

STATES OF JERSEY



FUTURE HOSPITAL: PUBLIC INQUIRY – TERMS OF REFERENCE

**Lodged au Greffe on 25th May 2018
by Deputy R. Labey of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for the Environment to redraft the Terms of Reference for the forthcoming Public Inquiry into the new application for the Jersey Future Hospital, as outlined in his letter of 17th May 2018 to the Independent Inspector, to provide the Inquiry with the freedom and latitude to consider alternative sites, if deemed necessary and appropriate.

DEPUTY R. LABEY OF ST. HELIER

REPORT

Currently the Terms of Reference for the Public Inquiry expressly constrain the Independent Inspector from any consideration of alternative sites. At issue is the following paragraph –

“As I made clear in relation to the 2017 application, I do not consider that the Inquiry should consider potential alternative sites, or funding mechanisms. You will recall that such matters may well be of public interest, but I am clear that the Inquiry should focus on the planning matters relevant to this application, as presented for determination by the applicant.”

Attention is drawn to the same Inspector's Executive Summary of the Public Inquiry into the previous Hospital application in which he states –

“The critical issue here is not the case for a new hospital facility, but whether the application proposal represents the one and only vehicle that could deliver it. This raises questions about two matters that are beyond the scope of the Inquiry. The first concerns site selection and the comparative merits of alternative sites. The second, concerns the ‘brief’, which is currently premised on a single-phase comprehensive new build project.”

The Minister's continued direction to the Inspector is a mistake, principally for 2 reasons –

1. Such a stipulation does nothing to restore public confidence in a process that has, so far, fallen short of their expectations and – as was demonstrably evident during the course of the recent election – remains mired in scepticism and suspicion.
2. Whilst in an ideal world planning applications should be determined only on the merits or otherwise of the application set before those charged with making the determination, in reality it is often the case that where either the lack of an alternative or the availability of an alternative exists, it would be impossible or unwise to ignore what effectively becomes a material consideration.

There is also an element of “buying a dog but barking oneself” to this.

An Inspector of the experience and qualification of the appointee here will be fully cognisant of his role, and that it does not extend to choosing the site for Jersey's new Hospital. He may wish to rule out representations or testimony that stray into the territory of site selection, alternative locations and the “brief”, but that should be a decision for him to make without prescription from the Minister or anyone else.

In a scenario where considering whether permission should be granted for this application on this particular site, the Inspector finds that the application would require exceptions to be made to policies of the Island Plan because of non-compliance he should – before reaching a recommendation that this application be approved – consider the available evidence from the applicant and objectors and form an opinion on whether suitable alternative sites for the development have been considered sufficiently to justify such exception to the Island Plan policies in the public interest. If he considers that such alternatives have not been sufficiently considered, then the terms of reference should allow his report to identify what further information should be required. That is all.

This proposition does not require the Independent Inspector to re-open or re-examine the entire site selection process, neither does it require him to consider alternative sites. It simply gives the Inspector the freedom and latitude to look at the alternatives, if he deems it necessary and appropriate to do so, in the public interest and in the interest of the Inquiry reaching the most meaningful result possible.

Financial and manpower implications

Any number of elements can either protract or truncate the length of time a Public Inquiry takes to reach a satisfactory conclusion. Arbitration of this must be left to the discretion of the Independent Inspector. This Proposition and accompanying Report is very clear in allowing consideration of site selection to fall within the scope of the Inquiry if deemed necessary or appropriate. It is not a charter to re-open and re-examine the whole site selection process, and so it is conceivable that it does not represent a change of such significance as to alter the timescale or cost of the Inquiry.