
STATES OF JERSEY



PLANNING COMMITTEE DECISIONS 2018 (R.37/2019): RESPONSE OF THE MINISTER FOR THE ENVIRONMENT

Presented to the States on 25th June 2019
by the Minister for the Environment

STATES GREFFE

REPORT

In presenting to the States my response to the Planning Committee recommendations, I would like to recognise the dedication and hard work of the Planning Committee members. This is often a thankless and controversial task.

I would also like to thank officers for their advice in considering the Planning Committee's comments and recommendations, and helping me respond to these.

I encourage the Planning Committee to use their knowledge and experience to take an active role in the Island Plan Review ("IPR") process.

1. Article 9A of the [Planning and Building \(Jersey\) Law 2002](#) requires that –
 - “(6) The Planning Committee shall, within the period of 3 months following the end of a year, report to the States –
 - (a) the number of decisions made by the Committee under this Law during that year;
 - (b) the number of appeals made during that year against decisions made by the Committee under this Law;
 - (c) the Committee's assessment of planning policy and any recommendations it has for its revision.
 - (7) Where, under paragraph (6)(c), the Planning Committee makes recommendations about planning policy, the Minister shall present to the States his or her response to the recommendations.”
2. This report is presented to the States for the purposes of complying with Article 9A(6) and (7) of the Planning and Building (Jersey) Law 2002.
3. Between 1st January and 31st December 2018, the Planning Committee has determined **86** applications.
4. Between 1st January and 31st December 2018, **14** of the Committee's previous decisions were appealed under the new planning appeals system (7 of which were upheld and 4 of which were reversed. The final 3 decisions are awaited.).
5. Committee Members have made the following comments to the Minister during 2018.

Committee Members' comment 5.1:

The Committee decided to request a review of the criteria by which a business reached 'bona fide agricultural status' (in the context of the Rural Economy Strategy) (Minute No. A10 of 25th January 2018 refers).

Minister's response:

This matter relates to Planning Application P/2017/1026. The application sought consent for a new 3 bedroom house and an agricultural shed on land in Trinity for a new entrant to farming.

The Committee's point in this case was that the existing criteria for establishing agricultural 'bona fides' does not recognise the difficulty for new entrants to the industry providing evidence of the current income levels required. Given that in order to survive, the agricultural industry must encourage new entrants, the Committee considered that the criteria used to assess applications for development to support such cases should reflect this policy objective.

The Minister is concerned that the Planning Committee made a decision contrary to Island Plan policy and Planning Officer recommendation. The Minister will develop guidance relating to minor and major departures from the Island Plan, which may require a Public Inquiry.

The Economy and Partnerships Team of Growth, Housing and Environment is currently reviewing the way rural businesses are recognised (Bona Fide and Smallholder status) as part of the Rural Economy Strategy ("RES") implementation. Data will be updated on qualifying businesses accordingly. The RES will remain focussed on land-dependent activity, some of which may see a slightly different land-use pattern than in the past. New crops may become more economically attractive compared to our traditional crops. Increasing numbers of applications for 'smallholder' land-use licences are being received, and the assessment of these potential businesses will need to be appropriate in order that they achieve desired outcomes.

Committee Members' comment 5.2:

The Committee requested that consideration be given to a review of the agricultural worker policy to allow for changes in the industry (see 23rd August 2018 minutes for context).

Minister's response:

Proposals for new agricultural workers' accommodation within the Green Zone are considered in the light of Policies H9 and NE7 of the 2011 Island Plan (amended 2014). Following the States' debate on the Island Plan, it was accepted by the Assembly that there should be a general presumption against all new development in the Green Zone, and that this should be the starting-point for the assessment of development proposals therein. However, Policy NE7 recognises that the Green Zone contains most of the Island's working countryside and, as such, proposals for new agricultural workers' accommodation may be considered permissible exceptions, but only when in accord with Policy H9 (Staff and Key Worker Accommodation), and where they would not cause serious harm to the landscape character.

Policy H9 is clear that staff and key agricultural worker accommodation should be provided in the Built-up Area and be of a standard that is in accordance with the Minister for the Environment's published guidance for housing. The policy also lists 6 tests that any proposal for agricultural workers' accommodation outside the Built-up Area must satisfy if a planning application is to be considered acceptable in principle. The tests require clear evidence to show that the proposed accommodation –

1. is essential to the proper function of the business;
2. cannot be provided on a site within the boundary of the Built-up Area and still meet the functional need;

3. cannot be provided by an existing building, either on or off the site, and still meet the functional need;
4. cannot be provided by re-arranging, sub-dividing or extending an existing building on the site;
5. where possible is located within or adjacent to the existing business premises, or other buildings on the site; and
6. is of a size appropriate to its functional need.

I believe that, if applied fairly and consistently, Policy H9 has the required flexibility to ensure that genuine proposals for new accommodation for agricultural workers within the Green Zone can be supported where a clear case is made, based on evidenced need and lack of suitable alternatives.

The current policy should remain pending the Island Plan Review. The current Island Plan is to be revised, and a new Island Plan prepared for adoption in 2021. This provides an opportunity for the current planning policy regime to be assessed and reviewed, where it is considered appropriate to do so.

Committee Members' comment 5.3:

That consideration be given to whether there was a need for input from the Committee on residential standards (for example, density levels) (see 23rd August 2018 minutes for context).

Minister's response:

The Department for Strategic Policy, Performance and Population has recently drafted a new Supplementary Planning Guidance ("SPG") document: 'Design for Homes'. This SPG will offer detailed and often technical guidance on matters including space standards; residential density; privacy standards; daylight and sunlight standards; and car-parking standards.

The SPG will shortly be released for public consultation, and members of the Planning Committee will be able to offer their comments on the draft. All comments received will be fully considered before the finalisation and adoption of the SPG.

Committee Members' comment 5.4:

The Committee discussed the need for the compilation and maintenance of a register of agricultural workers' accommodation and/or some means of monitoring the same. The Committee was acutely aware of the amount and scale of development which appeared to be required by the industry. It was advised that, at present, a list comprising only that accommodation which was for sale was kept (see 15th February 2018 minutes for context).

Minister's response:

In 2018, questions were included in the Agricultural Return on staff accommodation supplied to the Minister for Economic Development, Tourism, Sport and Culture, with the intention of creating a register showing the number of units and bed spaces available.

The limitation on this at present is that only active farms have completed the information. We will be including further questions in 2019 to ascertain the use of rented accommodation by farming businesses.

If approved by the States Assembly during 2019, the introduction of a licensing system under the [Public Health and Safety \(Rented Dwellings\) \(Jersey\) Law 2018](#) will require all rented dwellings, including agricultural accommodation, to be registered.

Committee Members' comment 5.5:

That consideration be given to the appropriateness/continued relevance of the 8 year immunity rule.

Minister's response:

To summarise, this part of the Planning and Building (Jersey) Law 2002 was introduced when the Law came into effect in 2006. Previously, under the 1964 Law, there had been no 'statute of limitations', and any breach of control could have lasted indefinitely. The effect of Article 40 of the Law restricts the ability of the Chief Officer to take enforcement action to remedy a breach to a period of 8 years from the date of the breach.

After an 8 year period has expired, the Chief Officer is prevented from taking enforcement action. However, that does not mean that planning or building permission is granted; simply that the breach cannot be remedied by the serving of a notice.

It is considered that a limitation on the statute is still relevant. Certainly, there should remain within the Law a sufficient period for the Chief Officer to become aware of a breach and to take action, if it is considered expedient to do so. However, the provision also provides certainty to those who may have caused a breach, that after an 8 year period, they become immune from enforcement action.

It should be noted that none of this affects the quite separate consideration of prosecution for breaches of the Law by H.M. Attorney General.

The Minister will consider this matter as part of the Island Plan Law review.

Committee Members' comment 5.6:

That consideration be given to ways in which to safeguard the public realm to preserve the character of the Island – either by the creation of conservation areas or by some other means (see minutes of 19th September 2018 for context).

Minister's response:

The Revised 2011 Island Plan provides a decision-making framework against which to assess the implications of development for the public realm. Specifically, Policy GD7: Design Quality, requires that the design of any new development should have specific regard to its relationship with existing buildings and its context, including the public realm and the style and traditions of local buildings. This does not require any formal form of designation of either a specific building or any area, but should be a material consideration for any development anywhere in the Island, under the existing policy provisions of the current Island Plan.

The Minister has requested the Jersey Architecture Commission (“JAC”) to consider reviewing the Jersey Design Guide, which is a form of supplementary guidance, to ensure that new development is locally relevant, respectful of its context, and contributes to a sense of place.

This matter was raised by the Committee in the context of an application for advertisement consent where the policy relating specifically to Signs and Advertisements (Policy GD9) enables decision-makers to have regard to ‘the visual amenity of the site or building on which they are to be displayed, and the surrounding areas’, and, as such, provides a clear basis for the consideration of any such proposal upon the public realm.

The Revised 2011 Island Plan proposes that Conservation Areas be designated in the Island during the current Plan period. This will, however, only seek to identify and protect those parts of the Island with a distinct architectural and/or historic character and will, thus, be limited in its application.

Work is currently underway to enable and progress Conservation Area designation, involving legislative change and the development of associated policy, during 2019.

Committee Members’ comment 5.7:

That some thought be given to addressing the difficulties which arose as a direct result of the absence of any graduation in the Built-Up Area; sites were either inside or outside the Built-Up Area. For example, in the case of St. Aubin, a designated tourism area, there was no greater focus or protection than that afforded to a modern housing estate (see minutes of 19th September for context).

Minister’s response:

The design policies set out in the Revised Island Plan (Policies SP7 and GD7), together with the 2008 Jersey Design Guide, set a high bar for design standards across the Island. Crucially, however, the policies refer implicitly to the need to pay full regard to the local context and to the character of the particular area in which the development, or new advertisement, is proposed.

In this respect, Policy GD7 states, unambiguously, that where the design of proposed development does not adequately address and appropriately respond to the following criteria, it will not be permitted –

1. the scale, form, massing, orientation, siting and density of the development, and inward and outward views;
2. the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting;
3. the degree to which design details, colours, materials and finishes reflect or complement the style and traditions of local buildings.

The policy test clearly makes it the responsibility of the decision-maker; whether that be the Planning Committee; an officer acting with delegated powers; or the Minister, to take into full account the specific character of a local area and the degree to which a

proposal would fit in with that area. Hence, a proposed structure or a sign that may be acceptable in one location may not be acceptable in another.

The policies do not place a responsibility, or an expectation, on the decision-maker to apply arguments of ‘precedent’ when assessing proposals for similar forms of developments or signs in different localities. Each planning application has to be assessed on its own individual merits in light of the local context.

In St. Helier, there is supplementary planning guidance which sets out the character of various parts of the town – the St. Helier Design Guidance – which can be used to assist decision-makers in determining the impact of new development upon the character of the town and its locality.

Committee Members’ comment 5.8:

That, with reference to its Minute No. A7 of 19th September 2018, consideration should be given to ways in which to safeguard special character areas (such as St. Brelade’s Bay) within the Built-Up Area. The Committee was supportive of advancing the work which had been carried out in the context of the 1989 Environmental Improvement Plan for St. Brelade’s Bay. It was recognised that there were other special character areas within the Built-Up Area which should also be afforded greater levels of protection (see minutes of 18th October 2018 for context).

Minister’s response:

Work has already been undertaken to develop and adopt supplementary planning guidance which serves to identify and define the urban character of St. Helier: this should help guide and be material to any decisions for development within the Built-up Area of the Town, where there is most pressure for development (see: Design Guidance for St. Helier –

<https://www.gov.je/PlanningBuilding/LawsRegs/SPG/AdviceNotes/Pages/DesignGuidanceforStHelier.aspx>).

Elsewhere, the Revised 2011 Island Plan, together with the 2008 Jersey Design Guide, provides a robust planning policy framework for the determination of planning applications, where there is a requirement to consider the implications of development upon its context as a material consideration, provided that it is applied comprehensively and consistently.

Opportunity to review the planning policy framework for St. Brelade’s Bay and other parts of the Built-Up Area will be presented by the Island Plan Review.

20th June 2019