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WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 6TH DECEMBER 2021
ANSWER TO BE TABLED ON MONDAY 13TH DECEMBER 2021

Question

Would the Attorney General advise whether the following are correct interpretations of the Law –

(a) land under glass is defined as agricultural land governed by the Agricultural Land (Jersey) Law 1964 (the "AgLaw") and therefore is not a building under the Planning and Building (Jersey) Law 2002 (the "PBL");
(b) internal alteration or creation of rooms in a glasshouse and the installation of plant/machinery unrelated to its permitted use is not a permitted development under the Planning and Building (General Development) (Jersey) Order 2011 (the "GDO");
(c) the PBL would only become relevant to "agricultural land" if a planning application was required for something unrelated to its permitted use and that does not change it from being "agricultural land" as defined under the Law;
(d) the construction of new rooms in a glasshouse that renders the land unsuitable for its permitted agricultural use is illegal under the AgLaw;
(e) GDO Use Class D Agriculture refers to a building used for agricultural purposes, not "agricultural land"; and
(f) Part 5 of the GDO permits the installation of additional or replacement plant or machinery for the purpose of an industrial process on industrial land but does not apply to agricultural land.

Answer

(a) land under glass is defined as agricultural land governed by the Agricultural Land (Jersey) Law 1964 (the "AgLaw") and therefore is not a building under the Planning and Building (Jersey) Law 2002 (the "PBL");

For the reasons set out below, both Laws apply.

There is nothing in the Protection of Agricultural Land (Jersey) Law 1964 (AgLaw) that creates an offence where an activity is carried out with the benefit of planning permission – irrespective of whether it is planning permission granted by the Minister by a Development Order or on an application made in accordance the Planning and Building (Jersey) Law 2002 (PBL).

Under the AgLaw, "agriculture" is defined to include "*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock, the use of land as grazing land, meadow land, market gardens and nursery grounds; and references to "agricultural land" shall be construed accordingly*."

Article 2(1) provides:

> **Subject to the provisions of this Article**, if any person –
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> (a) removes, or causes or allows to be removed, surface soil from any agricultural land;
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> (b) does, or causes or allows to be done, anything which has, or is likely to have, the effect of rendering any land unsuitable for agriculture; or

(c) with the intent of rendering any agricultural land unsuitable for agriculture, fails to do anything which the person ought reasonably to do in the ordinary course of good husbandry,

the person shall be guilty of an offence. [Emphasis added]

Article 2(8) goes on to provide:

(8) **The provisions of this Article shall not prohibit the doing of anything** –

(a) **in exercise of any powers conferred by or under any other enactments**;

(b) **in pursuance of, and in accordance with any conditions attaching to, any authorization (by whatever name called) granted under any other enactment or as a reasonable consequence of the grant of any such authorization**; or

(c) **in pursuance of, and in accordance with any conditions attaching to, a permit in writing by the Minister**. [Emphasis added]

Article 1(1) of the Interpretation (Jersey) Law 1954 provides:

(1) In this Law and in every other enactment (as hereby defined) whether passed before or after the commencement of this Law**, the expression "enactment"**, unless a contrary intention appears, **shall mean any provision of any Law passed by the States** and confirmed by Her Majesty in Council **and any provision of any regulations, Order, rules, bye-laws, scheme or other instrument passed or made in Jersey under the authority of any Order in Council or under any such Law as aforesaid**. [Emphasis added]

Article 4(1) of the Interpretation (Jersey) Law 1954 also provides:

(1) The definitions in Part 1 of the Schedule shall, unless the contrary intention appears, apply to every enactment, whenever passed or made.

Part 1 of the Schedule provides '*"land" shall include houses and other buildings;*'

Article 1(1) of the PBL provides:

"building" includes –

(a) a structure or erection of any material and constructed in any manner;

(b) a part of a building; and

(c) the inside of a building including its internal services;

A glasshouse can fall within this definition. There is nothing in the AgLaw that leads me to conclude that it is not capable of applying to agricultural land on which there is a building. Put another way, the AgLaw applies to agricultural land irrespective of whether it is inside or outside of a building. Whether an activity inside of a building is caught by the Article 2(1) offence would depend on the facts and circumstances the case.

(b) internal alteration or creation of rooms in a glasshouse and the installation of plant/machinery unrelated to its permitted use is not a permitted development under the Planning and Building (General Development) (Jersey) Order 2011 (the "GDO");

Assessing what constitutes a "material" change in use is unfortunately not straightforward. It is a matter of fact and degree in each case.

(c) the PBL would only become relevant to "agricultural land" if a planning application was required for something unrelated to its permitted use and that does not change it from being "agricultural land" as defined under the Law;

In the context of the question, the PBL is relevant where a person requires planning permission and a person could require planning permission in relation to a glasshouse.

(d) the construction of new rooms in a glasshouse that renders the land unsuitable for its permitted agricultural use is illegal under the AgLaw;

This is a fact-based question and so would depend on the circumstances and the contents of the answer to part (a) above are repeated.

It should also be noted that Part 3 Class AA (which relates to any type of building) of the GDO permits "*Internal alterations or building operations that do not amount to an external change or create new floor space."*

(e) GDO Use Class D Agriculture refers to a building used for agricultural purposes, not "agricultural land"

It is correct that the relevant part of the GDO provides:

Class D – Agriculture

Use as a building for agricultural purposes.

However, as above, the AgLaw is capable of supporting the notion of buildings on agricultural land.

(f) Part 5 of the GDO permits the installation of additional or replacement plant or machinery for the purpose of an industrial process on industrial land but does not apply to agricultural land.

Whilst there are aspects of the GDO that only concern agriculture, I cannot exclude the possibility of land being both agricultural land and industrial land for the purpose of the GDO. This is because of how "*industrial land*" is defined in the GDO. "Industrial land means "*land used to carry out an industrial process*". An "*industrial process*" means any process that is necessary or incidental –

(a) to make an article or part of an article;

*(b) to alter, repair, ornament, finish, **clean, wash, pack or can**, or to adapt for sale or to demolish an article; [Emphasis added]*

Agricultural produce is capable of being an "article" for the purpose of paragraph (a), and as regards (b) there is nothing unusual in the activity of washing or cleaning produce on agricultural land, for example potatoes. So, whilst it is correct to say that those parts of the GDO that refer directly to agriculture, it does not mean that agricultural land (or buildings) is not covered by other aspects of the GDO that do deal with plant and machinery. It is a question of construction applied to the circumstances of any individual case.