

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

**Lodged au Greffe on 1st May 2001
by Deputy P.N. Troy of St. Brelade**



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

PAGE 60, ARTICLE 5(1) -

Insert in sub-paragraph (a), after the words “the land”, the words “, except the drilling of a bore hole for the purpose of drawing water from land that is owned privately”.

PAGE 61, ARTICLE 5(2) -

Delete sub-paragraph (d) and designate subsequent sub-paragraphs as sub-paragraphs (d) to (i) accordingly.

PAGE 68, ARTICLE 11(5) -

For the words “provides a person with a copy of it” substitute the words “allows a person access to view the application”.

DEPUTY P.N. TROY OF ST. BRELADE

REPORT

Planning control “develop” defined (Article 5)

My first two amendments are concerned with the definitions provided in Article 5 of the meaning of the term “develop”. Article 5 attempts to define the term “develop” and arrives at many different conclusions as to what constitutes development. Article 5(1)(a) states that “ ‘develop’, in respect of land, means - (a) to undertake a building, engineering, mining or other operation in, on, over or under the land;”. The wording as drafted would extend to any type of drilling operation, inclusive of drilling a borehole for the purpose of drawing water from one’s land, and consequently would necessitate an application being made to the Committee prior to drilling a borehole unless an exemption is made. At present, one does not have to make an application to drill a borehole for the purpose of drawing water as the Committee operates a policy that one only has to comply with current Bye-Laws. My amendment serves to clarify the law in relation to the drilling of boreholes for the purpose of drawing water from one’s land, as at present the definition in 5(1)(a) is too widely drawn.

My second amendment refers to another meaning given to the term “develop”. Article 5(2)(d) introduces a new clause stating that “develop” in respect of land includes “to remove a hedgerow or banque or other physical feature defining a boundary of the land or of any part of it.”.

Our landscape has been shaped by farming practices and land transfers between individuals, who once having concluded a purchase of land, have exercised their right as landowners to decide how they will administer their land. It should not be the case that the Planning and Environment Committee dictate the future shape of our countryside: it evolves. Farming practices change and the countryside changes with it, and that concept must be acknowledged.

Removing a hedge must not be regarded as development, are landowners seriously going to have to apply to remove a hedge? If a landowner plants a hedge, then at a later date he must have the right to remove it. If planting a hedge means that at some later date you may not be able to remove it, it is inevitable that many landowners will decide not to plant hedges. The inclusion of 5(2)(d) within the draft Law is questionable and I ask the States to delete it.

“The Committee shall by Order prescribe the manner in which an application for planning permission shall be publicized or otherwise notified.” (Article 11)

My third amendment relates to Article 11(5). The Article states that “The copyright in anything forming part of an application for planning permission is not infringed if the Committee provides a person with a copy of it for consideration and comment.”. This is a departure from existing policy. Currently, a copy of development plans cannot be handed to a third party, they may only be viewed by a third party, as the applicant has in the majority of cases paid for the preparation of plans by a qualified architect. It is probable that the copyright will be owned by and remain with either the applicant or his architect.

I acknowledge that I am not an expert on copyright law, but would suggest that the Committee might be challenged legally in respect of Article 11(5).

I have suggested amending Article 11(5) to the Committee, allowing a person access only to view any item on which the applicant may have a copyright, and would ask the States to support the amendment.

This proposed amendment has no implications for the financial or manpower resources of the States.