

STATES OF JERSEY



ISLAND PLAN 2022-25: APPROVAL (P36/2021) – EIGHTY-FIFTH AMENDMENT

POLICY EV1

Lodged au Greffe on 7th February 2022
by the Connétable of St. Brelade

STATES GREFFE

ISLAND PLAN 2022-2025: APPROVAL (P.36/2021) – EIGHTY-FIFTH
AMENDMENT

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After the words “the draft Island Plan 2022-25” insert the words “, except that within Policy EV1 the following paragraph should be inserted after the sixth paragraph –

“Changes of use of visitor accommodation offering more than 58 beds will not be supported in St. Brelade’s Bay unless it is demonstrated that:

- (i) there is no market demand for the continued use of the premises for visitor accommodation including if refurbished or redeveloped through further investment for such purpose; and
- (ii) there is no unacceptable adverse effect on the intrinsic character of St. Brelade’s Bay as a tourist destination area.”

CONNÉTABLE OF ST. BRELADE

Note: After this amendment, the proposition would read as follows –

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

to approve, in accordance with Article 3(1) of the Planning and Building (Jersey) Law 2002, as amended by the Covid-19 (Island Plan) (Jersey) Regulations 2021, the draft Island Plan 2022-25, except that within Policy EV1 the following paragraph should be inserted after the sixth paragraph –

“Changes of use of visitor accommodation offering more than 58 beds will not be supported in St. Brelade’s Bay unless it is demonstrated that:

- (i) there is no market demand for the continued use of the premises for visitor accommodation including if refurbished or redeveloped through further investment for such purpose; and
- (ii) there is no unacceptable adverse effect on the intrinsic character of St. Brelade’s Bay as a tourist destination area.

REPORT

Introduction

The proposed amendment replicates and modifies the wording of an amendment the Minister for the Environment proposed in the Bridging Island Plan post-consultation report¹ that aimed to respond to the critical nature of visitor accommodation loss in the Island.

The amendment proposed by the Minister sought to implement a recommendation made by two sets of consultants² engaged at public expense as part the Bridging Island Plan review process.

Each recommended the placing of a restriction on the current ability of owners of registered visitor accommodation to change the use of their properties into residential accommodation without further planning permission. One set of consultants recommended this restriction on an Island wide basis, the other with respect to St Brellade's Bay.

Establishments engaged in the visitor economy, other those offering visitor accommodation, generally are restricted (in Paragraph 5. of Policy ER4 of the draft Bridging Island Plan) from converting the designated use of their premises, subject to certain exceptions.

The Minister's proposed amendment sought to extend the similar restriction on similar term to owners of visitor accommodation Island wide. This would have incurred certain risks for some owners that could not be quantified or minimised owing to a lack of available data.

The proposed amendment would seek to place a restriction in similar terms only on the owners of larger visitor accommodation establishments in St Brellade's Bay. This would be based on research submitted to both the Minister for the Environment and the Minister for Economic Development that was copied to the planning inspectors for the purposes of their Examination in Public of the draft Bridging Island Plan, to which their report did not refer.

Nature of amendments

In paragraph a. of the proposed amendment, the equivalent wording in Policy ER4 has been amended to import a viability test recommended by one set of consultants and to address a common situation in which a premises is allowed to become dilapidated, discouraging market interest. (Paragraph 5a. of Policy ER4 is to be the subject of an equivalent amendment).

The equivalent of sub-paragraph c. of paragraph 5 of Policy ER4 has been omitted from the proposed amendment as it is not relevant to the area in which the Bay's visitor

¹Draft Bridging Island Plan: Post-consultation report. Statement Response 59
<http://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20Draft%20Bridging%20Island%20Plan%20-%20Post-consultation%20report%20-%20part%203.pdf>

² Arup (Employment Study December 2020) and Willie Miller Urban Design, Benton Scott-Simmons and Nick Wright Planning (St Brellade Character Appraisal April 2021)

accommodation is located, which is characterised as built-up area.

Further Background

1. Visitor Accommodation Crisis

Government statistics³ show a successive decline in the number of registered visitor accommodation beds (from 16,388 in 2001 to 11,956 in 2011).

Visit Jersey changed the methodology used to capture information about the volume and value of tourism to Jersey in 2016. However, the most recent figures provided by Government's Hospitality and Leisure Manager show registered visitor beds Island wide fell from 9522 last year to an expected 8388 at the beginning of this year, a loss of 1134 beds (11.9%) in a single year.

Reports of a second Premier Inn to be opened in St Helier, offering 122 rooms, and the approval of an application to develop a 104 bed 'holiday village' at Les Ormes⁴ (outside any designated Tourist Destination Area) are not enough to reverse or stall this trend.

2. Current Planning Policy as a Contributory Factor

A contributory factor to this decline has been the ease with which planning policy has allowed the use of visitor accommodation premises to be changed to residential accommodation without planning permission. The potential for immediate residential property development is immediately inflates the value of the sites.

This has provided an opportunity for owners of visitor accommodation to use that inflated value not only to make a quick profit on sale. It also has offered them the opportunity to secure a higher amount of borrowing to invest in their premises than would otherwise be available if the premises were not capable of being converted into residential accommodation. This is because a lender can be offered more in the way of security with respect to the property's value. No official data is available regarding the number of owners of visitor accommodation sites who finance themselves in this way.

There are options available to owners of visitor accommodation seeking to exit their business. If the selling price covers their investment in their business and any related borrowing/costs, one option is to sell the property to another supplier of visitor accommodation with interest in the site. This has the advantage of preserving the number of hotel beds in that establishment for future use (unless it is redeveloped to provide fewer rooms with more space).

However, most commercial hotel operators generally would balk at being asked to pay the price for a site that can support a luxury residential development. It would not be the type of the development they wish to undertake and the asking price could make it impossible to run a business on the site profitably.

There are obvious reasons any owner of visitor accommodation, whether the owner has secured borrowing based on the value of the premises as a residential development site

³ Tourism statistics <https://www.gov.je/Government/JerseyInFigures/BusinessEconomy/pages/tourism.aspx>

⁴ Appeal decision P/2019/0688

<https://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?docid=3FD24FE3-5D05-4858-960A-68D619C2D83B>

or not, may prefer to sell the site at a price more than the sum of the owners' investments in the hotel's business.

The more lucrative option of selling their properties to developers of 'luxury accommodation', that is not available to owners of other hospitality establishments, can fund a more comfortable retirement which current planning policy allows.

Arup in its Employment Study considered the impact of hotel bed decline, along with the planning history of a former Protection of Prime Sites' policy that created severe difficulties for some hotel owners for the reasons explained above, at a time when currency exchange rates significantly depressed the value of hotel accommodation.

Amongst Arup's general recommendations to support the Island's economy were that:

- Policy should protect and diversify existing visitor accommodation from any further losses;
- Appropriate levels of land must be made available in the Bridging Island Plan for other land uses to reduce pressure on visitor accommodation sites;
- Policy should identify (or safeguard) broad locations for tourist accommodation, identifying the suitability through a criteria-based assessment;
- priority for new visitor accommodation should still be to facilitate the development of key 'urban opportunity' sites; and
- any new policy on protecting visitor accommodation sites should include criteria which clarify the circumstances in which change of use may be permissible, principally where there are viability issues around redevelopment or where there is no longer a market interest in the business⁵.

3. The impact of hotel bed loss on Islanders generally

Even if building luxury houses instead of maintaining hotels on hotel sites is more profitable for the economy in the short-term, it is important that the Island continues to attract visitors.

Islanders, their businesses, and the Island's government, all rely on adequate transport links to:

- transport themselves, employees, clients, and customers
- import supplies, goods, and services
- export goods and services.

Two-thirds of all passengers travelling into the Island are tourists (as opposed to visitors of friends or family or business travellers)⁶. Tourists therefore have a significant value to the Island's connectivity as well as the local hospitality industry in general.

The same tourists need to be accommodated to make their trips generally worthwhile.

⁵ Pages 58 and Recommendation 6 (page 97, Economy Study)

⁶ Statistics Jersey Passenger Exit Survey March 2020

<http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Passenger%20Exit%20Survey%20report%20March%202020%2020200626%20SJ.pdf>

The more that available visitor accommodation decreases, the fewer tourists wishing to book holidays here will be able to be accommodated, resulting in carriers cutting back routes and the frequency of services in and out of the Island. This will impact on the ability of Islanders to travel off-Island as well as on business growth and government services.

While Airbnb accommodation has been mooted as a solution, the States Assembly needs to be mindful of its impact of AirBnB rentals on general housing availability and rental costs that have been experienced in other tourist destinations, leading to some authorities banning such rental.

4. Value of St Brelade's Bay as a tourist accommodation centre

The main clusters of tourist accommodation are in St Helier and St Brelade⁷. St Brelade's Bay has a key role in attracting visitors to the Island. Visit Jersey found in its most recent exit surveys that visitors rated most highly the Island's beaches and countryside, more than any of its built attractions. The easier the access to the Island's beaches, the more likely tourists will visit Jersey.

St Brelade's Bay has a particularly significant beach, that, ahead of any other beach in the Island, was voted one of the top three best UK beaches in 2019 in a poll conducted by the high-profile travel website TripAdvisor⁸. Although the beach is smaller than other beaches in the Island, the seaside resort's offering of beach and water sport facilities within close proximity to each other, within a scenic and historic landscape setting, is exceptional in the Island.

The Bay currently provides 677 registered hotel beds, in addition to any non-registered visitor accommodation (the number of available beds is believed to be fewer than ten).

Visit Jersey has described the Bay as a 'key asset for tourism'⁹.

5. Impact of local bed loss on St Brelade's Bay's local visitor economy

Owing to its charms for wealthier residents, and despite the high, and escalating, costs of residential development sites in the Bay owing to a limited supply of land for such purposes, the Bay has come under immense pressure for luxury residential development. It has lost 154 visitor accommodation beds in the last three years, following the conversions of two of its former hotels into residential accommodation. Some of the area in its Shoreline Zone along its seafront, that formerly was occupied by other types of visitor amenities, has also been lost to luxury residential development, partly owing to a current planning policy that applies to the whole area (in respect of which a separate amendment is to be submitted).

Aside from its registered visitor accommodation establishments, the Bay's tourist enterprises, that greatly contribute towards its vibrant character during the summer

⁷ Jersey Land and Property Index data for 2019 (cf, page 24, Bridging Island Plan Employment Study December 2020 <https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20Employment%20Study%20Final%20Report%20Arup%20v1.pdf>)

⁸ 2019 TripAdvisor Travellers' Choice awards

⁹Response ID BHLF-ZZ1R-2KT1-S

https://haveyoursay.gov.je/consult/islandplan/consultation/view_respondent?uuId=215438377

months¹⁰, are typically small and seasonal. They largely depend for their survival on the custom of the tourists who stay at the registered visitor accommodation in St Brelade's Bay and, to some extent, on the support of those establishments who also benefit from the general tourist offering in the area.

The Bay's small local visitor economy differs significantly from that of St Helier where hospitality premises are supported, in addition to leisure visitors, by the custom of office workers (if not working from home outside town) and people visiting government and finance industry premises located in town. However, its contribution to the wider economy and the Island's connectivity, even if not officially quantified, is significant.

The St Brelade Character Appraisal described visitor-related activity as an essential part of the Bay's character. It recommended that a presumption be created 'against loss of land from employment use by removing the 'tourism accommodation' exemption from existing Island Plan Policy E1.'

The public engagement report carried out in connection with the St Brelade's Character Study reported, after engaging with the Bay's local business community, that 'most businesses said the tourism offer needs to [be] supported or tourism businesses will continue to decline'¹¹.

6. Minister's Response to Consultants' Recommendations

The draft Bridging Island Plan, published in September 2021, omitted any content that responded to the recommendations to restrict the ability of visitor accommodation to be converted into residential accommodation. This has reduced the time for any amendment in this respect to be reviewed by the public and planning inspectors alike.

The only specific proposals for the Bay in the current draft Plan (which are the subject of separate amendments): are

- a proposal for the development of a local improvement plan complementary to the Bridging Island's policies (which, if developed, would not have the immediate effect of changing of such policies¹²); and
- (as a result of further proposed amendment by the Minister for the Environment¹³) proposing an amendment to Policy GD9 to restrict building spread in the Bay along part of the Bay's seafront (including hotels, without preventing their change of use to residential accommodation, which could accelerate such conversions because of the development constraints).

In his Post-Consultation Report, the Minister for the Environment proposed an amendment¹⁴ to remove the concession provided to the owners of visitor accommodation sites Island wide, subject to a similar test (in Paragraph 5a of Policy

¹⁰ St Brelade Public Engagement Report for St Brelade Character Study, November 2020
<https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20St%20Brelade%20Character%20Appraisal%20public%20engagement%20report%20WVUD.pdf>

¹¹ Business Responses, page 23 of St Brelade Character Study November 2020

https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20St_Brelade_character_study_engmt_phase_1_report_Nov2020.pdf

¹² Preamble to section of draft Bridging Island Plan headed 'St Brelade's Improvement Plan' (page 159)

¹³ Statement Response SR51 of the Bridging Island Plan Post-Consultation Report (page 229)

¹⁴ Statement Response SR59 of the Bridging Island Plan Post-Consultation Report (page 229)

ER4 of the Bridging Island Plan¹⁵) that owners of other hospitality premises must meet to escape the restriction on change of use of their premises. This included a ‘market test’ to cover lack of commercial interest in the site.

In the comments accompanying his proposed amendment, the Minister reported that, during the preparation of the draft Bridging Island Plan:

- he had consulted with ministers, specifically those with responsibility for Economic Development, Tourism, Sport and Culture regarding the implementation of the recommendation in the Employment Study;
- he had met with resistance on the basis that ‘the same ministers considered this matter not to be in the strategic economic interest of the island and that the risk of any structural land use barriers emerging in these sectors over the bridging plan was not sufficient to warrant such a test’¹⁶

The Minister for the Environment referred to the matters raised in the consultation and the level of development activity that is currently focused on hotel sites as matters of continuing concern and said he wished to:

- explore the ‘potential for amendment to the draft plan to ensure that some form of qualified protection is provided to those elements of tourism infrastructure where they exist in those parts of the island that are most critical to Jersey’s tourism industry’; and
- ensure that ‘some regard is had to any proposals’ affecting established visitor accommodation in the identified tourist destination areas of St Brelade’s Bay, St Aubin, St Helier and Gorey and ‘prime locations around the coast and in the countryside.’

In a further Statement Response on the subject¹⁷, the Minister said that he was aware of the concerns raised by lobbyists and that he

- wished the matter to be examined ‘further relative to current circumstances, and for the potential benefits and disbenefits of potential policy change to be explored; and
- ‘was open as to the form of policy tests that might be introduced, having regard to the issues and challenges identified by hotel operators’.

7. Response to Minister’s Proposed Amendment

At the Examination in Public, lobbyists resisted the proposed new restriction. The Minister for Economic Development (who himself has a declared interest in a St Helier

¹⁵ Policy ER4, page 152 of the draft Bridging Island Plan

¹⁶ Page 228, SR59 Draft Bridging Island Plan: Post-consultation report

¹⁷ Draft Bridging Island Plan: Post-consultation report Statement Response 59a

<https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/C%20SR%2059%28a%29%20-%20Visitor%20accommodation.pdf>

hotel) personally attended the hearing to lend his support to the lobbyists.

The main concern discussed at the hearing (of which there was a video record), was the extent to which property owners would suffer unreasonable harm, if the amendment were implemented, considering those who could lose out because of their financing arrangements, rather those who would than lose a windfall that could be regarded as inequitable.

No estimate was provided to the planning inspectors by the lobbyists or the Minister for Economic Development of how many property owners could be adversely affected in this way. This made any real risk assessment of the potential impact of removing the exemption difficult for the planning inspectors to assess.

The inspectors made no attempt at estimate themselves and concluded in their report that:

- ‘Overall, we consider the revised policy as suggested in SR59 is unlikely to achieve the broader objective of supporting the tourist industry and would create significant difficulties regarding implementation in terms of devising suitable tests and monitoring’; and
- ‘a means or viability test is unlikely to be effective and could well prove to be counter-productive to the aim of supporting a vibrant economy’.¹⁸

8. Reasons for proposed location-specific policy

In addition to the reasons already outlined in this report for introducing a location-specific restriction for visitor accommodation in St Brelade’s Bay are the following reasons related to the content of the post-examination report.

1. The planning inspectors produced their post-examination within time and terms of reference constraints for reading many complex reports that limited the time they could give to exploring a location-specific policy in any depth. In addition, their focus was on the Island wide policy proposed by the Minister for the Environment in his Statement Response. As was pointed out by one planning consultant in attendance at the hearing, drafting an alternative proposal to that submitted by the Minister was not part of their instructions.
2. The reasoning provided by the inspectors for not recommending a location-specific policy was ‘there is no evidence that any one tourist area has suffered more than others’ in terms of bed loss. However, no assessment was offered of other reasons for considering a location-specific policy for St Brelade’s Bay as a ‘key tourist asset’.
3. The commissioning of the St Brelade Bay Character Appraisal and the inclusion of Proposal 17 in the draft Bridging Island Plan for a local improvement plan for St Brelade’s Bay seeking to ‘support its role as a valued place for visitors and islanders alike’ indicated that, as a matter of policy, there are other reasons than comparative bed loss to ‘single out’ the Bay from other Tourist Destination Areas.

¹⁸Paragraph 7.14 Report on the Jersey Draft Bridging Island Plan 25 January 2022 (page 68)
<https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20Jersey%20Draft%20Bridging%20Island%20Plan%20EiP%20Inspectors%20Report%20to%20Minister%20for%20the%20Environment.pdf>

4. The inspectors' report in suggesting, "a more location specific policy might be appropriate if supported by evidence prepared for the St Brelade's Bay Improvement Plan, as set out in Proposal 17", did not refer to a submission of evidence of simple research¹⁹, also provided to the Minister for Economic Development, Tourism, Sport and Culture and the Minister for the Environment as early as August 2019 (and to lobbyists for members of Jersey's hospitality industry on 3rd February 2021), that enabled a risk impact assessment to be made of the effect of a location-specific policy on owners of visitor accommodation in St Brelade's Bay.
5. This research reported the results of direct enquiries made of owners, or senior management, of registered visitor accommodation in in St Brelade's Bay, whether the relevant operation relied on the potential residential value of its site to finance its operations. Only an owner of one of the smaller registered visitor accommodation establishments in the Bay responded in the affirmative.
6. The inspector's report did not refer to any assessment of the following:
 - a. the location-specific impact of declining visitor accommodation on St Brelade's Bay against the comparative risks and benefits of introducing a location-specific restriction for the Bay;
 - b. whether government representatives for Economic Development, Tourism, Sport and Culture could confirm the research with relative ease, given that only six establishments needed to be approached for the purposes of the research (nor did the inspectors question the Minister for Economic Development, Tourism, Sport and Culture regarding his position on the matter of a location-specific policy at the Examination in Public, leaving his position unclear);
 - c. the benefit of amending the Bridging Island Plan to include a location-specific policy as a 'proactive intervention' consistent with the recommendation of two sets of consultants immediately an amendment that would be potentially delayed until the next Island Plan review, when 'potential proactive interventions', at least in the form of policy amendments, sought by Proposal 17 of the draft Bridging Island Plan are most likely to be implemented;
 - d. the risk of the local improvement plan for St Brelade's Bay, to which Proposal 17 of the draft Bridging Plan refers, not coming to fruition for some time, despite the approval of the Minister for the Environment of an amendment further proposing that the local improvement plan will be developed by December 2023;
 - e. the extent of possible delay of implementation of the proposed local improvement plan, considering evidence provided to the inspectors in the same submission that, for political reasons, the local development plan for the Bay, to which Proposal 16 of the current Island Plan refers, has never been developed despite inspectors in the interim 2014 Island Plan recommending it be proceeded with 'as a matter of some urgency' and having been informed by

¹⁹ Draft Bridging Island Plan consultation response no 675162774, submitted by St Brelade's Bay Association (https://haveyoursay.gov.je/consult/furtherrepresentations/consultation/view_respondent?&uId=675162774)

policy makers it ‘could be completed within about twelve months’²⁰; and

- f. the inconsistency of the recommendation in the inspectors’ report of the Minister’s proposed location-specific amendment to Policy GD9 ‘to provide safeguards pending the production of the St Brelade’s Bay Improvement Plan’²¹ with the report’s approach to a location-specific amendment to EV1: without more proactive action being taken with respect to Policy EV1, in accordance with the recommendation, views of the Bay will be better protected than its local tourist economy.

7. Conclusion

It would be unwise to deduce from the simple piece of research in respect of St Brelade’s Bay that the percentage of owners of visitor accommodation that would be adversely affected by a restriction (9.3%) is replicated Island wide. The Bay’s hotels are situated in a key ‘tourist destination area’ –an advantage many hotels in the Island do not share – and are dominated by hotels that are part of boutique luxury hotel chains with related advantages .

Nevertheless, a balance needs to be made between:

- protecting hotel owners who could become bankrupt if a blanket restriction preventing a change of use of the site to residential accommodation were imposed; and
- providing windfalls to other hotel owners unfairly,

particularly given:

- the constraints within which the inspectors conducted their examination and assessed risk in the context of a location specific policy for St Brelade’s Bay;
- the public interest issues arising from falling hotel beds;
- the circumstances in which other types of smaller business owners typically accept the constraints of planning policy designation and sell to larger businesses, whether inside or outside the Island; and
- the ‘overwhelming sentiment’ in public opinion that the Bay should ‘be enhanced as a place for everyone to enjoy, not an exclusive residential area for a select few’ identified in the St Brelade’s Bay Character Study²² carried out in connection with the St Brelade’s Bay character appraisal.

²⁰ Report to the Minister for Planning and the Environment. Further Examination in Public July 2014 (page 8).
<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/IPRI%20-%20EIP%20further%20report%2011.07.2014.pdf>

²¹ Paragraph 8.12 of Report on the Jersey Draft Bridging Island Plan 25 January 2022 (page 72)
<https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20Jersey%20Draft%20Bridging%20Island%20Plan%20EIP%20Inspectors%20Report%20to%20Minister%20for%20the%20Environment.pdf>

²² St Brelade character study | report of public engagement phase 1, November 2020 (page 14)
<https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/R%20St%20Brelade%20Character%20Appraisal%20public%20engagement%20report%20WMUD.pdf>

The proposed amendment addresses that balance by tailoring the Minister's proposed amendment to accommodate and address the circumstances of St Brelade's Bay, which already is the subject of location-specific policy. For this reason, the proposed amendment specifically excludes registered visitor accommodation that offers more than 58 beds in St Brelade's Bay from its scope.

This will have the result of excluding two hotel or self-catering establishments from its scope and a total of 93 beds, or 13.7% of the Bay's current registered bed stock, while encouraging other hotel owners, should they choose to exit, to sell to another provider of visitor accommodation rather than a developer of residential accommodation.

Financial and manpower implications

There are no financial or manpower implications in relation to the proposed amendments.

Child Rights Impact Assessment implications

These amendments have been assessed in relation to the [Bridging Island Plan CRIA](#). Improved well-being of children will arise from improved public access to, and improved enjoyment of, a public beach and recreation area.