

STATES OF JERSEY



ANNUAL BUSINESS PLAN 2009 (P.113/2008): ELEVENTH AMENDMENT (P.113/2008 Amd.(11)) – COMMENTS

**Presented to the States on 10th September 2008
by the Minister for Planning and Environment**

STATES GREFFE

COMMENTS

The Minister for Planning and Environment rejects this amendment.

The Planning and Environment Department recognises that it is desirable to enhance the sewer network for social and, in some instances, environmental reasons. It is concerned, however, about the suitability of the funding mechanisms proposed by the Deputy of St. Ouen.

Amendment 11 suggests that Planning Obligation Agreements (POAs) should be used to generate pooled funds to extend the mains drainage network to properties that are not currently connected. The properties to benefit would, in many cases, be existing properties and not part of the proposed new development to which the POA relates.

The Department is concerned that using POAs in this way would contravene principles 2, 3, 4 and 7 outlined below and may be unlawful as it would, in effect, form a tax. Legal advice should be sought on whether this is the case.

The ability to make Planning Obligation Agreements between the planning authority and developers entered Jersey Planning Law in November 2002. The legal provisions are contained in Article 25 of the Planning and Building (Jersey) Law 2002, and the policy guiding their use is contained in planning policy guidance adopted in March 2005. It is important to note that POAs are collateral agreements entered into willingly by both parties.

The provisions in the Law and the local policy guidance are based closely on English law and the principles in the relevant government circular (S.106 Town and Country Planning Act 1990 and Circular 1/97).

The decision to enter into a planning obligation or agreement needs to meet a number of key tests. These tests are –

- that it is necessary to make a development acceptable in planning terms;
- that it is relevant to planning;
- that it is directly related to the proposed development (emphasis added);
- that it is fairly and reasonably related in scale and kind to the proposed development;
- that it is reasonable in all other respects.

The key principles contained in the UK and local guidance are –

1. Local authorities should place more emphasis on the overall quality of a development proposal than on the number and nature (or value) of planning benefits they can obtain or offer.
2. Developers should not be expected to pay for facilities which are needed solely in order to resolve existing deficiencies, nor should attempts be made to extract excessive contributions to infrastructure costs from developers.
3. Planning Obligations should never be used as a means of securing for the local community a share in the profits of development, i.e. as a means of securing a “betterment levy”.
4. Authorities should be careful to guard against attempting to secure a list or range of desirable benefits from developers without justification.
5. Policies which are based on blanket formulation are not thought to be appropriate.
6. Policies which allocate precise costs in advance are not deemed to be appropriate since it is impossible

to know what is involved until an individual proposal has been made.

7. It is not acceptable for a planning authority to seek to secure a percentage of enhanced land value through the use of obligations.
8. If there is a choice between imposing conditions and entering into a planning obligation, the imposition of a condition is preferable.

Where financial contributions are sought through POAs, they are usually to offset the costs the community will have to meet as a result of the development, such as off-site road improvements.

In addition to raising the issue of POAs, Amendment 11 rightly notes that the Department has introduced a new albeit voluntary, mechanism for generating contributions from developers in the form of its Percentage for Art (PFA) scheme and suggests that a similar mechanism could work for extending the main drains network. Under the PFA scheme, developers can choose to make a voluntary contribution of around 0.75% of their build costs to publicly accessible art. The 'art' being generated under the scheme is, however, predominately taking the form of a publicly visible enhancement to the development (for example; hand-crafted gates), and very few developers are choosing to contribute monies to a funding pool. In addition, it is important to recognise that developers are motivated to participate in the PFA scheme because they are investing in something that they both own and benefit from.

The PFA experience therefore suggests that introducing a similar voluntary mechanism for main drains is highly unlikely to generate the level of funding that TTS would require unless the percentage were considerably higher.

It should be noted that in the UK, the Government is seeking to introduce a Community Infrastructure Levy on new development which would tax each development to meet an appropriate portion of the costs of a programme of infrastructure provision or improvement. A similar mechanism could potentially be explored in Jersey. However, it would require new or amended primary legislation.