

BUILDINGS OF LOCAL INTEREST: REMOVAL FROM REGISTER (P.185/99) - REPORT

**Presented to the States on 12th March 2002
by the Planning and Environment Committee**



STATES OF JERSEY

STATES GREFFE

150

2002

P.185/99 Rpt.

Price code: B

REPORT

1. Introduction

The notion of protecting the Island's built heritage has long been a feature of Jersey law and planning policy and mirrors the attitudes of other societies around the world. In November 1987, Jersey became a signatory to the *Convention for the Protection of the Architectural Heritage of Europe (the Granada Convention)*, which was promulgated by the Council of Europe and came into effect on 1st March 1988. The States had also affirmed its commitment to the protection of the Island's architectural and archaeological heritage by its endorsement of the relevant policies in the Island Plan in 1987. This was reaffirmed in the States Strategic Policy Review, "*2000 and Beyond*" which in 1995 agreed one of the States key aims "*to protect the Island's special architectural and archaeological heritage*".

2. International Policy for the Protection of The Built Environment

The preamble to the Granada Convention recognises that the architectural heritage constitutes an irreplaceable expression of the richness and diversity of Europe's cultural heritage, bears inestimable witness to our past and is a common heritage of all Europeans. The first 16 Articles introduce specific requirements on the member States relating to the mechanics of heritage management and protection. Article 3.1 introduces an obligation to take statutory measures to protect the architectural heritage - this is reflected in Article 9 of the Jersey Planning Law (Jersey) 1964 which makes provision for the designation of Sites of Special Interest - a programme which is ongoing.

Article 10 of the convention introduces broader obligations which are relevant to Deputy Rondel's proposition.

It states that each Party undertakes to adopt integrated conservation policies which, among other things -

- (a) include the protection of the architectural heritage as an essential town and country planning objective and ensure that this requirement is taken into account at all stages both in the drawing up of development plans and in the procedures for authorising work;
- (b) promote programmes for the restoration and maintenance of the architectural heritage;
- (c) make the conservation, promotion and enhancement of the architectural heritage a major feature of cultural, environmental and planning policies;
- (d) facilitate whenever possible in the town and country planning process the conservation and use of certain buildings whose intrinsic importance would not warrant protection within the meaning of Article 3.1 of this Convention (in Jersey terms this means the statutory designation as an S.S.I.) but which are of interest from the point of view of their setting in the urban or rural environment and of the quality of life.

This Article in the convention recognises that it is not just buildings of outstanding architectural or historic worth that merit protection, but that more modest buildings are also vitally important. These provide the backcloth to more important monuments, help to create and reinforce local identity and enrich the quality of life. These objectives are reflected directly in Jersey in the two grades of historic buildings that are presently included in the Committee's Register - Sites of Special Interest, or S.S.I.s, which are buildings of high intrinsic value, and Buildings of Local Interest, or B.L.I.s, which are more modest, but are visually important in the local scene and have significance for the local community.

3. Current protection afforded by, and value of, the Historic Buildings Register

In order to enable successive Planning and Environment Committees (and the former Island Development Committee (I.D.C.) to take such matters properly into account in dealing with planning applications and in formulating its policies and action plans, the value of a published list of historic buildings is self-evident. Such a list was prepared by the I.D.C. between 1987 and 1989, and first published in August 1992. Since then it has been made available to the public. It is now referred to as the Register of Buildings and Sites of Architectural, Archaeological and Historical Importance in Jersey. There can be few people in Jersey who are unaware that the Committee maintains such a Register and takes it into account in dealing with planning applications and discharging its other planning activities. But much has changed since publication in 1992. The present Committee, as well as the previous Committee and the I.D.C. before it, have been increasingly concerned to ensure that decisions to include or maintain historic buildings on the Register are made fairly and objectively and take into account a broad range of expert opinion.

For this reason, the criteria for the selection of Sites of Special Interest and Buildings of Local Interest have been progressively tightened and codified. These criteria have been published and are available to anyone who wants them. The

Register of Historic Buildings, as members will be aware, is currently undergoing comprehensive review to ensure a high degree of consistency. This review is being directed by the Jersey Building Heritage Sub-Committee on behalf of the Planning and Environment Committee and will be finished this year. It is worth noting that the Register of historic buildings is available on the Internet and on the Department's website, and is updated in a regular basis.

The membership of the Sub-Committee comprises two representatives each of the Jersey Heritage Trust, the Société Jersiaise, and the Association of Jersey Architects, one representative of the National Trust for Jersey, and two members of the Planning and Environment Committee. The Sub-Committee is served by expert professional advisors from the Planning Department.

4. Procedure implemented during the registration of sites and buildings

Where a decision is taken, as part of the current review, to add or retain a property on the Register, it is now the practice to notify the relevant owners and occupiers, advising them at the same time of the formal appeal provisions which exists to the Jersey Building Heritage Sub-Committee and to the Planning and Environment Committee. These matters are set out in an explanatory leaflet which has been circulated to members.

5. The public response to registration

It may be helpful to members to give some statistics for the numbers of appeals for the parishes of St. John, St. Ouer St. Clement, Grouville, St. Brelade and St. Lawrence, where the review of the Register has recently been completed and owners and occupiers individually notified. These figures exclude atypical structures such as milestones and German defensive works.

- In St. John, 93 Buildings of Local Interest have been included in the Register. Letters have been sent to 115 owners and occupiers advising them of this, resulting in **one** written appeal.
- In St. Ouen, there are 88 Buildings of Local Interest. Ninety-three owners and occupiers have been notified, resulting in **one** written appeal.
- In St. Clement, there are 72 Buildings of Local Interest, 76 owners and occupiers, resulting in **three** written appeals.
- In Grouville, including Gorey Village, there are 172 Buildings of Local Interest. **Two** appeals were received.
- In St. Brelade, including St. Aubin, there are 150 Buildings of Local Interest. **One** appeal was received.
- In St. Lawrence, there are 171 Buildings of Local Interest. **No** appeals have been received.

In total, 746 letters sent out have generated only **eight** letters of appeal.

This signifies for the Committee is that there is very wide support for the idea of the protection of the Island's architectural heritage and property owners are prepared to accept personal responsibility when their own property is involved. This evidence suggests that the majority of people agree with the Committee that the external form and character of Buildings of Local Interest, which do so much to define the unique character of the Island, should be safeguarded in the public interest. This approach, which is now adopted in most developed countries, is recognised as helping to enrich the quality of life, support tourism objectives, and enhance, rather than reduce, property values.

6. Response to the Deputy of St. John's Proposition

Deputy Rondel's proposition requests the States -

“To request the Planning and Environment Committee to remove from the Committee's informal Register of Buildings and Sites of Architectural, Archaeological and Historical Importance of Jersey all buildings of local interest until -

- (a) full consultation has taken place with the owners and occupiers of those buildings and their agreement to the inclusion of such buildings on the list obtained; or***
- (b) there has been established, by law, an independent system of appeals against Committee decisions to include buildings of local interest on the Register.”***

The Committee has given the matter careful consideration and has concluded that the adoption of either part of Deputy Rondel's Proposition would render ineffective the measures which the present Committee, and its predecessor Committees, have already brought into being over a period of many years and the proposals for the new Planning and Building Law which are already well advanced in their preparation. These improvements are now beginning to deliver an effective framework for the protection of historic buildings which the Island so richly deserves.

Particular reasons for the Committee reaching this conclusion are -

- The proposition refers to the Committee's "informal" Register of Historic Buildings. This is a misunderstanding. The Register is an official document issued by the Committee. It formally records all those buildings and structures which the Committee considers to possess architectural, historical, archaeological and other qualities, such that it is in the public interest to safeguard those properties from damaging change wherever possible. The inclusion of a property on the Register does not preclude change. However, it introduces a presumption in favour of conservation.
- Paragraph (a) of the proposition requests that all Buildings of Local Interest be removed from the Register until full consultation has taken place with every individual owner and occupier of those buildings, and their agreement given to the inclusion of their building on the Register.

If the States were to endorse this proposal, it would have the following adverse effects -

- The relative certainty which the Register currently provides for owners and their agents in formulating proposals for historic buildings graded as B.L.I.s would be removed. However the Committee would still be empowered to take into account issues such as architectural and historical interest in dealing with planning applications and in formulating its other planning strategies. Indeed, the Committee would be bound to do so, given the requirements of the Granada Convention, the Planning Law and the States Strategic Review. Without a published Register to rely on, the Committee would have to make its decisions on an ad-hoc basis, taking each case on its individual merits. The transparency which the Committee is striving to achieve in these matters would be destroyed. People would not know where they stand. Owners and their agents would have no way of predicting whether historic building issues might figure in the Committee's assessment of their proposals.
- The extent of the consultation process suggested by Deputy Rondel would drain the very limited resources of the historic buildings team, at the expense of other important aspects such as the historic buildings grant programme, and advice which is routinely given to owners. An extensive programme of individual consultation, which is potentially very time-consuming, would also delay the completion of the review of the Register, which is regarded as one of the Committee's key objectives because of its potential to provide greater certainty for owners and developers.
- If properties were to be included in the Register only with the consent of owners and occupiers, this would be likely to result in many unacceptable anomalies. Cases will inevitably arise where one historic building will be safeguarded because the owner agrees to its inclusion, but another building of the same quality and importance would remain unsafeguarded because the owner does not agree. The proposal would be unworkable in practice as the Deputy's proposition appears to provide an occupier of a property with a veto over the contrary views of the owner of the same property. The planning process cannot operate if it is flawed by such fundamental anomalies, where the interest of a single individual can over-ride the greater public interest.
- Experience of the Parishes of St. John, St. Ouen, St. Clement, Grouville, St. Brelade and St. Lawrence is that less than 1.1 per cent of the owners and occupiers consulted about the inclusion of their property in the Register have appealed. Given this modest level of objection, can the complete overturning of the established process be justified, bearing in mind the substantial extra administrative costs and the significant disadvantages and delays which will follow?
- The Committee believes that the demolition of Janvrin's Farm in 2000 is instructive. This is a case where the Committee was in negotiation with the owner of a building to obtain access to the property in order to determine whether it merited inclusion on the Register. The owner did not give his views on whether the building should be included. The building was simply pulled down. How many historic buildings might be lost in the future if owners are encouraged to undermine the States and the Committee in their commitment to protect the Island's built heritage, simply by withholding their agreement to Registration? The consequences of adopting the approach advocated by the Deputy would be to totally undermine the principles enshrined in the States' Strategic Policies and the Granada Convention.

Deputy Rondel appears to offer, in paragraph (b) of the Proposition, an attractive alternative to individual mandatory consultation and consent with owners and occupiers; that of a statutory, independent appeal process to consider appeals

against inclusion of Building of Local Interest on the Register. The Committee has indeed recently considered the matter of appeal procedures generally as part of its preparations for bringing the new Planning and Building Law to the States. It has concluded that there is considerable merit in proposing the establishment of an independent Planning Commission to deal with appeals under the new Planning and Building Law. This would enable an applicant who has had a planning application rejected on historic building grounds to appeal to the Commission, drawing specific attention to the matter of Registration. The Commission would then be entitled to consider the architectural and historical merits of the building afresh. However, the adoption of the Deputy's proposal would be problematic because it envisages, in effect, the immediate abandonment of the Register. The very damaging effects that would follow from this have already been explained.

The Committee sees the new appeal arrangements as set out in the proposed Law as being in addition to, and not replacing current appeal arrangements. This approach will mitigate the significant extra administration costs which would otherwise arise and eliminate the possibility of unnecessary delays. At present, it is the Jersey Building Heritage Sub-Committee that has the delegated responsibility for the management of the Historic Buildings Register. Several of its members are experts, and the criteria under which the Sub-Committee makes decisions about individual buildings are now well established. Any owner or interested person who is aggrieved by the inclusion of their property can appeal to the Sub-Committee, and, if that fails, can make a further appeal to the Planning and Environment Committee. The leaflets on Sites of Special Interest and Buildings of Local Interest which are publicly available explains this to owners.

In an appeal about Registration to the Planning and Environment Committee, members of the Committee deal with the matter on an entirely fresh basis. They review the material presented to the Jersey Building Heritage Sub-Committee, as well as the submission made by the appellant in support of their case. The Committee obtains any other information which it feels necessary to reach a fair and impartial decision. As the political representation on the Jersey Heritage Building Sub-Committee extends to only two members, there is clearly the potential for the Committee to decisively overturn a Sub-Committee decision if it believes that circumstances dictate this.

Under present arrangements where an appeal is rejected, and the appellant feels that the decision was procedurally flawed, then they are able to seek a further review by means of a Board of Administrative appeal (Review Board).

The Committee believes that there is already an adequate appeal arrangement in place relating to the inclusion of buildings on the Register of Historic Buildings. However it believes that it has already responded to the spirit of paragraph (b) of the Deputy's proposition by its declaration that the new draft Planning and Building Law seeks to establish an independent Planning Commission which will be able to review cases where planning applications have been rejected on historic building grounds.

7. Conclusion

In conclusion, the Committee would ask members of the States not to support Deputy Rondel's proposition.

The improved procedures which have already been introduced and those in progress and to be brought forward for the States' consideration will be designed to operate in an integrated and logical manner. Paragraph (b) of the Deputy's proposition, although superficially attractive, is problematic and its adoption out of context would lead to change in a piecemeal manner which would be counterproductive to the effectiveness of the Planning process.

The effective protection of the Island's built heritage must remain one of our key objectives. The Island's commitment to the Articles of the Granada Convention brings with it considerable responsibility and, as in many aspects of government, involves a careful balancing of the rights of the private individual against a greater public interest.

Members of the Planning and Environment Committee are determined to continually improve standards of impartiality and consistency in decision-making, to open up new avenues of consultation, and to allowing a fair hearing to anyone aggrieved by the Committee's decisions.

The States are requested to reject the proposition.

March 2002