

STATES OF JERSEY



ISLAND PLAN 2011: REVISED DRAFT REVISION – APPROVAL (P.37/2014) – NINTH AMENDMENT

Lodged au Greffe on 6th May 2014
by Deputy J.H. Young of St. Brelade

STATES GREFFE

PAGE 2 –

After the words “the revised draft revision to the Island Plan 2011” insert the words –

“except that –

- (a) the following additional revision shall be made to the Island Plan 2011 in addition to the Minister’s draft Revision –

in Policy GD1 on pages 35–37 of the Island Plan 2011, for the introductory words to paragraph GD1(3) (on page 36) substitute the following words –

‘3 does not materially harm the amenities of neighbouring uses and should, in particular;’;

- (b) Policy GD2 shall not be deleted as proposed in the draft Revision;

- (c) the following additional revision shall be made to the Island Plan 2011 in addition to the Minister’s draft Revision –

for Policy GD3 on page 40 of the Island Plan 2011 substitute the following Policy and a new Proposal as follows –

‘Policy GD3

Density of development

To contribute towards a more sustainable approach to the development and redevelopment of land in accord with the Strategic Policies of the Plan (Policy SP1 ‘Spatial strategy’ and Policy SP2 ‘Efficient use of resources’), the Minister for Planning and Environment will require that an appropriate reasonable density is achieved for all developments, taking into account the character and present density of each particular urban, suburban or rural settlement, commensurate with good design, adequate amenity space and parking (bearing in mind the potential for reducing the need for car ownership by the creation of car-pooling schemes and other methods), and without having a materially adverse impact on adjoining properties. Residential development proposals on sites of more than 0.2 hectares (0.5 acres or 1.125 vergées) will not be permitted unless a minimum density, in accord with supplementary planning guidance, is achieved.

Proposal

The Minister will review each of the Island’s Built-up Areas as defined on the proposal map in consultation with stakeholders, to determine their individual character and propose limits on the type of development and their densities within each of those areas.

The Minister will develop supplementary planning guidance for the redevelopment of existing buildings and sites within

each of urban, suburban and isolated rural settlements and for individual sensitive localities, to ensure that the density of development is appropriate, the character of the area is not adversely affected to any material extent and the areas special characteristics are conserved for the future.’;

- (d) the following additional revision shall be made to the Island Plan 2011 in addition to the Minister’s draft Revision –

‘for the second paragraph of Policy GD5 on page 44 of the Island Plan 2011 substitute the following paragraph –

‘Policy GD5

Skyline, views and vistas

Proposed development that has a materially detrimental impact, by virtue of its siting, scale, profile or design, in terms of its affect upon or obscuring of the skyline, strategic views, important vistas, and the setting of landmark and Listed buildings and places will not be permitted.’;

- (e) the following additional revision shall be made to the Island Plan 2011 in addition to the Minister’s draft Revision –

‘in the preamble to the Percentage for Art Policy on page 49 of the Island Plan 2011 insert the following new paragraph 1.46, and for Policy GD8 substitute the following revised Policy –

‘1.46 Since its introduction, the percentage for art policy has made an important contribution to the public realm. However, in recent years the choice of works of art and their relevance to the development has been increasingly questioned. In response to suggestions it is proposed that the policy should not exclusively relate to artistic work, but should be extended to include contributions for an environmental or community purpose, which has some connection with, or as a consequence of the development. This Policy is implemented by planning obligation agreement and developers will be given a wider choice of making a percentage contribution from the development to include environmental and community purposes.

Policy GD8

Percentage for art

The Minister for Planning and Environment will encourage the contribution of a percentage of design and development costs to the provision of public art or for an environmental or community purpose.

Agreements will be sought where it is considered that:

- both the scale and location of a new development are appropriate for the inclusion of public art; and
- the provision of public art would enhance the public’s enjoyment of the building, development or space; or

- the scale and the wider impact of the development would justify a contribution for environmental or community purposes in recognition of and to ameliorate or offset these impacts.’ ”.

DEPUTY J.H. YOUNG OF ST. BRELADE

REPORT

(a) & (b) Demolition of Buildings – Policies GD1(1)(a) and GD2

I am not clear why the Minister's own review has not included Policy GD1(1)(a) as well as proposing to remove Policy GD2. They both cover the same purpose, although GD2 has more weight.

Views expressed during public consultation were equally divided on this issue. At the Inquiry it was apparent that the sole argument for the Minister proposing to abandon this policy is that it is difficult for the Planning Department to administer in practice. Underlying the Minister's proposal, the GD2 policy was cited in the breach as part of prominent appeal cases against developments which were also subject to objection for other reasons. In my mind, administrative convenience is not sufficient reason to abandon this policy.

Policy GD2 was introduced in 2011 for very sound sustainability reasons, which are explained in detail in the Planning Inspectors' report of 2010 and are even more valid today (the relevant section is attached at **Appendix 1**). The Planning Inspectors, in their latest report on the Minister's review (extract attached at **Appendix 2**) remind us that in 2010 they were supportive of the introduction of Policy GD2, and in 2014 remain so, in regarding a general principle to consider retention and refurbishment as an option before embarking on demolition and replacement.

However, in concluding that "on balance", they would support the Minister, the Inspectors relied upon the Minister's intention to amend the Island's Building Regulations still further to require incrementally improved energy efficiency in new buildings and to require design statements to include a simple "Sustainability Checklist". In relying on the Minister's undertakings, the Inspectors should have reflected that when the policy was introduced 3 years ago, the Inspectors had clearly recommended that supplementary Planning guidance was required to put the policy into effect, but that the Minister, as at May 2014, has not done so.

I represented objectors at 2 cases of very desirable buildings being destroyed and replaced with modern buildings, and it was apparent that the policy had been ignored, as no case for demolition of the existing building had even been submitted. If we are really committed to sustainability and do not want to become even more of a throwaway society readily consigning very usable buildings to La Collette waste site, then the policy should remain. My amendment is intended to allow the States Assembly to make that choice.

(c) Density of Development – Policy GD3

My proposition which was approved by the States (P.71/2013) included a review of Policy GD3. This Policy enforces an equally high density of redevelopment in all zoned Built-up Areas as required by the spatial strategy, irrespective of the character of the area. The spatial policy adopted in 2011 does not differentiate between urban, suburban and isolated rural settlements outside the main Built-up Area; these settlements, many of which pre-date the Planning Law, vary widely in their age, their individual character, and their density. Their variation is one of Jersey's very special qualities which I believe is worthy of conservation. Settlements may be on the edge of the Coastal National Park, have an open aspect over coasts or headlands, be in isolated

rural pockets, or alongside popular tourist beaches such as St. Brelade, along our southern coast, or be on the edge of town.

Because of their lower density and greater amenity of open space which encourages community life, most settlements are very pleasant places to live. Most of these communities have become settled, and their residents have lived there in peace and harmony throughout much of their lives. The effect of the “one size fits all” Built-up zone policy adopted in 2011 has opened all these areas to high density redevelopment, which is proving to be very socially divisive. This runs entirely counter to the Minister’s own commitment to community planning. The policy protection from over-development of neighbouring properties which is presently enjoyed by residents living in the Coastal National Park and Green Zone areas should be extended to those living in all urban, suburban and isolated Built-up rural settlements.

The blanket policy of SP1 which treats these Built-up areas equally was well-intentioned to generate more homes, but I submit it is misguided. The social cost of opening up these areas to indiscriminate high-density development has not justified this policy.

My written question to the Minister on 17th April 2012 seeking information on the density of development and number of residential units approved in all zoned Built-up Areas since the policy was adopted, passed without an answer, but a promise to research it. As at May 2014, this information is still not available. It is clear the Planning Department has no means of monitoring this policy.

Policy GD3 has resulted in “garden grabbing”, speculative high-density residential developments taking up garden areas in residential areas. The GD3 Policy also has the effect of overriding the requirements of Policy GD1 (General Development Considerations), which is intended to prevent developments which cause damage to the character of the area and prejudice to neighbouring properties. Having attended the Planning Applications Panel and made representations on behalf of concerned neighbours and residents against several such over-developments, the Planning Officers have taken a robust view of the GD3 Policy, and the Planning Applications Panel has little choice but to approve applications which rely on this Policy, despite the very negative effect on neighbours and local communities. The social costs are too high.

I believe the GD3 Policy is misguided and socially divisive, and should at least be modified. The right policies to secure the new housing development we require are the Housing Policies.

My amendment does not undermine the Spatial Strategy, but modifies Policy GD3 to reduce the density of development permitted in all Built-up Areas from the highest density to an appropriate density for an area, taking into account the character and present density of each settlement. It might be argued that the use of “appropriate” density is too loose; however, the report of the Planning Inspectors (see **Appendix 2**) makes it clear that the use of this term is generally workable for Planning Officers.

My amendment is intended to ameliorate the effects of Policy GD3 and, taken together with my separate amendment which requires the Minister to carry out a review of all the urban, suburban and isolated rural settlements included within the Built-up Area and issue supplementary planning guidance to be issued for each, will, I believe, make the Spatial Strategy more sustainable and acceptable to communities.

(d) Skyline, Views and Vista – Policy GD5

The Island Plan already recognises the importance of Jersey’s topography, which provides spectacular views of natural settings, and buildings which are greatly valued by residents and tourists and are a major part of Jersey’s character and identity.

Policy GD5 seeks to protect the skyline, strategic views, important vistas and the setting of landmark and listed buildings and places by protecting them from damaging development. As the pressures of development increase with population, I think it is important that greater weight be given to Policy GD5 in development control decisions.

My amendment strengthens the policy by reducing the criteria for rejection of development applications from “seriously detrimental impact” to “materially detrimental impact”. This will enhance the protection the policy provides against damage.

(e) Percentage for Art – Policy GD8

This Policy imposes a “voluntary” requirement on major developments for a Planning Obligation to provide public art in the form of sculpture. The Policy has made an important contribution to the public realm. However, in recent years, the choice of such works of art has been increasingly being questioned. It has been suggested that the scope of such obligation should be extended to requiring a percentage contribution for the environment or for a community purpose.

Appendix 3 is an extract from an Environment Scrutiny Panel hearing on 3rd December 2012 which demonstrates flexibility in how the Policy is actually applied, and the Minister for Planning and Environment’s precedent for permitting an obligation for an alternative purpose to public art and his intention to widen the scope of the GD8 policy.

Financial and manpower implications

Amendments (a), (b), (d) – GD1, GD2, GD3, GD8. There are no resource implications for the Planning Department arising from these amendments, as any costs in achieving compliance with the policies are already met by applicants. The amendment to Policy GD8 will generate or re-allocate additional contributions from developers, which will be ring-fenced against their projects.

Amendment (c) – GD3 – Density of Development. The development of detailed Supplementary Planning Guidance for the entire Built-up Area would have significant resource implications for the Department if this is required. However, my amendment recognises that the Department would need to set priorities, so that following the initial classification of Built-up Areas into urban, suburban and isolated rural settlements, and identification of the more sensitive Built-up locations within it, priority will be given to producing supplementary planning guidance for these areas. I am advised that the Department has limited resources, but the capacity of the Department to carry out this work in addition to other commitments is unknown. If it becomes necessary to engage consultancy support for this task, I would estimate a cost of potentially up to £100,000, but this would be spread probably over 2 or 3 years.

Extract from Planning Inspectors' Report dated 19 November 2010 on the Island Plan 2011

Policy GD2: Demolition and replacement of Buildings

- 3.4 The AJA described Policy GD2 (Demolition and Replacement of Buildings) as overtly anti-development, as akin to listing every building on the Island with criteria that are virtually impossible to meet.
- 3.5 The JEF saw the Policy as not about covert listing but sustainability and waste: existing buildings embody energy from their original construction which should be conserved ... also described the Policy as “woolly”; ... The crucial need is for requirements to be spelt out clearly in the promised SPG, and that these should be robust and balanced with regard to buildings that still have a useful future.
- 3.6 ... several participants attacked the word “appropriate” as vague, leaving too much open to interpretation across such issues as sustaining energy, better uses of land and economics of refurbishment ...
- 3.7 ... the Minister stressed the underpinning Policy SP2, Efficient Use of Resources and the aim to reduce CO₂ emissions. The Policy ... simply requires that prior consideration be given before demolition as one material consideration along with others. It is something to have regard to but not unduly restrictive. The criteria are not self-contained but refer to other policies in the Plan ... As regards “appropriate” the word is employed daily in planning but he accepted the need for greater clarity.
- 3.8 We reach a number of conclusions ... starting with acceptance of the underlying need for this form of policy control. Buildings in the broadest sense are part of the capital assets of the Island. Part of this lies in the fact that CO₂ emissions (from the initial materials and site works) do not need to be expended again now. Also a vacated site following demolition can be unsightly and attract anti-social behaviour; there have been examples of unscrupulous owners using this as a mechanism to put pressure on planning authorities and local communities to accept a new development that might otherwise be resisted. We therefore accept the approach in Policy GD2 that in effect puts the onus on the applicant to justify a proposed demolition. None of this implies that such an application need be refused, merely that it should be examined.
- 3.9 We do not in principle recoil from the word “appropriate” when used in planning generally or specifically in Policy GD2 criterion 1. As the Minister explained, criterion 1 concerns sustainability in whether to replace or repair/refurbish a building ... Entrusting decision-makers with the word “appropriate” has a role in striking that balance ... We recommend that clarification, by amending Policy GD2.1 so that it reads: involves the demolition of a building or part of a building that it is not appropriate in sustainability terms to repair or refurbish.

- 3.10 We have no problem with criteria 2 to 6, which are either founded on other Policies in the Plan or on well recognised development control considerations. ... we recommend that the necessary resources should be devoted to producing and adopting the SPG referred to in paragraph 1.9 of the Plan with respect to the “sustainability” balance between retention and replacement of buildings ... we recognise the practical necessity for such guidance to be in separately prepared SPG (following consultation) rather than with the Plan, which would otherwise become unwieldy and the guidance time consuming to modify in the light of evolving experience.

Section of Planning Inspectors' Report 2014 on Island Plan 2011 Review

Policy GD2 – Demolition and replacement of Buildings

Introduction

- 2.1 This aspect of the *Proposed revision* differs from the others in proposing to delete a policy – General Development Policy 2 – without modification or replacement. There were 60 responses to the consultation: some 28 objecting, 25 supporting and 7 commenting. The Policy states:

Policy GD2: Demolition and replacement of buildings

The demolition of a building or part of a building will not be permitted unless the proposed development:

1. *involves the demolition of a building or part of a building that it is not appropriate in sustainability terms to repair or refurbish; and*
2. *makes adequate provision for the management of waste material arising from demolition in accord with policy WM1 'Waste Minimisation and New Development'; and The demolition of a building or part of a building will also not be permitted where the proposed development:*
3. *would have an unacceptable impact on a Listed building or place in accord with Policy HE1 'Protecting Listed buildings and places' and Policy HE4 'Demolition in Conservation Areas' or protected species and their habitats, in accord with Policy NE2 'Species protection';*
4. *would have an unacceptable impact on the character and amenity of the area;*

The replacement of a building or part of a building will not be permitted unless the proposed development:

5. *enhances the appearance of the site and its surroundings;*
 6. *replaces a building that is not appropriate to repair or refurbish.*
- 2.2 It was included in the Plan with the aim “to promote a culture of re-use of buildings rather than demolition and rebuilding”. In proposing its removal, the Minister refers (IP2) to difficulties with its application experienced in practice, further highlighted during the preparation of Draft, unissued, Supplementary Planning Guidance (OS2). He also refers to other Plan Policies regulating demolition.
- 2.3 The demolition of a building in whole or in part is an act of development as defined by Article 5 of the Planning and Building (Jersey) Law 2002, generally requiring express planning permission with only limited exceptions

permitted by Article 2 and Schedule 1 Part 7 of the Planning and Building (General Development) (Jersey) Order 2011. Any planning application for demolition would continue to be subject to consideration under other Plan policies.

- 2.4 Leaving aside, just for the moment, Policy GD2 criterion 1, major development proposals (e.g. 10 or more houses) would, as now, continue in any event to be subject to Policy WM1 requiring a Site Waste Management Plan. This requirement is now subject to Supplementary Planning Guidance and, we heard, effectively applied in practice with the important objectives of minimising land fill disposal and maximising reuse and recycling, and at least for larger developments fulfils the aims of GD2(2). Demolition proposals affecting listed buildings and/or protected locations would similarly continue to be subject to consideration in accordance with safeguards in Policies HE1: *Protecting listed buildings and places*; HE4: *Demolition in Conservation Areas* or NE2: *Species protection*, as referred in GD2(3).
- 2.5 The Minister also drew attention to the fact that all proposals would continue to be subject to consideration under Policy GD1: *General development considerations*, which sets out a wide range of safeguarding requirements, GD7: *Design quality* and, where so located, Policy NE6: *Coastal National Park* or NE7: *Green Zone*, which directly and indirectly by reference to other Plan Policies provide (still setting aside GD2(1)) a comprehensive range of assessment criteria that more than cover the aims of GD2(4) and (5).
- 2.6 We therefore do not accept objections to the loss of Policy GD2 stemming from dislikes of particular replacement developments, actual or foreseen, since these do not directly relate to this Policy but more to planning judgments in the application of other aspects of the Plan.
- 2.7 We therefore now turn to Policy GD2(1) and (6), which we see as at the heart of the issue, and which turn on the phrase “sustainability terms”. The generally accepted definition of sustainable development, as noted in the Working Draft SPG, is that in the Brundtland Report *Our Common Future* (1987): *Development which meets the needs of the present without compromising the ability of future generations to meet their own needs*. This in turn, and again as noted in the Working Draft SPG, is generally treated as comprising 4 aspects: social, environmental, economic and prudent use of natural resources, most aspects of which can be properly addressed through a sound application of the other Plan Policies. However, an important – many would say vital – element of the environmental component concerns minimising Green House Gas emissions, generally measured in CO₂e (carbon dioxide equivalent).
- 2.8 In principle it is possible to assess the embedded carbon retained in an existing building, expended in its refurbishment and operational carbon emitted over the remainder of its expected life, and to compare the net impact against the embedded carbon expended in its demolition and replacement together with the latter’s annual operational carbon emitted over the equivalent period. We heard assertions that retention and refurbishment will generally be preferable,

because of the high emissions during demolition and replacement, or conversely that replacement may well be preferable because of the potentially much more efficient replacement in use and maintenance. There are methodology tools available for this, such the Carbon Profiling Model published by the RICS1 in conjunction with others (appended to OS2). It is evident, however, that the use of such tools is far from straightforward, particularly taking into account practical considerations such as estimating the whole life expectancy of existing and replacement buildings, the fact that different elements of a building may have different life expectancies or that a replacement will not always be like for like. Just by way of example: the demolition of a single house and its replacement by several may well in isolation increase carbon emissions, but less so than its retention combined with the erection of the equivalent number of new houses on another site. To such complexities simply in assessing CO2e need to be added the other aspects of sustainability referred to in the preceding paragraph.

- 2.9 We keep in mind the separate requirement for a full Environmental Impact Assessment for proposals prescribed by the Planning and Building (Environmental Impact) Order 2006, including for example larger urban development projects which might well give rise to sustainability issues with respect to demolition.
- 2.10 In our examination of the then Draft Plan in 2010 we were supportive of the introduction of Policy GD2 and remain so regarding a general principle to consider retention and refurbishment as an option before embarking on demolition and replacement. However, we are reassured by the evident firming up of control of demolition waste and note also the Minister's separate intention to amend the Island's Building Regulations still further to require incrementally improved energy efficiency in new buildings.

We note also the Minister's intention to require design statements to include a simple "Sustainability Checklist". On balance, and combined with the proper exercise of discretionary decision-making with regard to the merits of individual applications in the light of other Plan Policies, we conclude that the Minister has made the case for omitting Policy GD2.

- 2.11 Recommendation: that the Minister proceeds as he intends.

Extract from Environment Scrutiny Panel Hearing 3rd December 2012

Percentage for Art Policy (GD8) and Practice

The Connétable of St. John:

... What about percentage for art within, shall we say, this particular site. What kind of money are we talking about and would you take an alternative to art, given this time where the Island is cash struck and we need to educate young people, et cetera, would you take an alternative for that percentage for art in some other form?

The Minister for Planning and Environment:

I have already done that in relation to another application put forward by that company in relation to offering training possibilities for our youngsters as a percentage for art alternative contribution and indeed the percentage for art contribution scheme is being reworked in order to allow a greater flexibility to spread the scheme to a wider field.

The Connétable of St. John:

As percentage for art is not a legal requirement I do not believe, if the developer can decide once the plans are passed not to go ahead with it, I presume that would affect any future application a developer may have within your department?

The Minister for Planning and Environment:

No, it should not do. You were saying that if ...

The Connétable of St. John:

It should not do but I presume it would.

The Minister for Planning and Environment:

Certainly the applicant would not be entered into my little black book because I do not have a little black book and I do not bear a grudge.

Chief Executive Officer, Department of the Environment:

Yes but percent for art policy is a voluntary policy, the plan makes that very clear. I think it is fair to date that most developers ... I do not think we have had any developers say no to that voluntary policy. Is there flexibility built into the process to allow it to be used for other things or potentially? Yes, the aim is to up the standard of development so working with this applicant in mind, a large scheme in Broad Street, we had a good solution – a bit of art on-site as well as some off-site training as well. So the Minister has indicated he is flexible to see what possibilities there are around that.

The Connétable of St. John:

In this day and age, when every penny counts and everyone's back is to the wall, percentage; what is the percentage on, shall we say, a £75 million project? What percentage would be expected?

Chief Executive Officer, Department of the Environment:

Off the top of my head it is less than 1 per cent of construction cost, so it is probably about 0.5 per cent of the construction cost, I think we work it out as, although it is a negotiated figure so it can ...

The Connétable of St. John:

If it is voluntary how can it be negotiated?

Chief Executive Officer, Department of the Environment:

It is voluntary in the sense that as our starting point we have published some guidance on that. Have we ever refused anything on percent for art? No we have not. We have always had a willing developer say: “Yes, this brings benefit to our scheme therefore we want to do it.”