

**WRITTEN QUESTION TO THE MINISTER FOR
PLANNING AND ENVIRONMENT
BY SENATOR B.E. SHENTON**

ANSWER TO BE TABLED ON TUESDAY 17th APRIL 2007

Question

Would the Minister advise members whether the various Planning restrictions placed by the Planning and Environment Department, particularly those relating to properties designated as Sites of Special Interest such as the Le Seilleur offices and workshop in Oxford Road, are human rights compliant?

Answer

1. The Minister for Planning and Environment is required under Article 51 of the Planning and Building (Jersey) Law 2002 (“the Planning Law”) to maintain a List of Sites of Special Interest. The List must include each building or place that the Minister is satisfied has public importance by reason of -
 - (a) its special zoological, ecological, botanical or geological interest; or
 - (b) the special archaeological, architectural, artistic, historical, scientific or traditional interest that attaches to the building or place.
2. The Minister is also empowered under Article 53 of the Planning Law to include a building or place provisionally in the List of Sites of Special Interest.
3. The effect of including a building or place on the List is to restrict certain operations and activities that may be undertaken or carried on in relation to that building or place. The restrictions are as follows:
 - No operation or change of use which adversely affects the special interest of the site may be undertaken or made without the Minister’s permission (which may be given subject to conditions).
 - The following activities (unless any of them is specified as a permitted activity in the entry on the List relating to the site) may only be carried on with the Minister’s permission, namely -
 - (i) the use or operation of a device designed or adapted to detect or locate metal or minerals in the ground;
 - (ii) an activity which might injure or deface the site or a part of the site; or
 - (iii) certain specialised activities in relation to a site having a special interest which is zoological, ecological, botanical or geological.
4. Self-evidently, the inclusion of a building or place on the List of Sites of Special Interest operates to curtail the peaceful enjoyment by the person having possession of it. Article 1 of Protocol No. 1 to the European Convention on Human Rights is therefore engaged. It provides that -

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

5. According to the case law of the European Court of Human Rights^[1], this provision comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third rule, stated in the second paragraph, recognises that contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.
6. In relation, therefore, to the Senator’s question, whilst the inclusion of a building or place on the List of Sites of Special Interest does indeed interfere with the right of an owner or occupier to the quiet enjoyment of his or her possessions, Article 1 of Protocol No. 1 allows the state to interfere with that right by imposing controls on the use of property ‘in accordance with the general interest’.
7. However, any interference must be shown to strike a fair balance between the rights of the owner or occupier and the general interest. This has been interpreted by the European Court of Human Rights as meaning that the interference must serve a legitimate aim, must not be arbitrary and must be rationally related and proportionate to the aim.

Legitimate aim

8. The provisions of the Planning Law requiring the Minister to maintain a List of Sites of Special Interest are designed to secure the fulfilment of Jersey’s international obligations under -
 - (a) the Council of Europe Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985 – “the Granada Convention”); and
 - (b) the European Convention on the Protection of the Archaeological Heritage (revised) (Valetta, 16.I 1992).
9. Jersey is a party to both Conventions. The Granada Convention is of particular significance in the context of Sites of Special Interest. It defines the architectural heritage very broadly (article 1), to include places of ‘conspicuous historical, archaeological, artistic, scientific, social or technical interest’, comprising ‘monuments’ (buildings including fixtures and fittings, and structures), ‘groups of urban or rural buildings’, and ‘sites’ that are partially built on. Of particular importance to planning are the Convention’s requirements for -
 - inventories for protection the of architectural heritage and records of threats to it (article 2)
 - measures for statutory protection of the architectural heritage (article 3)

- the control of threats to monuments buildings and sites (article 4)
 - provisions to prevent removal or part removal of buildings except under special controls for their relocation (article 5)
 - the public funding fiscal measures and encouragement of private initiatives to maintain the architectural heritage (article 6)
 - general enhancement of the environment surrounding protected monuments (article 7)
 - research and to take special account of historic conservation in anti-pollution policies (article 8)
 - enforcement measures to control and where appropriate reverse infringements of conservation policy (article 9)
 - conservation, promotion and enhancement of the architectural heritage as an essential town and country planning objective and a major feature of cultural, environmental and planning policies and development control; promote restoration and maintenance of the architectural heritage, foster appropriate use and traditional craftsmanship (article 10)
 - use of protected properties in the light of the needs of contemporary life and adaptation when appropriate of old buildings for new uses (article 11)
 - balancing public access with architectural conservation (article 12)
 - effective co-operation at all levels between conservation, cultural, environmental and planning activities (article 13)
 - appropriate machinery for the supply of information, consultation and co-operation between the State, the regional and local authorities, cultural institutions and associations, and the public; and to foster the development of sponsorship and of non-profit-making associations working in this field (article 14)
 - public policies for disseminating information and fostering increased awareness and education and demonstrating the role of architectural heritage in wider culture (article 15)
 - promotion of training in craft skills (article 16).
10. The case of *Beyeler -v- Italy* (Application 3320/96, 5th January 2000, ECHR) makes it clear that ‘the general interest’ includes environmental and planning control and protection of heritage property.
11. The Granada Convention puts beyond any doubt listed building control as a matter within the general interest.

Interference must not be arbitrary/ must be rationally related and proportionate to the aim

12. Article 52 of the Planning Law requires the Minister to give at least 28 days notice of an intention to include a building or place on the List of Sites of Special Interest. The Minister must

take into account any representations made to him. In the case of No 1 Oxford Road (Le Seilleur offices and workshop) to which the Senator refers, no such representations were received in response to the service of the Minister's Notice of Intention to include the building in the List of Sites of Special Interest.

13. In determining whether to include a building or place on the List, the Minister must, as already mentioned, be satisfied that the building or place has public importance by reason of, amongst other things, the special archaeological, architectural, artistic, historical, scientific or traditional interest that attaches to the building or place. In respect of each Site of Special Interest, the Minister must specify the relevant special interest. The Minister has included No 1 Oxford Road (Le Seilleur offices and workshop) in the List of Sites of Special Interest on the basis of its architectural and historical interest.
14. In particular, and with specific regard to the case of No 1 Oxford Road (Le Seilleur offices and workshop) to which the Senator refers, account was taken of the fact that the workshops date back to 1845 (with later alterations) and are a relatively rare survival of an historical industrial building on the edge of the Town Centre. The recommendation to retain the workshops on the Historic Buildings Register was made having taken into consideration that the workshops retain their historic form with only minor alterations. The buildings are of unusual construction with a mixture of granite and brick with timber boarded up floors containing extensive glazing. The interior of the building is unusual for its large open plan areas at first floor level supported by a mixture of structural cross walls and closely spaced piers at ground floor level. There are internal details of interest, such as heavily joisted flooring and brick piers formed with rounded corners. The open nature of the workshops with walls of glazing and natural light contribute significantly to the distinctive character and special interest of the building.
15. There is one further aspect of human rights compliance which is relevant to the Senator's question. That aspect relates to the rule of law.
16. When Ministers make decisions affecting the rights of individuals, they must do so in accordance with the law. This is reflected in the requirement in Article 1 of Protocol No. 1 that any deprivation of possessions be '*subject to the conditions provided for by law*' and, furthermore, Article 6(1) of the European Convention on Human Rights stipulates that –

"In the determination of his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
17. What this means, in the context of a decision by the Minister to include a building or place on the List of Sites of Special Interest, is that the legality of what the Minister does must be subject to review by an independent and impartial tribunal.
18. In this respect, Article 118 of the Planning Law provides that a person aggrieved by the decision of the Minister may, within 28 days of being notified of it, appeal to the Royal Court which may confirm the decision of the Minister or order the Minister to remove the building or place from the List
19. The Minister must comply with any such order.

Conclusion

20. The following statement was made when the draft Planning and Building (Jersey) Law 200-

[P50/2001] was lodged *au Greffe*:

In the view of the Planning and Environment Committee the provisions of the Draft Planning and Building (Jersey) Law 200- are compatible with the Convention Rights.

21. In my view the Law in its enacted form is likewise compatible with Convention rights as have been the procedures in relation to the designation of the Sites of Special Interest to which the Senator makes reference.

^[1] See *Sporrong and Lönnroth -v- Sweden* [1982] EHRR 35