

STATES OF JERSEY



ISLAND PLAN 2022-25: APPROVAL (P.36/2021) – EIGHTY-NINTH AMENDMENT (P.36/2021 AMD.(89)) – SECOND AMENDMENT

**Lodged au Greffe on 28th February 2022
by the Minister for the Environment**

STATES GREFFE

PAGE 2 –

(a) Replace part (a) with the following –

“within the preamble to Policy HE1– Protecting listed buildings and places, and their settings,

(i) after paragraph 2 on page 124, there should be inserted a new section –

“Inclusive design

Everyone should be able to enjoy easy and exclusive access to the historic environment. Listed buildings and places may need to be modified to meet existing access needs as well as the changing needs of occupants and users. Removing barriers to access can allow many more people to use and benefit from the historic environment. If sensitively designed this need not compromise the ability of future generations to enjoy heritage and access these environments. Understanding the significance of a building is a vital first step in thinking about how much it can be changed to ensure sensitive interventions. In most cases access can be improved without compromising the special interest of the historic buildings and it is rare when nothing can be done to improve or facilitate access. By undertaking a careful process of research, consultation and creative exploration of alternative, good quality solutions are usually possible. The provision of improved access can be an important part of a sustainable approach to caring for the historic environment without compromising the significance of special places.”;

(ii) substitute the last paragraph on page 125 with the following –

“In the case of demolition, in whole or in part, justification for this course of action might arise where a building is structurally unsound and is technically incapable of repair; or the demolition or partial demolition relates to a structure which detracts from the special interest of the listed building or place. In exceptional circumstances there may be overriding public policy objectives, related to the delivery of other Government priorities, such as the provision of strategic infrastructure, or compliance with specific policies of direct public benefit (for example, improving access for people with disability or sustainability), which would add weight to a proposal for partial or full demolition of a listed building or place.

The weight given to heritage values in decision-making should be proportionate to the significance of the building or place and the impact of the proposed change on that significance, together with an assessment of the public benefit to be derived from a demolition proposal. The

nature of the predicted public benefit should be clearly described and justified, and should set out how, when and in what form the community will be expected to benefit directly from the proposed development, relative to its impact on the historic environment. To ensure the protection of the island's historic environment the wholesale loss of any listed building would require exceptional justification where it can be demonstrated that public benefit outweighs harm, and where the nature of that benefit to the public is clear, direct and evidenced."

(iii) substitute the third paragraph on page 126 with the following –

"In cases where there is any approved alteration to or loss of historic built fabric from, listed buildings or places, there will be a requirement for an appropriate level of recording and analysis to be undertaken and subsequently publication including to the island's Historic Environment Record. This may also include requirements, especially in the case of works affecting places of archaeological interest, relating to the treatment and care of archival material. In exceptional circumstances, where it is proportionate, reasonable and appropriate to do so, a form of mitigation could involve managed disassembly and reconstruction of a heritage asset on an alternative site. Any such requirements will be secured through planning condition or obligation attached to any such permission."

(b) Replace part (b) with the following –

"in Policy HE1 –

- (i) the fourth paragraph should be replaced with the following – "Proposals that do not protect a listed building or place or its setting will not be supported unless and with regard to the comparative significance of the listed building or place, or its setting, and the impact of proposed development on that significance";
- (ii) at the end of c., after the words "reasonably practicable" replace the word "or" with the word "and";
- (iii) at the end of d., after the words "in its setting" add "and where the nature of that benefit to the public is clear, direct and evidenced."

(c) Add a new part (f) as follows –

"(f) the draft bridging Island Plan 2022-25 be further amended in such respects as may be necessary consequent upon the adoption of (b)(ii) and (iii), specifically Policy HE3 – Protection or improvement of conservation areas; Policy HE5 – Conservation of archaeological heritage; Policy NE1 – Protection and improvement of biodiversity and geodiversity; and Policy NE3 – Landscape and seascape character, and their associated preambles."

MINISTER FOR THE ENVIRONMENT

Note: After this amendment, the amendment of the Deputy of St. Peter would read as follows –

After the words “the draft Island Plan 2022-25” insert the words “except that -

(a) within the preamble to Policy HE1– Protecting listed buildings and places, and their settings, after paragraph 2 on page 124, there should be inserted a new section –

(i) after paragraph 2 on page 124, there should be inserted a new section –

“Inclusive design

Everyone should be able to enjoy easy and exclusive access to the historic environment. Listed buildings and places may need to be modified to meet existing access needs as well as the changing needs of occupants and users. Removing barriers to access can allow many more people to use and benefit from the historic environment. If sensitively designed this need not compromise the ability of future generations to enjoy heritage and access these environments. Understanding the significance of a building is a vital first step in thinking about how much it can be changed to ensure sensitive interventions. In most cases access can be improved without compromising the special interest of the historic buildings and it is rare when nothing can be done to improve or facilitate access. By undertaking a careful process of research, consultation and creative exploration of alternative, good quality solutions are usually possible. The provision of improved access can be an important part of a sustainable approach to caring for the historic environment without compromising the significance of special places.”;

(ii) substitute the last paragraph on page 125 with the following –

“In the case of demolition, in whole or in part, justification for this course of action might arise where a building is structurally unsound and is technically incapable of repair; or the demolition or partial demolition relates to a structure which detracts from the special interest of the listed building or place. In exceptional circumstances there may be overriding public policy objectives, related to the delivery of other Government priorities, such as the provision of strategic infrastructure, or compliance with specific policies of direct public benefit (for example, improving access for people with disability or sustainability), which would add weight to a proposal for partial or full demolition of a listed building or place.

The weight given to heritage values in decision-making should be proportionate to the significance of the building or place and the impact of the proposed change on that significance, together with an assessment of the public benefit to be derived from a demolition proposal. The nature of the predicted public benefit should be clearly described and justified, and should set out how, when and in what form the community will be expected to benefit directly from the proposed development, relative to its impact on the historic environment. To ensure the

protection of the island’s historic environment the wholesale loss of any listed building would require exceptional justification where it can be demonstrated that public benefit outweighs harm, and where the nature of that benefit to the public is clear, direct and evidenced.”

(iii) substitute the third paragraph on page 126 with the following –

“In cases where there is any approved alteration to or loss of historic built fabric from, listed buildings or places, there will be a requirement for an appropriate level of recording and analysis to be undertaken and subsequently publication including to the island’s Historic Environment Record. This may also include requirements, especially in the case of works affecting places of archaeological interest, relating to the treatment and care of archival material. In exceptional circumstances, where it is proportionate, reasonable and appropriate to do so, a form of mitigation could involve managed disassembly and reconstruction of a heritage asset on an alternative site. Any such requirements will be secured through planning condition or obligation attached to any such permission.

(b) in Policy HE1 –

(i) the fourth paragraph should be replaced with the following –
“Proposals that do not protect a listed building or place or its setting will not be supported unless and with regard to the comparative significance of the listed building or place, or its setting, and the impact of proposed development on that significance”;

(ii) at the end of c., after the words “reasonably practicable” replace the word “or” with the word “and”;

(iii) at the end of d., after the words “in its setting” add “and where the nature of that benefit to the public is clear, direct and evidenced

(c) in Policy HE2 -

(i) for the first paragraph there should be substituted –

“Historic windows and doors in listed buildings or buildings in a conservation area which are of significance or special interest, or which contribute to the character of the conservation area should be repaired using materials and detailing to match the existing. Proposals for the replacement of modern glazing in historic windows with double glazing will be supported where it can be accommodated:

a) within the existing window or door joinery frames; or

b) within a like for like frame.”;

(ii) in the third paragraph the words “or the character of a building in a conservation area” should be deleted.

(iii) a new fourth paragraph should be inserted in as follows –

“Where proposals for the replacement of windows and doors in conservation areas will affect the character and appearance of the conservation area, they will only be supported where they protect or improve that character or appearance.”

(iv) in the first sentence of the existing paragraph four the word “more” should be deleted from before “modern windows”, the words “or buildings in a conservation area” should be removed, and the word “and” should replace “or” at the end of the second line;

(v) a second sentence should be inserted at the end of the existing fifth paragraph as follows –

“The use of double-glazing in replacement windows and glazing in doors will, therefore, be supported where replacements replicate the historic window and doors as far as practicable helping to meet Jersey’s commitment to energy efficiency.”

(d) in Proposal 14 – Conservation area designation –

(i) the second paragraph should be replaced with the following –

“It is proposed that the first conservation area or areas to be designated should be within the historic areas of St Helier and then drawn from the following list: St Aubin, the areas around the parish churches of Grouville, St. Lawrence, St. Martin, Trinity, St. Ouen, St. Peter, and St. Clement; Gorey Village and Pier, and Rozel Harbour. Designation should follow engagement and consultation with parish authorities, local residents, businesses and other key stakeholders including heritage organisations.”

(ii) a new paragraph should be inserted at the end of Proposal 14 as follows –

“During the course of the Bridging Island Plan, at least four conservation areas should be designated from those listed in this Proposal.”

(e) within the preamble to Policy HE3 – Protection or improvement of conservation areas, a new sentence should be inserted at the end of the last paragraph on page 133 -

“This does not preclude high quality modern design of buildings or spaces within the area, rather it seeks a contextual response to fit the place.”

(f) the draft bridging Island Plan 2022-25 be further amended in such respects as may be necessary consequent upon the adoption of (b)(ii) and (iii), specifically Policy HE3 – Protection or improvement of conservation areas; Policy HE5 – Conservation of archaeological heritage; Policy NE1 – Protection and improvement of biodiversity and geodiversity; and Policy NE3 – Landscape and seascape character, and their associated preambles.

After the amendment, if amended by this amendment, the main 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 –

(a) within the preamble to Policy HE1– Protecting listed buildings and places, and their settings, after paragraph 2 on page 124, there should be inserted a new section –

(i) after paragraph 2 on page 124, there should be inserted a new section –

“Inclusive design

Everyone should be able to enjoy easy and exclusive access to the historic environment. Listed buildings and places may need to be modified to meet existing access needs as well as the changing needs of occupants and users. Removing barriers to access can allow many more people to use and benefit from the historic environment. If sensitively designed this need not compromise the ability of future generations to enjoy heritage and access these environments. Understanding the significance of a building is a vital first step in thinking about how much it can be changed to ensure sensitive interventions. In most cases access can be improved without compromising the special interest of the historic buildings and it is rare when nothing can be done to improve or facilitate access. By undertaking a careful process of research, consultation and creative exploration of alternative, good quality solutions are usually possible. The provision of improved access can be an important part of a sustainable approach to caring for the historic environment without compromising the significance of special places.”;

(ii) substitute the last paragraph on page 125 with the following –

“In the case of demolition, in whole or in part, justification for this course of action might arise where a building is structurally unsound and is technically incapable of repair; or the demolition or partial demolition relates to a structure which detracts from the special interest of the listed building or place. In exceptional circumstances there may be overriding public policy objectives, related to the delivery of other Government priorities, such as the provision of strategic infrastructure, or compliance with specific policies of direct public benefit (for example, improving access for people with disability or sustainability), which would add weight to a proposal for partial or full demolition of a listed building or place.

The weight given to heritage values in decision-making should be proportionate to the significance of the building or place and the impact

of the proposed change on that significance, together with an assessment of the public benefit to be derived from a demolition proposal. The nature of the predicted public benefit should be clearly described and justified, and should set out how, when and in what form the community will be expected to benefit directly from the proposed development, relative to its impact on the historic environment. To ensure the protection of the island's historic environment the wholesale loss of any listed building would require exceptional justification where it can be demonstrated that public benefit outweighs harm, and where the nature of that benefit to the public is clear, direct and evidenced.”

(iii) substitute the third paragraph on page 126 with the following –

“In cases where there is any approved alteration to or loss of historic built fabric from, listed buildings or places, there will be a requirement for an appropriate level of recording and analysis to be undertaken and subsequently publication including to the island's Historic Environment Record. This may also include requirements, especially in the case of works affecting places of archaeological interest, relating to the treatment and care of archival material. In exceptional circumstances, where it is proportionate, reasonable and appropriate to do so, a form of mitigation could involve managed disassembly and reconstruction of a heritage asset on an alternative site. Any such requirements will be secured through planning condition or obligation attached to any such permission.

(b) in Policy HE1 –

(i) the fourth paragraph should be replaced with the following –
“Proposals that do not protect a listed building or place or its setting will not be supported unless and with regard to the comparative significance of the listed building or place, or its setting, and the impact of proposed development on that significance”;

(ii) at the end of c., after the words “reasonably practicable” replace the word “or” with the word “and”;

(iii) at the end of d., after the words “in its setting” add “and where the nature of that benefit to the public is clear, direct and evidenced

(c) in Policy HE2 -

(i) for the first paragraph there should be substituted –

“Historic windows and doors in listed buildings or buildings in a conservation area which are of significance or special interest, or which contribute to the character of the conservation area should be repaired using materials and detailing to match the existing. Proposals for the replacement of modern glazing in historic windows with double glazing will be supported where it can be accommodated:

- a) within the existing window or door joinery frames; or
- b) within a like for like frame.”;
- (ii) in the third paragraph the words “or the character of a building in a conservation area” should be deleted.
- (iii) a new fourth paragraph should be inserted in as follows –
 - “Where proposals for the replacement of windows and doors in conservation areas will affect the character and appearance of the conservation area, they will only be supported where they protect or improve that character or appearance.”
- (iv) in the first sentence of the existing paragraph four the word “more” should be deleted from before “modern windows”, the words “or buildings in a conservation area” should be removed, and the word “and” should replace “or” at the end of the second line;
- (v) a second sentence should be inserted at the end of the existing fifth paragraph as follows –
 - “The use of double-glazing in replacement windows and glazing in doors will, therefore, be supported where replacements replicate the historic window and doors as far as practicable helping to meet Jersey’s commitment to energy efficiency.”
- (d) in Proposal 14 – Conservation area designation –
 - (i) the second paragraph should be replaced with the following –
 - “It is proposed that the first conservation area or areas to be designated should be within the historic areas of St Helier and then drawn from the following list: St Aubin, the areas around the parish churches of Grouville, St. Lawrence, St. Martin, Trinity, St. Ouen, St. Peter, and St. Clement; Gorey Village and Pier, and Rozel Harbour. Designation should follow engagement and consultation with parish authorities, local residents, businesses and other key stakeholders including heritage organisations.”
 - (ii) a new paragraph should be inserted at the end of Proposal 14 as follows –
 - “During the course of the Bridging Island Plan, at least four conservation areas should be designated from those listed in this Proposal.”
- (e) within the preamble to Policy HE3 – Protection or improvement of conservation areas, a new sentence should be inserted at the end of the last paragraph on page 133 -
 - “This does not preclude high quality modern design of buildings or spaces within the area, rather it seeks a contextual response to fit the place.”
- (f) the draft bridging Island Plan 2022-25 be further amended in such respects as may be necessary consequent upon the adoption of (b)(ii) and (iii), specifically Policy HE3 – Protection or improvement of conservation areas; Policy HE5 – Conservation of archaeological heritage; Policy NE1 – Protection and improvement of biodiversity and geodiversity; and Policy NE3 – Landscape and seascape character, and their associated preambles.

REPORT

The amendment lodged by Deputy R. Labey (amendment 74), seeks to retain the existing Policy HE1 – Protecting listed buildings and places as set out in the current Revised 2011 Island Plan, rather than adopt the new revised policy that is set out in the draft bridging Island Plan (and which is proposed to be amended by my own amendment, following consideration of the inspectors' report).

The basis for Deputy Labey's amendment might be summarised as follows:

- the current policy works well
- the current policy sets out a 'presumption in favour of preservation' which is lost in the proposed draft policy
- new tests in the proposed draft policy could make it easier for developers to argue that there is no other way of delivering their proposals (other than a way which results in harm to the historic environment); and
- the proposed draft policy is behind the times.

None of these assertions are accepted, and I will address all of these matters in my comments relative to amendment 74.

Whilst I consider the revised draft policy HE1 to be robust and fit-for-purpose, I am of the view that it could be further strengthened, to ensure that decision-makers are better equipped to deal with planning applications which may adversely impact upon the island's historic environment.

In particular, I am concerned to ensure that a policy that is designed to manage change in the historic environment in a sustainable way is not abused and used to justify schemes where their overriding public benefit is not clearly described and demonstrated, but which might otherwise harm the island's heritage. To achieve this, I propose further amendment to Policy HE1 and its accompanying preamble to strengthen the need to demonstrate public benefit of potentially harmful change.

This is given effect by:

- first, a minor modification to Policy HE1 - replacing 'or' with 'and' at the end of provision (c) - ensures that all provisions (a)-(d) apply comprehensively and as a sequential test to development which causes harm to the historic environment.

With this change, not only does a proposal need to satisfy an overriding public policy need (under (a)); and meet tests (b) and (c); it also needs to demonstrate that its public benefit outweighs the harm caused.

This would further strengthen the policy and ensure that **public** benefit is key.

- second, the further enhancement of a provision in the policy – supported by additional commentary in the preamble – to ensure that changes which would harm the value or significance of a heritage asset should be unacceptable unless it can be clearly demonstrated that public benefit outweighs harm, and where the nature of that **benefit to the public is clear, direct and evidenced**.

This policy provision, related to the balance of predicted public benefit versus harm, also features in other parts of the draft bridging Island Plan, notably Policy HE3 – Protection or improvement of conservation areas; Policy HE5 – Conservation of

archaeological heritage; Policy NE1 – Protection and improvement of biodiversity and geodiversity; and Policy NE3 – Landscape and seascape character, and this amendment would result in similar consequential changes being made to the policy and preambles of those policies cited above.

I am also keen to ensure that the preamble to Policy HE1 makes it clear that if and where an exceptional justification can be provided for the complete loss of an historic building(s) that a form of mitigation might involve the managed disassembly and reconstruction of a heritage asset on an alternative site, but only where it is proportionate, reasonable and appropriate to do so. This situation is only likely to arise in exceptional circumstances, which would need to be considered and assessed in relation to the specific circumstances.

The details of these proposed changes, in so far as they relate to Policy HE1 and its preamble, are set out at appendices 1 and 2.

Financial and manpower implications

There are no direct financial and manpower implications.

Child Rights Impact Assessment implications

This amendment has been assessed in relation to the [Bridging Island Plan CRIA](#). It will not lead to adverse impacts upon the rights of children and will ensure that children will continue to enjoy their heritage into the future

Appendix 1:

(a) Proposed changes to preamble to Policy HE1 (page 125)

In the case of demolition, in whole or in part, justification for this course of action might arise where a building is structurally unsound and is technically incapable of repair; or the demolition or partial demolition relates to a structure which detracts from the special interest of the listed building or place. In exceptional circumstances there may be overriding public policy objectives, related to the delivery of other Government priorities, such as the provision of strategic infrastructure, or compliance with specific policies of **direct public benefit** (for example, improving access for people with disability or sustainability), which would add weight to a proposal for partial or full demolition of a listed building or place.

The weight given to heritage values in decision-making should be proportionate to the significance of the building or place and the impact of the proposed change on that significance, together with an assessment of the public benefit to be derived from a demolition proposal. **The nature of the predicted public benefit should be clearly described and justified, and should set out how, when and in what form the community will be expected to benefit directly from the proposed development, relative to its impact on the historic environment.** To ensure the protection of the island's historic environment the wholesale loss of any listed building would require exceptional justification where it can be demonstrated that public benefit outweighs harm, **and where the nature of that benefit to the public is clear, direct and evidenced.**

(b) Proposed changes to preamble to Policy HE1 (page 126)

In cases where there is any approved alteration to or loss of historic built fabric from, listed buildings or places, there will be a requirement for an appropriate level of recording and analysis to be undertaken and subsequently publication including to the island's Historic Environment Record. This may also include requirements, especially in the case of works affecting places of archaeological interest, relating to the treatment and care of archival material. **In exceptional circumstances, where it is proportionate, reasonable and appropriate to do so, a form of mitigation could involve managed disassembly and reconstruction of a heritage asset on an alternative site.** Any such requirements will be secured through planning condition or obligation attached to any such permission.

Appendix 2: Proposed changes to Policy HE1 (page 127)

Policy HE1 – Protecting listed buildings and places, and their settings

Proposals that could affect a listed building, or place, or its setting, must protect its special interest.

All proposals should seek to improve the significance of listed buildings and places.

Proposals for the re-use of listed buildings and places with compatible uses, which secure the long-term protection of their special interest, including the protection of their setting, will be supported.

Proposals that do not protect a listed building or place, or its setting, will not be supported unless, and with regard to the comparative significance of the listed building or place or its setting, and the impact of proposed development on that significance:

- a. the changes are demonstrably necessary either to meet an overriding public policy objective or need; and
- b. there is no reasonably practicable alternative means of delivering those proposals without harm to the heritage values of the listed building or place, or their settings; and
- c. that harm has been avoided, mitigated and reduced as far as reasonably practicable; ~~or~~ and
- d. it has been demonstrated that the predicted public benefit outweighs the harm to the special interest of the building or place in its setting and where the nature of that benefit to the public is clear, direct and evidenced.

Where exceptionally, approval is given to demolish or substantially alter a listed building or place, a programme of recording and analysis, and archaeological excavation where relevant, will be required as part of the implementation of the scheme, together with publication of that record to an appropriate standard in the Historic Environment Record.

Applications for proposals affecting listed buildings and places must be supported by sufficient information and detail to enable the likely impact of proposals to be considered, understood and evaluated. Where this is not the case, applications will not be supported.