal was ruled against her and eventually she went, with an extra £5,000 expense, through planning advisers. She managed not to have to reduce it to three foot and scallop the top, but in fact a planning appeal inspector came on her side and the fence has been retained.

785 But I think the point is a bit of proportionality; there is a sense of why engage in that? It was a six-foot wooden fence replaced by a six-foot wooden fence. Three years of stress and angst and expense to end up with a six-foot wooden fence.

**Q41. The Chairman:** Can I just ask when the time of that was?

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**Mrs Caine:** The retrospective application was refused in November 2016.

**Q42. The Clerk:** And you did mention moving the fence slightly. Was that on to private land or public land?

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**Mrs Caine:** No, no, it was just literally instead of where the posts were – it was five centimetres to knock in where the concrete posts of the previous fence were – on her land, on the side of the road.

800 **Q43. The Clerk:** So she was not taking land from anyone else?

**Mrs Caine:** That is the fence as it is today, and the only condition I think the inspector put on was that there was some planting needed to take place in front of it.

805 **Q44. The Chairman:** Okay, can we –?

**Mrs Caine:** But all I am saying is, in terms of the enforcement, it was just a fence and yet that has been a *huge* expense probably for the Department as well as for the constituent concerned. Proportionality – it does not leave a very good sense of fairness or consistency in the appeal.

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The other photos that you have in front of you are some chimneys that have been erected on a property in the Onchan part of Garff. This is current, so I will not say where it is precisely, but in 2014 there was a plan for the property with the chimneys, showing the chimneys in line with the ridge of the roof. These are substantially taller and have been braced because they are probably rattling around. The householder where they are directly facing has asked Enforcement if they can be removed, or stopped being in use while the retrospective planning application goes through, because the smoke is going directly into the property.

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**Q45. The Chairman:** Mrs Caine, I think we have got to be really careful if we have got a live case.

820 I think, let's bring it back to our concern –

**Mrs Caine:** Can I just say: the point about that is there is a lack of amenity and there is smoke into one household. And the response from Planning –

825 **The Chairman:** Mrs Caine, can I –?

**Mrs Caine:** Planning was going to Environmental Health – 'We cannot help you'.

830 **Q46. The Chairman:** Mrs Caine, please do not interrupt. Okay? This is a live case and we have got to be really careful about live cases.

Let's bring it back. One of the very first questions that we asked with the DEFA team here this morning was an overview of the responses that we received and, as a Committee, we received around 25 correspondences. They had a clear common theme going through them and I would like you to have an input into those.

835 The themes included: a lack of response; slow to take action; policy not fit for purpose; a delay in dealing with complaints; lack of engagement; a lack of communication and updates; and inconsistency in the approach taken by the Department.

This is the overview of the letters that we have received as the Committee and I would welcome your response if possible to those.

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**Mr Hooper:** As Alex has mentioned, part of the rationale for sending this letter was off the back of some very specific constituency complaints and issues in respect of planning enforcement, which I am not going to go into. But what really was the main catalyst following that, because we have been dealing with these issues for a little while, was the Tynwald Commissioner for Administration's report that was laid in front of October Tynwald, TCA1801, in which he identified quite clearly, I think, a number of very significant issues that really summed up a lot of the problems that we have, and I think a lot of people have, with planning enforcement on the Island.

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The first one of those, and this speaks to the consistency point, is that there is an apparent unwillingness within the Department to take enforcement action. So according to Tynwald Answers that we received that were outlined in the letter, roughly one in five cases are closed by the Department without taking any action; and that is because they decide it is not expedient to take action. Not because there has been no breach, simply they do not feel that it is worth their time and effort taking any action. According to the Answers, there have been zero enforcement notices served during 2018 up to September, compared to 30 in 2012 and numbers obviously in the year since then. I think this really speaks to what you were saying there about a lack of consistency of approach.

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It would seem to be the case that what the Department has done with its new operational policy is codified this principle that, if it is determined by the Department to be a low priority case, they do not see the rationale for taking planning enforcement; they do not see that it is worth their while enforcing those breaches of planning law. The Minister himself, in response to some Questions from myself and others, has confirmed this, really. He stated in response to a Question about the planning officers essentially granting planning permission by refusing to investigate, by refusing to enforce. His response was essentially that people are allowed to get away with breaches, it is a matter of expedient action by the Department, and it will ever be thus. It is the Minister's view, clearly, that there will always be planning breaches that are not investigated or reported. His rationale for that approach is, 'Well, the Police do not prosecute for every minor offence'.

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I think one of the biggest concerns around consistency for me is that using that line of thought, he is saying, 'Well, the Police do not prosecute everybody that speeds in a 30 mile-an-hour zone'. And while that may be the case, it is probably because the Police are making an individual determination based on the specific circumstances of that case. The Police have not codified a policy that says, 'We will not prosecute you if you are doing 35 miles an hour in a 30-zone' – which is essentially what DEFA have done with their planning policy: they have codified that in a number of circumstances you will not be prosecuted for breaching Planning Law, and that is now their operational policy. If they determine it is low or very low priority they are basically almost confirming, 'We are not going to take action'.

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That is now Department policy. That is not an assessment of the individual circumstances of the case, it is a broad policy across the whole Department that says, 'We will not enforce'. This is where the issues of inconsistency come in because some officers will decide, 'I'm going to enforce this particular issue'; whereas you might have very similar set circumstances that have gone to a different planning officer who has made a different decision and said, 'Actually, I am

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not going to enforce this' – and the policy will support him on that because there is no appeal process, there are no time targets and there is no requirement to update people as the progress of how the case is going on.

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So the Department is basically being given a free hand to deny this due process. That is something that the Tynwald Commissioner touched on in his report that was laid before Tynwald. He was very clear commenting that planning enforcement officers are taking decisions on the assumption that retrospective approval would be granted.

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What is essentially happening there is the Planning Enforcement Division are saying, 'Well, you probably would get planning permission for this, so we are not going to take any enforcement action'. So what they are doing there is denying those individuals that are involved in that case the proper democratic due process that planning law sets out that they are entitled to. And so rather than someone going through the planning process where you have an opportunity to object or to comment and discuss your concerns with the Planning Committee, its planning enforcement officers are taking that system completely to one side and saying, 'None of that is relevant. We are not going to enforce which means we're not taking action.'

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After a certain length of time, I think it is two years, we no longer *can* enforce if someone was to change their mind. It is that whole issue around consistency there that is really summed up in that policy – they have codified this ability to say the planning system only exists for those that choose to use it, whereas if you choose not to use the planning system there is a reasonably good chance that we are not going to enforce any breaches.

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**Q47. Mr Robertshaw:** So, using your example there, we all respect the fact that if the Police decide not to take action in a specific instance it is on their judgement and their rationale in that given circumstance and, as a society, we would be deeply upset if the Police took action on every single incident.

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What I am having difficulty with here, Lawrie, is then translating that to the planning system where you are effectively – and I am challenging you here because I might have misunderstood you. Are you saying, therefore, because a planning judgment on planning permission given should be absolute and that you are not expecting planning officers to have a degree of flexibility?

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**Mr Hooper:** No, of course not. If a planning officer investigates the circumstances of an individual case and comes to the decision that it is not in the public interest to prosecute, and that you are not going to get a judgment or a conviction or whatever, that is the right process to go through. But the problem is that the starting point they have with this operational planning policy, is the moment they have codified something as a low priority – which is essentially a box-ticking exercise in the way it reads. It talks about: 'Development that only has a localised impact' – low priority; 'minimal harm to Development Plan policies' – again, low priority; and 'breaches where planning approval is likely to be granted'. So they are determining themselves that you are going to get planning permission for this anyway, because the policy says all of these things factor into your thinking.

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So the constituency example that kind of relates to this is: someone might want to build a greenhouse, for example, not a traditional greenhouse but quite a large black polystyrene structure which they would have needed planning permission for. Now, because the impact of that was only on one other individual, immediately that falls into the very low priority/low priority box, which means the planning officer then says 'Well, this is very low priority. I am therefore not empowered under the policy to enforce that properly'.

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This subjectivity, this decision-making process that relies on the facts of the individual case, the policy is essentially codifying that where these planning decisions are low priority. The comparative example would be the Police deciding that if you are in a 30-zone and you are doing five miles an hour over the speed limit we will never enforce that. Whereas what the Police

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935 actually do is they look at the exact circumstances of that person speeding in that zone and say,  
'Is it worth prosecuting in this instance?'

**Q48. Mr Robertshaw:** But the difference is that – and we are all politicians, it is all about perceptions – we are at ease with the granting of the right of the police officer to interpret a given situation and expect him or her to do so to the best of their ability.

940 I think if I can be devil's advocate here and sort of argue, as I understand the Department's position, it is that they are trying to assist in their attempts to create these various levels an opportunity for people to understand that the Department will not always act in accordance with the letter of the planning – that they are trying to indicate to the general public that there are levels and degrees of seriousness.

945 I think what as a Committee we are trying to grapple with here is how does Government and its planning system talk to the citizens so the citizen can understand that there are degrees in this and it is not absolute; and how can you help us here?

**Mr Hooper:** I am in agreement with your assessment there, but I think the difference would be – and what I am trying to get across is that the individual circumstances of these cases do not appear to matter.

950 So in the example I just gave you, we were advised by the recipient of the letters from the Planning Department that there had been a breach. The Planning Department acknowledged there was a breach; they contacted the individual and the individual basically said, 'I am not taking action. I am not doing anything'.

955 Now, if that was the Police, if they say, 'Look, you are a regular speeder, you have broken the law. We need you to slow down a bit'. (**Mr Robertshaw:** Yes.) If the first thing that person does it gets in the car and does a hundred miles an hour off, the Police would pull them over. So in this instance you have got an individual that is refusing to engage with the process: 'I am not engaged; I am not putting a planning application in; I absolutely refuse to comply with the law'.  
960 At that point the Planning Department really should say, 'Right, you're not engaging. We've tried to talk to you ...' Because, obviously, we do not want to prosecute everybody; we are just trying to make sure everyone is understanding that. But if you have got someone that is really, deliberately not engaging, because it is low priority the Planning Department still takes the decision, 'We are not going to enforce this'.

965 So this is what I am trying to get across: it does not appear that the individual circumstances of these cases are as relevant as we would like them to be. We are not empowering planning officers to use their own judgment to decide what is and what is not appropriate to prosecute. What the Department seems to have done is set a policy that says provided it has been categorised as only going to impact one or two people, we will never enforce that. That is the definitely the feeling I am getting from the Minister in some of his Answers from the general thrust of the policy.

970 My real concern with this is when you have a wide acceptance – and there is a wide acceptance on the Isle of Man, I believe, that planning enforcement does not happen in small cases – people will simply decide there is no point in getting planning.

975 I myself have done building work and I have got advice from people when getting building work in: 'Do I need planning permission for this?' And the advice I get from professionals sometimes is, 'It's up to you.' That should never be a response from a professional – 'It's up to you whether you comply with the law' should never be a response.

980 That is what really worries me about the way that they are not enforcing planning on the Isle of Man –

**Q49. Mr Robertshaw:** But you do accept with regard to the Department's thinking that in terms of the absolute state of play some years back, before permitted development came in,  
985 there was an unreasonable assumption that everything was buttoned down. They have moved

permitted development and they are now deliberating on moving it again to create that extra degree of flexibility where, to come to your point, there is not any need for planning permission – ?

990 **Mr Hooper:** Again, if I can comment on that? That is exactly the point.

So what they have done in that instance is they have come to Tynwald, to parliament, and they have said, 'Can we exempt this list of things from planning requirement?' And Tynwald, as a democratically elected body, has said 'Yes, that's absolutely fine'. (**Mr Robertshaw:** Right.) That is absolutely the right approach.

995 But what they are kind of doing now is they have got this list of permitted developments. They have then got a list of low priority breaches and what they are doing is they are saying, 'We're going to treat those low priority breaches as if Tynwald has said these are okay'. And what they are kind of doing here is they are taking the decision away from Tynwald and they are saying: 'Tynwald has agreed that these things are permitted; we, as a Department have decided  
1000 there is a further list of things which we are not going to enforce'. And actually who has given them the power to make that determination themselves? Who has given them the power to decide that due process does not apply to these things? Who has given the Department the power to set that in policy?

1005 As I say, we are not talking about individual determinations here; we are talking about a blanket policy. That is where I have got an issue and this is where the concerns for the letter came from, that these concerns were reflected by the Tynwald Commissioner for Administration in his report – exactly the same issues that he presented to Tynwald saying, 'These things are happening in the Department; and where do you go? Where is the –?'

1010 **Q50. The Chairman:** Mrs Caine, do you want to come in?

**Mrs Caine:** Just on that, to follow on.

1015 The other impression I am getting is that the Planning Office always encourages a retrospective planning application and, as Mr Hooper says, if somebody does not engage with that – they may or may not – but they would never get prosecuted for not engaging. But the ones who then do go through the retrospective, it is almost as though Enforcement opts out until it has then gone through the planning process. So what is Enforcement doing? Because in the meantime if there is an intrusive or dangerous structure, or the chimneys, for instance, Enforcement does not say, 'You must not use them until the outcome of the planning  
1020 application'.

**Q51. The Chairman:** Well, Mrs Caine, they can actually issue a stop notice. Normally, what they –

1025 **Mrs Caine:** But they don't!

**Q52. The Chairman:** In the evidence we have just taken this morning, what they have said is every single breach that is reported is investigated. It is then prioritised in the new area, under the new policy that they have issued in August 2018, and from that there is an assessment  
1030 undertaken and if needs be they will issue a stop notice. We had that confirmed this morning and they have said normally a site visit, speaking to the person and actually explaining what they felt is the breach is then discussed. From that point there is a course of action taken.

1035 **Mr Hooper:** If I can, Mr Chairman?

**The Chairman:** Yes.

1040 **Mr Hooper:** One of the issues is that the Department is telling you these things are happening but when you start looking into what little data they have it might not be the case. So an example of this is: I asked a Question to the Minister about when people get acknowledgements. If I report a breach do I get an acknowledgement of that? And I think in the Answer there were 220 new breaches reported; and they recorded these as breaches but they only acknowledged 168 of them.

1045 So their policy is to acknowledge every single one of these things, but they only physically sent 168 pieces of correspondence to people that had reported 220 breaches. So there is a gap there.

1050 **The Chairman:** Mr Hooper, I think it is fair to say from the evidence taken this morning they have actually, very clearly and very publicly said there has been this enforcement, as a Department, was a very low priority. It was something they did in between everything else. They have acknowledged that this morning.

1055 Now, the current Minister, Mr Boot has said when he took up the position of Minister of DEFA it became more of a priority and they have worked towards that. In 2016 they had just one enforcement officer who looked at it in between other duties. They now have a dedicated team of two, two and a half, up to three officers looking at enforcement all the time now.

I am going to ask my colleague, Clare, to come in. Miss Bettison.

1060 **Q53. Miss Bettison:** Yes, just picking up on that. Although the law is not enforced, are you aware whether they are issuing certificates of lawfulness, otherwise would there not be some implication around sale of properties if a planning breach had been – ?

1065 **Mr Hooper:** The Minister did allude to that in one of his Answers, that if you do not get planning permission it might impact on a future sale. But again that is 'it may; it might' – there is no hard evidence of this. I mean, I have personal knowledge of people that have made amendments and changes to their properties without planning permission, and that has not impacted on the sale of their premises. So I think it is one of those things that you make a claim but it is impossible to back it up because I do not think Government anywhere collects that level of data or that degree of detail.

1070 So it would be very difficult to prove, I think, that is the case. And trying to then base a system on, 'If you do not follow the law now, in 25 years when you try to sell your house you might have a problem', is probably really not the most effective way of enforcing the law.

**Miss Bettison:** Yes, it was just to pick up.

1075 **Dr Allinson:** If I can, Mr Chairman?

One of the issues – and I am very glad to hear the Minister has said that things are changing. One of the issues here is the whole trust in the planning process. Obviously, we are moving towards far more permitted development and I think that is a good thing.

1080 I think planning is incredibly important. I think in terms of enforcement, perhaps what sometimes is lacking is the impact assessment on the individuals involved. We have heard of one occasion where somebody was very much aggrieved by their neighbour putting up a big structure and it really did affect them, to another where they put up a fence and nobody was bothered really – and that inconsistency.

1085 But I suppose what all of us want is a planning system that we can trust, the same as we trust the legal system and the criminal justice system, because if people lose trust in the system they will stop using it completely. My fear is that people will now think, 'Well, actually there is no point putting forward planning permission, because I know if somebody complains I can just go for retrospective anyway; and I might not even have to do that, so why bother?'



1090 This is law, and this is law to protect both the individual and our environment. And it is very important that people have trust and respect for that law; and because of the inconsistencies I fear that some people are losing that trust.

**The Chairman:** I agree on that.

1095 I think, just to go back to your point Mr Hooper, under the new Operational Policy on Planning Enforcement which, as I say, was issued in August 2018, the Department clearly states in section 3:

... we aim to acknowledge receipt of a request to investigate within 3 working days.

Now again, historically, I think they have acknowledged this morning there was a clear failure. They took a long time to respond to enforcement or breaches or what people felt were breaches, and to investigate them and to keep people fully informed.

1100 But here, under the policy in August 2018, anybody making a breach should receive at least an acknowledgement within three days wherever possible, and then it should be assessed and according to the table taking into account the harmful factors which builds up the points to go behind it. So there is a clear policy now which was not there previously.

1105 **Q54. Miss Bettison:** Yes, just where the Chairman has touched on the assessment of harm index, which again I think ties in with what Mr Hooper was saying about codifying. So actually anything that scores five and less will not be investigated, and there is quite a wide range of harm factors that could be involved in that.

1110 We did question the Department this morning as to how that decision was taken both in terms of the harm factors decided, the values placed and attributed to them, and the decision to have five as the arbitrary score. There was not a response and that is something we will pick up further. But I think that this ties in with what you were saying around the categories and the prioritisation, and I do not know if you have had any feedback from people around the actual scoring with the assessment of harm, and whether they feel ...

1115 One thing we questioned was whether they could have an informal opportunity for people to assess the harm and actually put that on to the reporting form – a request for investigation of a suspected breach. So actually request that the person making the complaint might do a scoring system themselves to give a feel and a flavour for where that point is.

I wonder if you have had any thoughts on that?

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**Mr Hooper:** It is something that the Tynwald Commissioner picks up on, that there does not appear to be a proper assessment of the amenity impact of developments when they are considering harm. And I think you are right: the point scoring is very arbitrary in some ways, or that is the way it appears.

1125 I think this comes back to, 'What is the rationale for this in the first place?' To me it seems like one of the main drivers behind this has been to do with resourcing. As has already been mentioned, they had one planning officer, one and a half I think it was, and now they are up to three. But it feels to me that they have almost decided that we can only afford three planning officers, so what we need to do is limit the number of cases they are dealing with. And that seems to be one of the main thrusts of the policy – to try and divert a lot of stuff away from the Enforcement team rather than saying, 'Is it right or wrong that we should be enforcing these?' – which is Mr Robertshaw's point. Is it more driven from a resourcing perspective?

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**Q55. The Chairman:** Mrs Caine, do you want to come in?

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**Mrs Caine:** I would agree with that point as well.

1140 And just going back to Miss Bettison's question, if the person making the complaint had the ability to express the harm level to them, I think it would be quite an important development for the person making the complaint to be able to explain the impact on them of a development that has gone ahead without planning permission. But over all of it I think that the whole inconsistency and the lack of awareness in the public, and the lack of openness in how the system works and who gets the follow-up and who does not, and who gets the whole weight and going to appeal over a fence – that is of concern.

1145 And if, as Mr Hooper is alluding to, it seems that they are not resourced fully to the amount or to the level of workload - I think from my contact with them, I fully appreciate they cannot do it all with the amount of resources they have – then would there be some point that the first-stage assessment could go to the local authority who could determine whether this breach needed to be followed up any further? Could that level go back to the community rather than be centred in a Department that does not have the resources to carry it out thoroughly?

1150 **Mr Hooper:** I think the fundamental issue is, if you look at the way the planning system is structured, there are certain things which we need planning for – we all accept that. And the way that works is you put in a planning application; you go through the process; you then go to the Planning Committee where people have the opportunity to object or comment on your planning application. So if you use the system as the law says you should be using the system there is a public and transparent process that you go through.

1155 If, on the other hand, you decide not to use the system – 'I'm not going to bother with that' – the flipside of that process is it is all very behind closed doors. And so you are not required to go to the Planning Committee. You do not get the opportunity to comment or object and it almost seems like the determination of – to take Dr Allinson's point – if everyone lost trust in the planning system, which I believe is happening, and no-one decided to use the proper planning process, it would then be a very arbitrary system as to decide who has to go through this public transparent process and who does not.

1160 That is the situation I feel that we are in at the moment, which is that if you choose not to go through the planning process, really, it is the Department's job – and I think the Department would probably agree with this. It is their job to get you to go through that process. They do not want to penalise you, they do not want to punish you. What they want you to do is go through the right planning process. That is their ultimate aim. I think the Minister has said that in the past: it is compliance that is their aim, not punishment.

1170 And that is the problem with the system as it stands and with this operational policy: it is not doing that; it is not encouraging and it is not requiring everyone to go through that planning process. The first step is, 'We'll ask you politely to go through the planning process and if you don't do that we'll ask you again, possibly a little bit more firmly; and if you don't agree to go through the planning process we then will make a decision as to whether or not we take formal action'. And, if you look at the statistics that have been published the decision, more often than not, is *not* to take formal action. They will either close the case – it is not expedient; or they will just keep sending you these small, strongly worded letters to try and force you to go through the planning process.

1180 So you are ending up with two categories of individual on the Isle of Man: those who choose to comply with the law because they think it is the right thing to do, because it *is* the right thing to do, going through this public, transparent, open, understandable planning process; and those who are choosing not to comply with the law, who are essentially in a lot of cases just – I do not want to say 'getting away with it' because that is not the point I am trying to make – but they are not going through that public, transparent process because the Department is not doing the job it is supposed to be doing under law, which is pushing people and requiring them to go through that public process.

1185 So, if I am an individual doing a piece of work, why would I opt to go through a lengthy, potentially expensive, public process when there is no real requirement for me to do so,

1190 knowing that all I am doing is a minor piece of work to my own property. Why should I go  
through that process? And if the Department is of the view that these minor improvements, the  
localised impact, should not go through that formal planning process then it is their job to come  
to Tynwald with a new Permitted Development Order and change the law.

That is the way the process should work. It is not up to the Department to say, 'Well, I know  
that the law says this, and there's a certain limit of things that we shall and shall not enforce and  
1195 we have decided to go above and beyond that'. So there is a category of people in the Isle of  
Man who really are not going through the planning process, who are not being required to go  
through the planning process, and will never be required to go through the planning process.

So, as Dr Allinson said, as that group of people gets larger and larger and larger, eventually  
the whole planning system falls apart and there is no sense in having a planning system on the  
1200 Isle of Man anymore.

**Q56. Mr Robertshaw:** The words that are emerging out of our conversation today certainly  
seem to be the issue of trust and respect in the system, and its consistency. But if I could just  
comment on Daphne's point about getting the local authorities involved.

1205 Would you not accept that, by definition, would be an invitation for inconsistency because  
they all have different levels of competency?

**Mrs Caine:** Well, if they had a set level of procedures and policies to work to – but if the  
alternative will be to strengthen the team of Enforcement so that they are operating at the level  
1210 of the amount of work that there is generated –

**Q57. Mr Robertshaw:** That takes us to the second point, about the balance between  
providing resources to achieve that level of trust; and whether or not the degree of flexibility,  
that additional – as Lawrie has just touched on – permitted development, would clear, as it  
1215 were, an area out from having to go through the process.

And another point that resonated with me was this issue about treating retrospective  
planning as if that is okay – and that diminishes to a degree trust in those who are following the  
process.

I think we are all here trying to search and find a way where we can get a balance of the  
amount of money applied to this, and getting people to trust and respect the system.  
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One of the things that we were talking to the Department about this morning was the  
importance that they do not misrepresent themselves in terms of the presentation of the rules  
on their websites, etc. and trying to create a better narrative between themselves and the public  
where the public themselves – the citizens themselves – were encouraged to think about  
1225 whether or not it is appropriate to put in a specific 'They're not complying' procedure.

I think there is a deal of work to do here, isn't there, to get the balance of resources and the  
balance of trust –?

**Mr Hooper:** I think what Miss Bettison was saying before about the harm assessment makes  
1230 a lot of sense. I think the biggest weakness in the planning enforcement process at the moment  
is that lack of appeal; so if you go through the planning process and you get a decision that  
someone is not happy with, you do have the right of appeal in some circumstances. So you have  
got that, 'I disagree with the decision that's been made. Let's take it to an independent appeal  
process'. You do not have that with Enforcement. So when the Department decides either to  
1235 enforce or not to enforce, no-one has any right to go back and say, 'Hold on a second, your harm  
assessment says this is low, but actually myself, my neighbours and the local community believe  
this is of much more significant harm than your assessor thinks.' (*Interjection by Mr  
Robertshaw*). Yes. So there should be that appeal process.

I think it is about, like you say, raising that trust level, raising that public awareness and  
making sure that these decisions are being made in a very public way, which is the way the  
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whole planning system, apart from Enforcement, is set up. Everything else is public apart from this one small aspect.

**Q58. The Chairman:** Dr Allinson?

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**Dr Allinson:** I would agree with you, Mr Robertshaw, but I think there is a key fundamental difference between the planning process being seen as co-operative or confrontational. So a co-operative planning process is, 'I want to do a project', and you go to the Planning Department and they, on behalf of the Government and on behalf of the people, say, 'Is this acceptable? Does it impact other people negatively?' And agree to it or work with you to make modifications so that basically everyone is happy.

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I think that is the ideal, and you always have to have some policing of that system. But some people find that rather than doing that perhaps we have moved – perhaps due to staff problems – more to the confrontational: 'You *will* go to planning and if you don't we will *have* to take action against you.'

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So it is going back to the more co-operative nature, which I think is best for everyone. The Planning Department is there to advise, to work with people to get the best outcome for the environment.

**Q59. The Chairman:** Mrs Caine?

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**Mrs Caine:** I think, just another point to make, the very fact that in most cases there is no comeback for failing to put a planning application in, and the first stage of enforcement is to require them to put a retrospective application in. But because there is no increased cost for doing that, or a fixed penalty notice ... I mean, if there is a confrontation on a failing to comply then we would expect that they would bring the full weight of the law down on somebody who is failing to co-operate. Whether it has been a mistaken oversight or a genuine oversight we would not want the full banging over the head by a planning department, because we want that trust and engagement with people to seek planning advice before they put in an application for development.

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But I think if we are saying that the office is under-resourced for the level of work for the retrospective and the enforcement, would there be a possibility of a retrospective planning application being a higher cost than a previous one, a normal one?

**Q60. Miss Bettison:** You touched on the appeals process and one of the things that we discussed in the previous session was around that separation of powers in terms of planning, law planning, delivery in terms of the operational process, and then that planning enforcement and the fact that at the minute they all sit in the same place.

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I just wondered what your thoughts were with regard to that?

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**Mr Hooper:** This is going to be music to Mr Robertshaw's ears, I suspect! (*Laughter*)

I am quite a firm believer in separating operational aspects of a Department's responsibilities from sometimes strategic and policy aspects. And so when it comes to things like planning – planning policy, planning law of course that needs to sit somewhere, and the operational side of things needs to sit somewhere else. But when in this instance you have a Department that sets its own policy and sets its own rules and then is the one following those rules, who have you got who is then supposed to say, 'Are those rules fair? Are you following those rules consistently and in an appropriate manner?' And the answer to that question at present is that it is you guys on this Committee.

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**Mr Robertshaw:** Very wise words! (*Laughter*)

1295 **Mr Hooper:** Yes, but I think if you are looking at a more strategic, bigger picture of this you would want to separate out the operational delivery from some of the strategic policymaking because then at least you have a more independent level of oversight as to what is happening on the ground rather than a Department essentially – and I feel like they are under attack all the time for not delivering on their own policy, whereas if they were policing the delivery themselves you would be in a different situation.

1300 It is back to what Dr Allinson was saying, it is more co-operative than confrontational and that is where I think everyone wants to get to – a more co-operative environment, not just in Planning but across Government, really.

**Mrs Caine:** Yes, I completely agree with that, that the policy should be separate to the operational delivery.

1305 The other aspect, I think, that reduces the confidence in the planning system is the appeal process where an appeal comes back and is overturned by the Minister, particularly in the case of a domestic matter. My understanding is that a planning officer would make the original recommendation whether to approve or reject a planning application, and then if it needs to it goes to the Planning Committee, and if it then is taken to appeal it goes to appeal.

1310 If the inspector upholds their decision and then it is overturned by the Minister, or it mirrors a previous decision at a lower stage, a previous stage, of the planning system, then there is an assumption that is too close, that perhaps it is the same people within the same Department advising the Minister. And for the Minister to overturn a decision of a domestic application is incomprehensible to me. If it is in the national interest or a particular development ... but there are other jurisdictions, I think it is Northern Ireland, where 100% of applications always uphold the independent planning appeal inspector's decision; and only about 10% in Scotland – I think that was the figure I got in the previous year – 10% would be overturned.

1315 But *why* does the Minister want to overturn an independent planning appeal inspector on a domestic matter? I think that, when it comes back to people, is yet another reason why there is a lack of trust and confidence in the system.

**Q61. The Chairman:** Can I ask you then, Mrs Caine: based on the new policy, do you think it is a step in the right direction? Are there any parts of it in respect of maybe looking at the timescales for site visits for high priority, medium priority, low priority, very low priority ...?

1325 Do you take comfort out of this new policy and do you think this policy can actually rebuild some of that trust that we need to put within our planning system?

1330 **Mrs Caine:** We *want* it to rebuild trust. We will have to see how it goes when it is implemented. I mean, the public perception of planning at the minute is not in a good place. I do not think people feel that it is a collaborative thing to get best possible development for the Isle of Man. I think it is seen as a battle. And to get back to working together to get the best development on the Isle of Man is going to take some years to rebuild.

1335 I have got another matter, another issue that arose from Onchan side, but it is more related to demolition orders where last year in the Onchan part of Garff there was a planning application for a barn to be demolished. A planning requirement was that the Manx Bat Group go in and do a survey, and when they arrived the barn had been demolished under a previous planning application that also required a survey. And this has happened again in Andreas, I believe.

Am I right in thinking the Bat Group has given their own submission for your consideration?

1340 It is that distinction between agricultural buildings – are they exempt from demolition orders or planning? But also in this particular case a planning requirement, a planning condition was that a bat survey would be carried out. It was not. 'Oh, the barn has gone'. Nothing was said; no follow up. And it happened again.

1345 I think where the Bat Group is coming from, there is no point once the barn is not there – they are in the business of surveying. It would be extremely difficult to prove there were bats in it when they had not had the opportunity to do a survey before it was demolished!

1350 So it is just, is there a discrepancy? Is there a particular exemption for agricultural buildings? But if we are in the business of wanting to protect what is there already, the heritage developments but also the environment, is there a better way when a planning requirement is put in, if the barn is demolished and disappeared before the Bat Group or any other environmental or heritage group had the opportunity to do the survey that was a requirement, why is there no comeback? And again that reduces confidence in the system.

**Q62. The Chairman:** I do not disagree with a lot of what you have said there.

1355 Can you give me the date again? I think the dates are very important because what we are actually saying here is, there is the Minister and the Department who have come in this morning and they have actually clearly said that there have been historic problems and this was a low priority for them, as a Department. They have said this morning in their evidence they have given that enforcement is now at a higher priority. They will investigate every breach that is reported to them. They will categorise it and they will then work out what form of action needs to be taken.

1360 So again it would just be encouraging because I think it probably again is a historic case – it is not a –

1365 **Mrs Caine:** This was last year. The barn in Onchan was last year. I do not know when the one in Andreas was, but I think it might be even more recent. But my understanding is the Manx Bat Group gave a submission on it to the Committee –

**The Chairman:** We will look at that –

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**Mrs Caine:** – and they would be happy to provide more information. And I think I am not even sure if there is an opportunity for them to seek an amendment via a Member of the Legislative Council and the Planning Amendment Bill that is going through at the minute. This specifically seems to be a demolition order, but the requirement was from a previous planning application and a planning requirement that a bat survey would be carried out. But it was demolished while another application was going through.

1380 **Q63. The Chairman:** But under the *current* policy – the new policy, as I say, and we keep repeating, is August 2018 – if somebody had made a breach on that and felt that something needed to be investigated, they would get an acknowledgement within three days, it would be categorised in that list. It would then be investigated and you know we cannot talk again about a specific case, but the Department would work out what course of action was needed.

1385 **Mrs Caine:** It was their own planning requirement. But the barn had been demolished before the survey could be undertaken. Twice.

**Q64. The Chairman:** It is a particular, specific case and it is very hard for us as a Committee to comment on that. Agreed?

1390 **Mrs Caine:** It has happened twice, so I think it is that discrepancy of what comes under a demolition order and what is a planning requirement. But again I think it would be helpful clarity for the landowner as much as the environmental groups.

1395 **Q65. Miss Bettison:** Just to clarify, you are looking more around the sanctions that might be imposed, post something like that happening in both an agricultural setting and an alternative setting?

1400 **Mrs Caine:** Yes, I suppose a similar one would be somebody who felled a load of trees before putting an application in for development, and then the appropriate level of the fine to the ability to pay – because for some developers a few thousand pounds to clear a load of trees might be quite helpful, rather than having to work a development round them.

**The Chairman:** I think I have to be careful I do not talk about a particular case –

1405 **Mrs Caine:** That is not a particular case; that is just an impression!

1410 **Q66. The Chairman:** No, but I think there are examples (*Interjection*) where I think the planning enforcement or the conditions that have been applied to an application have been forgotten or overlooked after a significant period of time. I know a case of that myself, and you have two Government Departments issuing completely different data and giving different information to people.

1415 So we have got to be very careful that if planning conditions are attached to a particular application that they have to be noted somewhere – maybe that is one of the things, it has to be noted somewhere where these conditions are still live, unless they go back to Planning to have them changed or removed.

Agreed?

1420 **Mrs Caine:** I think that it is probably worth the Committee taking detailed information if you wish to from the Manx Bat Group, who have all the information about the cases. I have got a copy of a letter, they were asked by an architect to do a survey as a planning condition – it was a planning condition. The barns were already knocked down under a previous planning application which had also asked them to do a survey. In February the Bat Group was contacted and asked why they are not enforcing the conditions of planning. But they were told demolition does not constitute development.

1425 **The Chairman:** Okay, we will check that one. Thank you, Mrs Caine.

1430 **Q67. Miss Bettison:** Just under the appeals process was another thing that we obviously touched on when we spoke with DEFA. Although there is an absence of a formalised appeals process around enforcement what they said was that the complaints process does act as a *pseudo*-appeals process and *can* allow for the reversal of a decision.

I just wondered if you had any comment on that and if you had any experience of that through the cases that you have presented?

1435 **Mr Hooper:** Not through the complaints system, but I would agree that there is a pseudo-appeals process in existence. If you go to your MHK and complain about non-enforcement, the MHK inevitably picks up the issue with the Department or with the Minister, and then that forces there to be a reconsideration of whether or not they should take enforcement action. That is something I have been involved in, successfully and unsuccessfully.

1440 But actually that process does exist, so there is already an informal appeals process that if you are bold enough to want to take the fight to the politicians, and you want to contact your MHK, then inevitably you will end up with at the very least a more detailed explanation and rationale as to why you did not get enforcement action in the first instance.

1445 So I agree with the comments that you have made, that there is an informal appeals process in place, which I think fundamentally is wrong because it needs to be transparent, it needs to be

public and it needs to be the same for everybody which in this case it is not. It really depends on the circumstances of who it is that is making the complaint and the comments with the Minister at the time.

So I would agree with that assessment.

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**Q68. Miss Bettison:** So in the cases you describe, just for my benefit, they are acknowledging that it was a decision that has been overturned? Or they are just simply then saying we are now going to enforce this and they are not making any comment around there having ever been an appeal?

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**Mr Hooper:** No, there is never an acknowledgement of an appeal. It is simply a case of, 'Oh, these are the reasons why we have not taken action'; and in some cases it is, 'We have not taken action to date but now we have taken some action, we are starting a correspondence and letters', or what have you. But no, to my knowledge I have never had a formal acknowledgement of, 'We've reviewed the decision and changed the decision'. It is simply, 'The decision has altered', or 'Actions have now started', that probably were not in train in the first instance and that only were put in train after being contacted by an MHK.

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So there is, I believe, an informal process there.

Back to your original question about whether or not this policy is a step in the right direction: I think in some ways it is, but I think the key issue is to do with how the Department is categorising from the priority perspective and what considerations they are putting in. I mean, a consideration that something may or may not receive planning approval if an application were to be put in – it is completely inappropriate to be trying to prejudge the Planning Committee's decision in that respect.

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I think the Tynwald Commissioner describes it as 'a very bold move'; and 'bold' in political terms normally means it could end your political career. *(Laughter)*

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So making bold decisions within a Department is unusual and some of those conditions for how they prioritise that really is the key. I think everyone is on the same page that they should be prioritising and dealing with the worst offenders first and the lower offenders obviously as they get them. But it is how they prioritise and whether or not there should be a formal appeals process if someone looks at that decision and says, 'Actually I don't agree for the following reasons ...' and then there is a transparent and easily understandable, easily accessible process whereby people can at least get a clearer understanding of why those decisions have been made.

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**Miss Bettison:** I think going back to what you had said initially around the arbitrary figures, and acknowledging what DEFA said when they gave evidence – there is a balance to be had in the same way that there is a degree of discretion in a 30 mile-per-hour speed limit; but you do not want to advertise the level at which you might take action, because you simply then create a new speed limit that people will then try and go on top of again.

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So it is trying to find a balance but it needs to be something that is easily understood and, as you say, the confidence I think is key, and manages the expectations of all parties to the planning process.

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**Q69. The Chairman:** Okay. Thank you so much for coming in this morning. I want to give you all an opportunity if you want to make any closing remarks before we close this particular session.

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**Dr Allinson:** I would just like to thank the Committee for taking this on board. Obviously this is quite a unique ability for MHKs to bring something to the Committee, because what we face dealing with our constituents are isolated cases. I suppose the problem I have is those cases that have been brought to my attention where enforcement has not been carried out, and those



1500 cases where paradoxically there has been what seems to be overzealous enforcement where nobody has been impacted – and trying to balance that. So one of the reasons to bring this to the Committee was to get the wider view: are these isolated cases? Are these a problem with the actual policy? Are these a problem with the person given the role to implement the policy; and, if they are, how to make it right?

1505 So I am actually encouraged by the changes that the Minister has announced and the fact that there have been changes; and the fact that those changes are being implemented properly hopefully will mean that we will not have the same conversation in a year or two's time.

But I will be very interested in your report to see whether this is an isolated thing that we are picking up in the north, or whether it is a more systemic problem across the Island that needs sorting out through very clear guidance and policy from the Department.

1510 **Mrs Caine:** I am very happy. Thank you for looking into the matter. I think it does need looking into and I think if you can make some recommendations that bring clarity for the public and the Department that would be very helpful.

1515 **The Chairman:** Thank you.  
Mr Hooper?

**Mr Hooper:** Yes, I would just like to echo those comments really and just say thanks for taking the time to investigate this issue. It is important for a lot of reasons and to a lot of people.

1520 One of the challenges I think we face when trying to raise this issue in a public forum, such as the floor of the House of Keys, is you often get accused of 'We do not want to talk about individual cases'; whereas the Committee format and the investigation you are doing obviously lets you take individual cases and put them in the right context.

1525 And, as Dr Allinson was saying, is this a wider problem across the whole Island or is it sporadic? I am really looking forward to seeing the work that comes out of the Committee and some of the comments and recommendations that hopefully you will be making.

**The Chairman:** Can I thank you again for your original submission asking us to look at this. The Committee will now suspend for a few minutes whilst we just set up and prepare for the next session. Thank you so much.

*The Committee adjourned at 11.56 a.m.  
and resumed its sitting at 12.01 p.m.*

**EVIDENCE OF  
Councillor Ritchie McNicholl, Chairman of Environmental Services Committee;  
Ms Dana Eynon, Director of Environmental Services; and  
Mr Stephen Salter, Dilapidation Enforcement Officer,  
Douglas Borough Council**

1530 **Q70. The Chairman:** We will now continue to take evidence on our inquiry into the operation of the planning system and the issue of planning enforcement in particular. Could I please ensure that your mobile phones are switched off and I will make sure that we do not have two people speaking at once.

1535 For the record, could I ask each of you to please state your name and the capacity in which you are appearing here today?

**Mr Salter:** I am Mr Stephen Salter. I am Douglas Borough Council's Dilapidation Enforcement Officer.

1540 **Councillor McNicholl:** Councillor Ritchie McNicholl, Chairman of the Environmental Services Committee.

**Ms Eynon:** Dana Eynon, I am Director of Environment and Regeneration at Douglas Borough Council.

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**Q71. The Chairman:** Excellent. Thank you and welcome. I was wondering if we could start maybe with an overview of your submission to the Committee if possible, Mr Salter? Because I think it was yourself who submitted it.

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**Mr Salter:** Yes. We provided some examples within the submission to illustrate some of the issues that we have experienced over a period of time with planning enforcement. But I do wish to emphasise that we do have an excellent working relationship with our colleagues in the Planning Department. However, we believe that because of a lack of resources within that particular Department, enforcement issues do come up and they do affect residents of Douglas as such.

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I believe that the main issues that we have had – I can give an example of a car park within Douglas which did not actually gain planning approval. There was no application made for planning approval for that particular department. When this was brought to the attention of officers within the Council we did contact the Planning Department, but unfortunately contact after that point was very limited and we have been led to believe that the forms had been lost. Subsequently to this, the car park has remained in place and we believe that the time has lapsed for Planning Enforcement to be able to take enforcement action against the operators of this car park. They can no longer do anything about the situation. So we have now got a car park within Douglas which does not have planning approval to be there and because of the lack of enforcement it can now remain in place.

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There are also other examples I believe that we have provided. Another good example is an area of land within the Borough of Douglas which is currently being used for the storage of building materials. This is within a residential area of Douglas. It has led to a number of complaints. In this particular instance, Chair, a Planning Enforcement Notice was served on the owner of the land because planning approval had not been granted for the purpose of using the land as a storage facility for building materials. Unfortunately, the time – again – has lapsed for enforcement action to be taken against the owner of this particular piece of land and it has led to officers within the Council trying to deal with the situation and to appease some of the residents within that particular area.

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However, the powers that Council officers can use to deal with situations are quite limited in comparison to the powers that the Planning Enforcement officers have. As an example, with this particular piece of land, we can only ask for the owner to remove the unsightliness of the land. The detriment that this particular area is causing to these residents within Douglas ... we do not have the powers that the Planning Enforcement team have to stop the owner from using the land for this purpose. In this particular case, planning approval was not granted, a Planning Enforcement Notice was issued and what we believe is that, because of a lack of resources within the Enforcement team – they have been able to go back and check whether the owner of the land has actually followed the notice that has been issued – the owner has not followed the Notice. It has been ignored and now we are left in a situation where it has fallen on officers within Douglas Borough Council to try and get the owner to tidy up this particular area. But it does not resolve the problem. The problem is that the land is being used for an illegal purpose.

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We have also got other examples of car parks, within the Borough, where planning approval has been granted on a temporary basis – and that is a condition on the approval being granted –

1590 and now we are finding that the two-year period, for one example that we have found, has  
lapsed and the car park is still being used, even though planning approval was only given for a  
limited period of time.

I personally, as an officer of the Council, have a very good working relationship with planning  
officers and with officers within the enforcement team. However, I personally believe that the  
resources that they have and the number of officers that are dealing with enforcement matters  
1595 are not sufficient to be able to tackle all of the problems that we have noticed, and that is just  
within the Douglas area.

**Q72. Mr Robertshaw:** For clarity could I just ask you to what degree these examples – looking  
at it very much from a generic perspective – are historic? I think the Department this morning  
1600 were very clear that they fully recognise that there was a quality performance deficit historically,  
and that is fully acknowledged, but they are now trying to fix that problem and explained how  
they were trying to do it.

So it would be helpful if we could understand, in broad terms, are these very recent, recent,  
or somewhat historic?

1605 **Ms Eynon:** In the submission we gave, one of the examples was a historic case.  
(**Mr Robertshaw:** Right.) But the other examples we have given this morning are what we would  
call recent cases. So for example one of the car parks we talked about – and we are avoiding  
naming areas – one of the car parks we talked about was granted permission in 2015 and that  
1610 expired in 2017. The other example we gave is one we brought to their attention in April 2018,  
so they had until April 2019 to take action and we understand that no action has been taken.

So I think that is quite recent.

**Mr Robertshaw:** Thank you.

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**Q73. The Chairman:** Can I just give an overview – because I think we are dealing with a local  
authority now, which is completely different from the submissions that we have received from  
most individuals, which are individual cases. Again, clearly they have said there was a lack of  
response, slow to take action, policy was not fit for purpose, delays in dealing with complaints,  
1620 lack of engagement, lack of communication update and an inconsistency in the approach  
undertaken by the Department.

I think you have already highlighted some of that, but you say you have a positive  
relationship. Can I ask you to explain that? By the sound of it, it sounds like maybe a local  
authority, especially the size of Douglas, should have more enforcement powers, given its size  
1625 and the staff available – to help the Department.

**Ms Eynon:** On an officer level we have a good working relationship with our colleagues in  
Planning and also Enforcement. We made the point in our submission that we do have difficulty  
getting hold of them sometimes and we do have difficulty getting responses. So we have said  
1630 that in our submission. But when we do speak to them they are helpful. So what we do not want  
to do is come across as criticising our colleagues. We are not criticising our colleagues; we really  
believe it is a resource issue.

We did not make a comment in our submission about the policy. We had an enforcement  
officer come into the Council and give a presentation, and she explained the policy that was  
1635 followed about prioritising and I think the Council members understood that – they understood  
the priorities. But obviously there are not enough people to deal with all of the cases that are  
being brought forward and some of those are then having unintended consequences for us as a  
local authority – for the communities that we serve – but in turn then for us as a local authority.

1640 **Councillor McNicholl:** It is obviously a resource issue, because they have 12 months in which to go through the process of that enforcement and that is not happening. So I think it is a theme throughout our submission that resources are desperately needed down there.

1645 **Q74. The Chairman:** But they have confirmed this morning that they previously – in 2016 – had just one enforcement officer and the priority of enforcement was low historically – they have said that themselves – but they have now got up to three officers engaged fully or on a part-time basis, whatever, that they have got these officers now engaged in enforcement, reviewing breaches that are reported to them, acknowledging them within three days, investigating them and then prioritising them by what they feel is a list of priorities.

1650 So have you seen any improvement in recent months yourselves?

**Councillor McNicholl:** Not that I have noticed; I look to the officers.

1655 **Mr Salter:** If I may pass comment, there is one particular case that I have been dealing with over the last few months and I have had a lot of dialogue with the enforcement officer that is dealing with this case. I have been led to believe that even though the Enforcement Notice had been issued and it had been made very clear to the owner of this particular land that he should cease using the land for an illegal purpose, the Planning Enforcement team still had to seek permission from the Attorney General's office to undertake a prosecution, even though it had already been agreed that an Enforcement Notice should be issued.

1660 So from my point of view, as an officer of Douglas Borough Council, we have a different process in place when we issue notices for improvement within the Borough. It makes us think as to whether there should be a change in which the Enforcement Notice is issued, in that an officer should be able to issue a Planning Enforcement Notice in the knowledge that if it is not adhered to, they will automatically have the support of the Attorney General's office to be able to see that Enforcement Notice right through to the bitter end if needed.

1665 **Q75. Mr Robertshaw:** Regardless of the degree of importance of that Enforcement Notice? Is not that too big a stick?

1670 **Mr Salter:** I personally, Mr Robertshaw ... there has to be a reason in the first place to issue an Enforcement Notice, whether that be because somebody has not gained planning approval for something and they are still continuing to go ahead with a development. A developer, or an owner of a piece of land, always has the opportunity to put in for retrospective planning approval. So if they have mistakenly done something and it has been brought to their attention by an enforcement officer, they still have the opportunity to rectify the situation by putting in a retrospective planning application. That is not to say that that would be approved.

1675 So I do not personally believe that it is taking a big stick to a situation, because each one has to be taken on its own merits and with some of the examples that we have given, perhaps if somebody had been using a piece of land for a purpose that they were mistakenly using it for, they could always apply for retrospective planning approval without having to go down the need of enforcement.

1680 **Q76. Mr Robertshaw:** Okay, thank you for that. The message that seems to be coming over strongly from you is that you see it, in your experience, as being a resource issue within the Department's Planning Division. I do not want to be disrespectful – it is always easy to say, the answer is to spend more money, and of course we have not got the luxury of always being able to do that. There is a desire – there must be a desire – to try to find other ways around this, and if we step back historically, in terms of planning, where planning was in a position where it was trying to give planning permission for all and sundry and everything, it got to the point where it

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was a resource issue where we had to change our thinking, and what they did is they introduced permitted development. That released resource to focus more on where it was really needed.

1695 Have you any other thoughts, other than it is a resource issue and therefore a financial issue, that might help us in our deliberations here as to how we can resolve these issues? Your experience and ideas would be most welcome.

**Ms Eynon:** The other thoughts that we have perhaps were around ... so for example, we said that Planning Enforcement have 12 months to bring a case forward. I think that is laid down in the regulation. If that was changed and they had more time, that may actually help the situation.  
1700 This is not strictly a Planning Enforcement matter, but it becomes a Planning Enforcement matter. We have all seen examples where planning approval is granted, a developer or the applicant has four years to start the development, they go in, they dig a trench, then they do nothing more and it remains that way for quite a long time. We have had instances of that in the capital because there is no end date.

1705 So again, if there was some sort of statutory end date to when these developments have to be finished, particularly if they are in very prominent locations, that may assist the enforcement side, because actually, when it comes to an end, the application would lapse and the applicant would have to reapply.

1710 **Q77. Mr Robertshaw:** Yes. So that trench-digging process becomes very detrimental to its environment. Thank you. Any other thoughts that you have got there?

**Ms Eynon:** Steve mentioned needing to go the AG's office and I appreciate the view that you are giving in that we have to make sure that things are worthwhile taking forward.  
1715 **(Mr Robertshaw: Yes.)** But whether or not that entire process could be streamlined so that ... I think the point we are trying to make is that that seems to be quite a lengthy process. Whether that could be streamlined in some way so that decisions were made quicker, that may assist the process as well.

1720 **Mr Robertshaw:** Thank you for that.

**Mr Salter:** I think – if I may add – we do see from time to time with Demolition Notices for properties to be demolished, that there are time constraints put on that type of work. So it is possible to put a time constraint on a planning application that the work needs to be carried out  
1725 within a specified period of time.

As my colleague Dana has just said, it may help to improve the environment, that where we have planning applications for developments within prominent areas of any town on the Island, if that development is going to have an immediate impact on the residents or visitors to the Island, if a time-limit was put on so that the development has to be carried out within a specified  
1730 period of time, I think that that would be a big benefit. It could avoid enforcement issues and it would also make the environment a lot more pleasing as well.

**Q78. Mr Robertshaw:** That is interesting. So you are defining or clearly identifying degrees of sensitivity in these areas. Something that in a completely rural, quiet environment may be of no  
1735 significance is profoundly important in a busy urban environment. That is interesting. Thank you.

**Councillor McNicholl:** I think if planning were to be taken seriously – and more importantly planning enforcement – then you would not have the problems that we are seeing today.

1740 **Q79. Mr Robertshaw:** When you say seriously, Ritchie, what do you mean?

1745 **Councillor McNicholl:** Well, it has already been pointed out that planning has not been obtained for certain projects and if it is not enforced then what are people going to think about the planning process? They are going to say, 'Well, do what you want, because it is not enforced', and if it is not enforced you can always apply for retrospective planning.

1750 **Q80. Mr Robertshaw:** Now that is a theme has been coming through strongly in all of our sessions this morning, this issue of how we all find a capacity to respect and trust the system and have regard for it. It is a conundrum.

**Councillor McNicholl:** It is.

1755 **Q81. Miss Bettison:** I wonder whether if – just to aid our comprehension of why that 12 months within section 38 of the Town and Planning Act is not working – you might be able to provide a timeline on the two cases that you gave for the Committee to consider, just to see when the communications went, where it is blocking – because obviously there is there is an issue. Trying to pick as to whether that is related to resource or allocation of current resources would be helpful for us.

1760 **Ms Eynon:** Unless Steve has brought it with him, I do not have the exact timeframe of the correspondence. We certainly raised one of those issues, as I said, in April 2018 and we have tried to have dialogue over that particular issue. There has been some dialogue but nothing has progressed. Now, we do not know the reasons behind it not progressing because they have not been fed to us. But we do know that we have come to April 2019 and that prosecution or that enforcement has not taken place. Therefore, they are now out of time to do it.

1765 There is a statutory timeframe within which they can bring cases and they are out of time, which means –

1770 **Miss Bettison:** And one of the things that came strongly through our evidence with DEFA – which I am not sure if you heard – they work you ideally to not have to get to that point. But obviously all of those things take time and you have to give the opportunity for someone to respond, to have actually received the information and so on, and when there are a number of other bodies involved, I feel like, perhaps, that is part of the challenge. It would just be helpful for me to get a better understanding of that if you are able to supply that after the hearing, not now.

1780 **Councillor McNicholl:** Can I help here? In April 2018 Douglas Borough Council was made aware – this is part of our submission – of a surface-level car park that had been formed on land within the borough. The relevant planning enforcement form was completed and submitted on the same day as the potential breach of planning control was brought to the Council's attention.

1785 Since the submission of the form the Council has inquired as to the status of the investigation on a number of occasions, without receiving a confirmation that enforcement action is being pursued. If action is not commenced by the end of April 2019, which is now passed, the Department will be unable to prosecute for a breach of planning control. Therefore that car park can remain.

1790 **Miss Bettison:** If we understood when those number of occasions ... we can date that directly to DEFA to highlight exactly – because this is a very real example of the fact that that now is lapsed. Assuming nothing has happened to this date, we are now in May, so there are 12 months from identification that have lapsed and it just allows us to then have something –

**Q82. The Chairman:** Can we actually take that particular case – without going into the specifics of it – but use that just as a guide? Realistically we have got this policy that the

1795 Department has issued, there is operational policy on planning enforcement. Going by that document, dated August 2018, Douglas Corporation should have received an acknowledgement of that Breach Notice within three days. It should have then been assessed and going by their own aims and objectives – to being open, transparent, helpful, consistent and targeting – you should have had a clear understanding, within a reasonable timeframe, exactly what the Department has actually done with that Breach application.

1800 So maybe – separately – we could ask Douglas Corporation to provide some details. Was the policy followed? Because they say they are now following that policy. So there should have been a clear timeline of (1) getting acknowledgement within three days if they received it; (2) they should have assessed it. They should have actually taken the timescale, was it a high priority was immediate priority, low priority or very low priority, taking into account the harmful chart at the back and the point scoring system as well. You should have had some sort of assessment within  
1805 that year exactly what the Department or the Enforcement team within DEFA was actually trying to achieve with that breach.

So maybe if you could help us with that and make a further submission that would be extremely helpful.

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**Councillor McNicholl:** I do not think it even appeared on the planning list that was public. It never appeared on that – but we can try.

**The Chairman:** But this is the problem, you see. I think one of the common themes that came out this morning – and it is in every single session – it is trust. It is how do we rebuild the trust with our planning? So that people actually have trust that people are going to actually make planning applications in accordance with the guidelines and the law, and then if it is not done, then how does the Enforcement team come in to make sure that the works are actually assessed properly on behalf of the applicant and behalf of everybody involved.

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**Q83. The Clerk:** Without wishing to put words in your mouth, is it your impression that some rather savvy developers have in mind the time-limit for prosecutions and are using that as a way of, as it were, playing the offside rule, if you know what I mean?

1825 **Councillor McNicholl:** Undoubtedly I think that plays a part.

**Q84. The Clerk:** Okay. So it is a provision that people who know about are misusing to their own advantage to avoid the law, you think?

1830 **Councillor McNicholl:** You could not say that in all instances, but it must creep in there in some way.

**Q85. The Chairman:** It is an interesting thought from the last session we had with our political colleagues, one of the thoughts there was that local authority is the first stop in respect of all breaches. Then possibly they are assessed there and then elevated into the Department. Now resources and staffing was a question that was raised from that, but would Douglas Corporation be in favour of actually seeing that any breaches are submitted via the local authority first, assessed and then elevated up to DEFA, where it feels appropriate? And where it feels it is a very low priority or it is within the exemptions, that the local authority issues a letter to say, ‘We don’t believe there is a breach here and this does not need to be taken any further’?

**Ms Eynon:** Planning matters are not within the gift of local authorities. There would have to be change in primary legislation to allow that. There would be a resource implication. We do not employ planning officers, we do not have planning officers on our staff. They do not have the requisite experience and the requisite knowledge.

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What I would say is I think that planning breaches are brought to our attention, sometimes, in the first instance, because members of our communities do not always know where to go. So they will raise things with us, or sometimes they will raise them with us because they think it is a Council function, particularly for Douglas Borough Council.

1850 What we will try and do is explain to them the difference in our roles. We will explain what we can do within our powers, which are limited to building control and dealing with dilapidations through the Local Government (Miscellaneous) Act, and we will then either refer them to Planning Enforcement to deal with, or sometimes on occasion we have actually filled in a form ourselves to be submitted. But we are doing that on behalf of residents in some respect.

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**Q86. The Chairman:** Okay, we take that example – have you at the time assessed that application and actually gone through what the breaches are and knowing that this is a high priority breach? Or have you actually, where you feel it is a low priority breach, persuaded the constituent – to turn around and say, ‘We don’t think that this is a breach of some form’?

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**Mr Salter:** If I may? I can give a very good example of a particular patch of land within a residential area of Douglas. It is very clear that it is a residential area. There are no industrial units, there are no builders’ yards or anything there, apart from this builders’ yard, which did not gain planning approval in the first place, which has already had an Enforcement Notice issued on it.

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I have brought with me the details with regard to this and although I am not going to name any individuals or give details of this particular area, refusal was given 21st March 2011 for a change of use and to use the land for the storage of building materials.

1870 I believe that the issue we are facing today, from our constituents and our residents of Douglas, is that Planning, once an Enforcement Notice has been issued, they do not follow up or it does not appear that they follow up, and actually police the notice to check whether a particular individual has ceased and followed what has been put out in the notice.

**Q87. The Chairman:** You are talking about the planning conditions as attached to an application?

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**Mr Salter:** Well, with regard to this particular one, an application was made, the plans were submitted. If this had come through to the Council’s Committee – and because this was in 2011 before I started work at the Council – the Council would have seen that this was in a residential area and we would not have supported this particular application. For some reason, I do not believe the Council had the opportunity to comment on this.

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However, it did get refused by the Planning Department and we are in a situation again – as I keep emphasising – where this particular person has totally ignored the Enforcement Notice that has been issued. So he is in breach of the planning legislation.

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**Ms Eynon:** Sorry, to answer the question, local authority officers would not take on the role of the planning enforcement. We would not assess something and say to the community, this is a low priority breach. That would not be for us to do.

1890 We would say to the community, we believe that there is a clear breach and we will pass that on to Planning Enforcement. But we would not take on the role of saying to somebody, this is really low priority and I would not even bother complaining about it.

We would not do that. We would just pass that on because we do not see that as our role and we feel that we would be undertaking the role of Planning Enforcement, and that is not our function.



1895 **Councillor McNicholl:** I do not like the term 'low level enforcement'. To me, if there is a breach of planning, there is a breach of planning. I think that is what needs to be considered. That all of it is a breach of planning. There is no low level or high level. It is a breach.

1900 **Q88. The Chairman:** And you say the letter of the law should be applied regardless of that breach? (**Councillor McNicholl:** Yes.) So for example, you take a wall that is built and it is an inch higher than it should be. The full force of the law and the provisions of the law should apply, including enforcement, etc.?

1905 **Councillor McNicholl:** If you have got planning laws, you have got planning laws, and a breach of the planning laws is a breach.

1910 **Q89. Miss Bettison:** Would you take the same adoption to speed limits, using the analogy earlier? One of the things we have talked about is that discretionary approach and officers having the ability to, within their professional ability, give a degree of discretion, but without publishing it so it is not used in the wrong way – so that people think, 'Well, I know I will get away with the extra inch so I will just stick it on', but just allowing that discretion.

Would you support that to any level?

1915 **Mr Robertshaw:** Bearing in mind the impact that might have on the respect the community has for its policing service. It is not easy, is it?

**Councillor McNicholl:** No, but I think that the police are different.

1920 **Q90. Mr Robertshaw:** Why?

**Councillor McNicholl:** One is road safety; the other, building a wall an inch higher, I do not think that would make that much difference, and who is going to measure it?

1925 **Q91. Mr Robertshaw:** So you are arguing against your own point then?

**Councillor McNicholl:** Well –

**Mr Robertshaw:** Yes.

1930 **Q92. The Chairman:** I think that what it shows, Councillor McNicholl, is the fact that it is very difficult. (**Ms Eynon:** It is very hard.) I think as a Committee we are actually understanding this, that there are different levels of breaches and there are different levels of enforcement that are required, and it is incredibly difficult to assess them. And I was saying, I am glad that Douglas Corporation has just acknowledged that if somebody comes and they feel there is a breach they will submit it regardless and let somebody else assess that.

1935 But realistically, my colleague Miss Bettison has actually said, that maybe when people do submit the form of the breach application, that the additional information there is applied to it, saying, 'Before you submit this form, have you looked at the exemptions? We will not look at neighbour disputes, we will not look at boundary issues. We will not consider this on X, Y and Z.'  
1940 So there is clear guidance so that people themselves will say, well okay, that is not for them. But what will happen is, the ones that are submitted, the breaches that are submitted, will be focused on by the Department.

1945 Because they are saying that it has not changed too much. They are getting between 225 to 300 submissions of alleged breaches every year, which is quite a lot. If we can reduce that down to proper, genuine breaches that would be helpful, I think. It is an interesting one.

So do you have any further comments on the category? I know, Mr McNicholl, you have made your point very clear. But do any of the officers have any? Are you happy with the category in respect to timescale of responding to high priorities, low priorities and very low priorities?

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**Ms Eynon:** Is that in the policy document?

**The Chairman:** Well, yes, it is in their policy document. They have categorised and said, this is the timescale. Given the fact that you have said they have got less than 12 months to assess something, so though they will say that they will acknowledge within three days, but if it is – in their opinion – a very low priority, it might –

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**Miss Bettison:** It is not – just to correct – it is not 12 months to assess; it is 12 months to commence the case, (**The Chairman:** Agreed, thank you.) to take legal proceedings. So actually you have got to have done the whole assessment, and I think that, from what you have submitted, is the concern. It is that timeframe and the ability to get all of that stuff done, prepare the whole case and then pursue that through. Sorry.

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**Q93. The Chairman:** Would you prefer to have the timescale extended a little bit, based on what you have said this morning?

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**Ms Eynon:** Yes. I think that having that timescale slightly longer would give them more time to be able to take prosecutions.

Can we revert to you on the policy, because we would need to just review it again I think, and then we can come back to give a comment and say whether we think the timeframes are reasonable, whether we think the low/high priorities are reasonable?

1970

Going back to your earlier question, sometimes it is about the impact of harm. It is about the impact of harm in terms of that action is taken. So if it is a wall in the middle of nowhere that no-one sees and is an inch higher, what is the harm? Whereas, if it is somewhere it is causing detriment to somebody, or harm to somebody, then that might be something that should have a greater priority.

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**The Chairman:** But that, again, comes down to an individual perception. Because, as you say, in the country it is not actually make that much of a difference, but a neighbour may be very aggrieved at the fact that they have the measuring tape out and realised that the neighbour has built a wall that is an inch high and they want that rectified. Now again, where is the harm in that? This is where it is very difficult. I think we appreciate that this is incredibly difficult. That is a very low, very easy assessment, but there are the more difficult ones than that, in respect of height and elements around that. So yes, it is very, very interesting. Okay.

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**Q94. Miss Bettison:** I was just going to pick up one thing. Specifically in your submission around the dilapidation – which obviously does fall within the work you have – in the last paragraph on the first page of your letter, you talk about, again, some of the difficulties, because there is not the confidence in the Planning Enforcement team due to the timescales and so on, with actually getting those cases pursued, then you are using other mechanisms to be able to just do something, I suppose.

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I know you have said the ideal situation is around that change in terms of the Planning Enforcement team's ability to do that. But are there any other changes that you would wish to see related to legislation around dilapidations that would be of benefit?

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**Ms Eynon:** We have previously given submissions on that. So I can re-forward that.

**Miss Bettison:** That would be really helpful.

2000 **Ms Eynon:** We gave oral evidence and written evidence to the brownfield Select Committee and we were asked during that submission whether or not there was anything we want to see changed as part of dilapidations and we can forward that, because our view has not changed. (**Miss Bettison:** Thank you). But apologies, I did not bring it with me today.

2005 **The Chairman:** Have you got any more questions?

**Miss Bettison:** No, that is fine, thank you.

**Mr Robertshaw:** No, thanks.

2010 **Q95. The Chairman:** Can I thank you – (**Mr Robertshaw:** Final comments?) Yes, sorry. (**Mr Robertshaw:** No, no, they.) That is what I am going to ask.

2015 Thank you so much for coming in this morning. Before we finish, I would like to give you an opportunity to make any closing statements or to add anything you feel it necessary to add to the evidence we are asking for.

2020 **Councillor McNicholl:** All I can do is underline the resources side of our argument. That seems to be ... and communication. You as MHKs, us as Council, we rely on communication. If nobody communicates with us, then you have problems like has recently been in the paper – on another side of what we do. So communication is important.

**Ms Eynon:** Nothing further from me, thank you.

2025 **The Chairman:** Thank you so much again for coming in this afternoon. The Committee will now sit in private. Thank you.

*The Committee sat in private at 12.37 p.m.*