STATES OF JERSEY

PLANNING AND BUILDING LAW: REPEAL OF MINISTER'S POWER TO GRANT PERMISSION THAT IS INCONSISTENT WITH THE ISLAND PLAN (P.78/2010) – COMMENTS

Presented to the States on 26th October 2010
by the Minister for Planning and Environment

STATES GREFFE

COMMENTS

Article 19(3) of the Planning and Building (Jersey) Law 2002 allows "the Minister to grant permission that is inconsistent with the Island Plan but shall not do so unless the Minister is satisfied that there is sufficient justification for doing so." Senator Shenton seeks to repeal this power of discretion.

The removal of the Minister's discretion to make an 'insubstantial' departure from the Island Plan is ill-considered ('substantial' departures require a public inquiry under Article 12 of the Law).

Removing the Minister's power would mean that no person in government would have the legal power to grant planning permission that is inconsistent with the Island Plan. Neither would the Planning Application Panel have the ability to make such a decision, as its powers are derived through delegation of the Minister's powers (Article 9A of the Law).

The determination of planning applications calls for careful skill and judgement, and the consideration of all matters that are material to the application, and not just Island Plan policy. Each application must be considered on its merits. In that sense, it is more of an 'art' than a 'science', and decision-making is not a matter of simple checklists. That is why the Law is drafted in such a way that permission can be granted when there is justification for doing so, even when it is inconsistent with the Island Plan.

There will inevitably be occasions where it is necessary in the public interest, or even a private interest, to approve a development that is inconsistent with the Island Plan. For example, no-one would have had the legal power to allow the extension to the Jersey Hospice onto part of an adjoining field at Mont Cochon.

Even a States decision to endorse an exception to the Island Plan could not be implemented through the planning application process.

Removal of the power would prevent the Minister from taking into account personal circumstances in deciding an exception to Island Plan policy, such as permitting an extension to or a new home in a rural area to accommodate the needs of a severely disabled child, as the Minister has done in the past.

The only way a proposal that does not comply with policy, but is otherwise in the public or a private interest, could be decided legally would be to amend the Island Plan so that it does comply. This is a procedurally slow process, but could also lead to many States propositions to amend the Island Plan over its lifetime to enable what would have been 'inconsistent' applications to be approved. This cannot be in the interests of good government.

The current process is that the Minister is responsible to the States Assembly. The Minister must exercise his ability to make departures from the Island Plan carefully and in any case can only do so in the case of insubstantial departures. The current mechanism works well in that, if the States Assembly is dissatisfied with departures made by the Minister or indeed any other aspect of the Minister's decision-making, there are well-rehearsed mechanisms to sanction or remove the Minister.

Accordingly, Senator Shenton's proposition is not supported by the Minister for Planning and Environment.