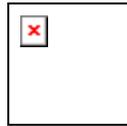


DRAFT PLANNING AND BUILDING (JERSEY) LAW 200- (P.50/2001): AMENDMENTS

**Lodged au Greffe on 10th April 2001
by Deputy J.L. Dorey of St. Helier**



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DRAFT PLANNING AND BUILDING (JERSEY) LAW 200- (P.50/2001): AMENDMENTS

PAGE 71, ARTICLE 14(5) -

Delete the paragraph and renumber remaining paragraphs.

PAGE 148, ARTICLE 116(1) -

After the words “the following notices -“ insert the following sub-paragraph -

“(a) a notice served in accordance with Article 5(4);”

and re-letter the remaining sub-paragraphs accordingly.

PAGE 149, ARTICLE 116(7) -

Before the full stop at the end of the paragraph, insert the words -

“, and Article 72 will not apply in this case”.

DEPUTY J.L. DOREY OF ST. HELIER

REPORT

Introduction

These are three detailed amendments to a draft Law which is a considerable improvement on its predecessor.

Amendment 1

Article 14 describes the circumstances in which the Planning and Environment Committee will be obliged to consider the views of the relevant highway authority (Public Services Committee or Parish Roads Committee) before determining a development application.

As drafted, however, despite any such views which might be submitted, Article 14(5) makes an absolute presumption against the Planning and Environment Committee allowing any new or enlarged access to a road, unless any damage to a tree, hedge, wall etc. will be 'insubstantial'.

It is possible that, for example, a road-access improvement might be proposed which was strongly justified in terms of safety or improved traffic flow, but which would involve substantial damage to a hedge. Under Article 14(5) as drafted, the Committee would be obliged to reject the application.

It cannot be right that safety issues should always and automatically be subordinated to amenity considerations. As a matter of interest, the presumption within UK law is exactly the opposite - that is, highway improvements are automatically exempt from the need for planning approval.

Both of these unthinking approaches are surely undesirable. Far better to embody in the law a requirement that a development application should be considered on its merits. This is what my amendment (1) seeks to achieve.

Deleting paragraph (5) creates the more balanced situation, in which the Planning and Environment Committee would be obliged to seek the views of the highways authority (and would be bound also to consider, according to other provisions of the draft Law, the views of other interested parties). The Committee would then have a general duty to weigh the benefits and disbenefits of the proposed development against each other, and reach a rational conclusion.

Amendment 2

Article 5(4) allows the Committee to declare that an existing, legal use of a site for dumping should henceforth require a planning application.

It is easy to imagine a situation in which this might be considered desirable - if, it was felt, for instance, that an old quarry at the cliff-edge was no longer a suitable location for refuse-tipping. By virtue of its location, such a site could never become overfull, in terms of Article 5(3), so such a declaration from the Committee would be the only way of putting an end to this type of use.

It is only fair to consider, however, that such a declaration by the Committee could have an effect on somebody's livelihood. My amendment (2) therefore includes this particular service of notice by the Committee in the list (in Article 116) of notices against which an appeal may legitimately be made. This is in line with the treatment of all other analogous situations in the draft Law.

Amendment 3

Action in respect of a dangerous building is (quite rightly) the one situation in which the Committee can, without prior notice, enter land and carry out work which it perceives as necessary.

Generally, when the Committee enters land and carries out work in this way, it is as a result of a condition notice or enforcement notice which has been ignored. It is therefore reasonable that Article 72, protecting the Committee against any claim for compensation, should apply in all those cases.

However, Article 116(7) deals with the situation in which the Committee has entered land and carried out work, without notice, and that action has subsequently been found by the Appeals Commission to have been unjustified. In this rare situation, the owner of the land should have a legitimate claim for compensation for any loss resulting from the Committee's action.

There are no financial or manpower implications for the States arising from this amendment.