

STATES OF JERSEY



ASSEMBLY APPROVAL FOR SUPPLEMENTARY PLANNING GUIDANCE (P.114/2022): COMMENTS

Presented to the States on 11th January 2023
by the Minister for the Environment

STATES GREFFE

COMMENTS

This proposition seeks to ensure that the Assembly gives its approval to the content of two pieces of supplementary planning guidance (SPG) before I consider their adoption and use.

I cannot support the proposition because I believe that it fails to properly recognise the status of supplementary planning guidance, relative to that of Island Plan policy; and also, because I consider that the content of the guidance is consistent with the bridging Island Plan (BIP) and does not, as a consequence, require or warrant the Assembly's consideration.

A consultation process has already been undertaken that has sought views on the draft SPG in a way that is effective, accessible and inclusive, affording opportunity for ministers, States members, keys stakeholders and the public to offer views.

In considering the current proposition, and the basis of my opposition to it, I would wish to draw the Assembly's attention to three key issues. These are summarised below and expanded in more detail thereafter.

Executive summary

- The first issue for members to consider is the actual **status of supplementary planning guidance**, and the weight that it is afforded in the planning process, as set out in law.

Members will be aware that the Island Plan is the primary consideration in Jersey's plan-led planning system. It is because of this, and the significant weight attached to Island Plan policy in decision-making about planning applications, that the Island Plan requires the approval of the States Assembly.

Supplementary planning guidance – whether it is in the form of interim policies or advice – does not carry the same weight as Island Plan policy. It is but a material consideration. Supplementary planning guidance is designed to operate under the Island Plan and is subordinate to it. Supplementary planning guidance cannot alone be a sufficient justification for granting planning permission where a proposal is inconsistent with the Island Plan.

Other material considerations can take many forms, including representations from people objecting to planning applications. They all must be taken into account in decision-making for planning applications, but do not carry the same weight as Island Plan policies. That is why the law empowers the Minister to adopt SPG and does not require its endorsement by the States Assembly.

Proposals in the bridging Island Plan confer a responsibility upon the Minister for the Environment to develop at least 13 specific pieces of supplementary planning guidance over the plan period. It is considered neither appropriate, warranted or an efficient use of parliamentary time, for SPG to be debated by the States Assembly.

- The second issue I would wish to highlight – whilst not the subject of detailed consideration during this debate – is the actual content and relative significance

of that which is proposed to be introduced by the adoption of this supplementary planning guidance.

It is a matter of law that supplementary planning guidance cannot change Island Plan policy. It is my contention that the **substance of the proposed guidance entirely supports and is consistent with the policy direction of the bridging Island Plan**, which has been approved by the States Assembly. It is clearly supplementary to it.

It does not, in my view, introduce anything that is far-reaching, or which might be construed as a new direction of policy (which would require Assembly approval as part of an Island Plan Review), and it therefore can be appropriately adopted as SPG.

- And third, is to highlight to members the **open and transparent manner in which this guidance has been prepared, which has already provided opportunity for comment from all**, including ministers and States Members, interested stakeholders and the public.

I have yet to finalise this guidance but before I do so, I will have regard to all of the consultation feedback and will consider amending the draft guidance in light of the feedback, if required, before adoption. I am also committed to publishing the consultation feedback and my analysis of and response to it.

On the basis of all of the above, I would respectfully request members to reject the proposition.

Main report

1. Status of supplementary planning guidance

The Planning and Building (Jersey) Law, amongst other things, sets out the relative importance of the different tools used for decision-making in the planning process.

Primary amongst these is the Island Plan. This is the most significant tool in the decision-maker's arsenal when determining planning applications. The reason for this is that the law¹ requires that '*in general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan*'.

The law also says that '*planning permission may be granted where the proposed development is inconsistent with the Island Plan, if the Planning Committee is satisfied that there is sufficient justification for doing so*'².

In other words, Island Plan policy has primacy and planning decisions should accord with the policy in the plan unless there is very good, and justifiable reason, for not doing so. The Minister has a statutory duty to prepare and present to the States for approval a draft Island Plan, the frequency of which is set out in the Law.

It is because of the primacy of the Island Plan that its policies are subject to a very robust process, which is prescribed in law, of public consultation and scrutiny, independent examination and ultimate approval by the States Assembly.

¹ See Article 19 (2) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

² See Article 19 (3) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

Supplementary planning guidance is **not** afforded the same weight as Island Plan policies in decision-making, as set out in the law. Supplementary planning guidance is not a primary consideration³ but is one of many material considerations that are required to be taken into account by decision-makers when determining planning applications⁴.

Other matters, such as the views of neighbours, interest groups⁵ and consultees, are all material considerations when determining a planning application. Supplementary planning guidance falls within the same category of consideration.

The law requires that supplementary planning guidance, along with any other material considerations, are taken into account in decision-making⁶. It states that: *‘The Minister shall take into account when considering an application for permission to develop land the extent to which the proposed development complies with any relevant guidelines and other policies he or she has published.’*⁷

It is clear that Island Plan policies carry more weight than any policy or guidance contained within supplementary planning guidance. It is also clear that, because of its primary role in decision-making, Island Plan policy has to go through a far more demanding process of consultation, independent scrutiny and approval by the States Assembly than any policy or guidance set out in supplementary planning guidance.

The Minister is under no duty to prepare supplementary planning guidance. The power to publish guidelines dealing with planning control, which is what supplementary planning guidance is, is a discretionary power that rests solely with the Minister. Whilst there are some statutory requirements for consultation, they are more limited than the Island Plan process. The law does not prescribe any definitive process of consultation for the development of supplementary planning guidance, other than engaging with those ministers and statutory authority whose portfolio interest might be affected by any policy or guidance⁸.

It is also because of this that the law confers the power to develop and adopt supplementary planning guidance, in the form of guidelines and policies, to the Minister for the Environment⁹ and does not require its approval by the States Assembly.

Whilst the Law requires and provides for prior approval of an Island Plan by the States Assembly, the Law does not provide for prior approval by the States Assembly of supplementary planning guidance.

There are at least 13 policies and proposals in the bridging Island Plan that explicitly require some form of SPG to be reviewed/developed and adopted during the lifetime of the bridging Island Plan. This amount of guidance will be increased having regard to the need to develop other site-specific guidance and conservation area appraisals.

It is considered neither appropriate, warranted or an efficient use of parliamentary time, for SPG to be debated by the States Assembly, particularly when the Minister has the

³ See Article 6 (3) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

⁴ See Article 19 (1) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

⁵ See Article 11 (4) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

⁶ Already cited at 4.

⁷ Already cited at 3.

⁸ See Article 6 (2) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

⁹ See Article 6 (1) and (4) [Planning and Building \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

legal authority (conferred on him by the Assembly) to undertake this work; and where there are established processes for consultation and engagement for the development of guidance that sits within the planning policy framework that has already been approved by the States Assembly.

2. Relative significance of the proposed content of supplementary guidance

The proposition suggests that the content of the proposed supplementary planning guidance is *'too far-reaching to be considered supplementary'* and requires Assembly consideration. This is not accepted and warrants further examination.

Two guidance notes are proposed for adoption, and between them, they would introduce the following factors:

- **Minimum density standards:** the introduction of minimum density standards accords with Proposal 21 of the bridging Island Plan, which states that the Minister for the Environment will develop supplementary planning guidance to establish minimum density standards for the island's built-up areas¹⁰.

The guidance also proposes the introduction of a maximum density standard to protect against overdevelopment.

The content of this guidance note is thus simply responding to that which the States Assembly has requested be undertaken in support of, and supplementary to, the Island Plan that it has approved.

- **Additional interpretation of the Policy H9 – Housing outside the built-up area:** the introduction of further guidance about the use and application of Policy H9 – Housing outside the built-up area, accords with Proposal 25 of the bridging Island Plan, which states that the Minister for the Environment will develop supplementary planning guidance to assist with the interpretation and application of this policy.¹¹

The content of this guidance note is thus simply responding to that which the States Assembly has requested be undertaken in support of, and supplementary to, the Island Plan that it has approved.

- **Interim policies for the development of large homes:** the introduction of interim policies about the development of larger homes in the island responds to the policy objectives of the government. In particular, it seeks to deliver action eight of the 100 Day Plan, which seeks to introduce limits on the number of houses that can be built over 3,000 sq. ft. for a period of time in order to focus on tackling the housing crisis.

This element of interim policy and guidance accords with and complements the planning policy framework established by the bridging Island Plan and is supplementary to it. It supports the following objectives of the bridging Island Plan.

¹⁰ See Proposal 21 [P Bridging Island Plan.pdf \(gov.je\)](#)

¹¹ See Proposal 25 [P Bridging Island Plan.pdf \(gov.je\)](#)

Response to climate change

Following the clear direction of the States Assembly to limit the spread of urban development into the surrounding countryside, the bridging Island Plan encourages the better use of already-developed land, and enables the development of denser, more compact forms of development¹².

The introduction of a parameter which seeks to better manage the scale of new residential development, and to limit the development of very large new homes, can help optimise the density of development and deliver better, more efficient use of land in support of these objectives.

Better meeting housing needs

The bridging Island Plan provides for the development of homes and, in particular, the delivery of more affordable homes, to help meet existing housing demand driven by changes to the make-up of the island's population, the greatly increased levels of in-migration since 2011, and the increasing cost of housing.¹³

There is no evidence that supports the need to provide very large homes in Jersey; and there will already be a supply of larger homes within the existing housing stock. Much of the island's current need is for smaller homes: Jersey's Future Housing Needs 2019-2021 report identified a potential shortfall of 2,750 one-, two- and three-bed dwellings (both flats and houses), together with a surplus of 4+ bed-homes over the report period¹⁴. Evidence from the census suggests that over 40% of owner-occupied homes in the island were under occupied where households had two or more bedrooms above the standard required relative to the number of people living in the house¹⁵. This suggests that a large proportion of existing large homes in the island are not being put to optimal or best use. A dwelling of 279 sqm (or 3,000 sq. Ft.), is a substantial structure; over double the floor area of a standard four-bed dwelling¹⁶. Such dwellings are likely to be marketed in the 'luxury homes' bracket with a significant market value that is well beyond the reach of most islanders. In 2021, a working household in Jersey with mean net income was not able to service a mortgage affordably on the purchase price of a median-priced house of any size. For the purchase of a median-priced 4-bedroom house (at £1,200,000) in the fourth quarter of 2021, by a household with mean net income, the total deposit required was £752,000 which represents a deposit gap of over 10%.¹⁷

The introduction of a size threshold for the development of new homes will help ensure that the homes that are provided during the bridging Island Plan period better match the needs of islanders in terms of their size, use and affordability.

¹² See Policy SP1 – Responding to climate change [P Bridging Island Plan.pdf \(gov.je\)](#) and Policy H2– Housing density [P Bridging Island Plan.pdf \(gov.je\)](#)

¹³ See Policy SP7 – Planning for community needs [P Bridging Island Plan.pdf \(gov.je\)](#) and Policy H3 – Provision of homes [P Bridging Island Plan.pdf \(gov.je\)](#)

¹⁴ See Table 1 – Surpluses and shortfalls (supply-demand) by type and size of dwelling, three-year totals [Jersey's Housing Assessment \(gov.je\)](#)

¹⁵ See Figure 3: Proportion of households considered to be 'under-occupied' by the Bedroom Standard, by tenure (percent), 2011 and 2021 [R CensusBulletin2 20220504 SJ.pdf \(gov.je\)](#)

¹⁶ See Table 1 - Minimum gross internal floor areas and storage (m²) [Technical housing standards – nationally described space standard \(publishing.service.gov.uk\)](#)

¹⁷ See Table 11 – Median house prices, qualifying household income and deposit gap, 2021 [R House Price Index Q4 2021 20220217 SJ.pdf \(gov.je\)](#)

Protecting character and identity

This bridging Island Plan provides for the greater protection of the island's very special landscapes and seascapes; its rich biodiversity; and its unique heritage.¹⁸ These elements of Jersey are greatly valued by the community.

The development of large homes, particularly in the countryside and around the coast, can have a more significant adverse impact upon the distinctive character, quality, and sensitivity of the landscape, seascape or coastal setting in which they are sited. This impact can be experienced from wider afield as larger development is more likely to appear in longer vistas, especially when any new dwelling has been sited and orientated to maximise views.

BIP policy already requires that new homes in the countryside, where proposals involve the redevelopment of existing dwellings, are no larger in terms of gross floorspace of the building being replaced. The introduction of a size threshold in SPG helps to better manage the potential visual impact of the development of large homes, particularly in sensitive rural and coastal settings.

In light of all of the above, it is not considered that the content of the proposed supplementary guidance challenges the existing direction of the Island Plan policy framework; or that it is far-reaching.

In essence, it is considered to be entirely supplementary to it.

3. Open process of development and adoption

The proposition suggests that the process of seeking to adopt this supplementary planning guidance is '*inappropriate and less than transparent*' and that it warrants States Assembly approval. This is not accepted.

As demonstrated above, it is entirely appropriate that supplementary planning guidance is adopted by the Minister for the Environment. Supplementary planning guidance carries less weight than the Island Plan, and so does not warrant or require the approval of the States Assembly. The law provides clear power and authority for the Minister to develop such guidance and policy.

The process of developing this supplementary planning guidance has been open and transparent.

As already stated, there is no prescribed process set out in law for adopting supplementary planning guidance, save for consulting relevant ministers. In this case, direct consultation has been undertaken with the Minister for Housing and Communities; and the Minister for Economic Development, Tourism, Sport and Culture; and also with the Chief Minister.

Wider consultation can, however, be an effective way of testing views with stakeholders or identifying unintended effects of policy and guidance. In most cases, the Minister for the Environment will undertake consultation on draft supplementary planning guidance where it is in the form of policy or site- and area-based masterplans, development briefs or planning frameworks, as a matter of course.

¹⁸ See Policy SP4 – Protecting and promoting island identity [P Bridging Island Plan.pdf \(gov.je\)](#) and Policy NE3 – Landscape and seascape character [P Bridging Island Plan.pdf \(gov.je\)](#)

This guidance was published for consultation for a six-week period, beginning on 18 October 2022 and ending on 30 November 2022. Late representations were accepted for a further two weeks.

The draft guidance was published on the government website and its release was publicised through the local media. Stakeholders with a known interest in the development industry and planning matters were directly invited to comment and given opportunity to receive a presentation about the draft guidance.

Two online webinars were held for members of the public, providing an opportunity to receive a presentation and to ask questions. Two webinars were also held for States Members.

Work is now being undertaken to analyse the consultation feedback. There may be further follow-up meetings with those who have made comment requiring further examination.

The outcome of consultation will be published, together with a clear indication as to whether the proposed draft guidance is to be amended, in light of comments made and issues raised. This is standard practice and accords with the Government consultation code of practice. The key point is that as a matter of law I cannot frame or adopt this SPG in a way that would contradict the Bridging Island Plan. Whatever form the SPG eventually takes, it must and will remain subservient to the BIP.

Summary

It is my view that it is entirely appropriate for me, as Minister for the Environment, to develop and adopt supplementary planning guidance, in support of the policies and proposals set out in the bridging Island Plan. I have been tasked to do this by the States Assembly, and have been given the powers to do so, as set out in the Planning and Building (Jersey) Law. To do otherwise would represent an inefficient use of parliamentary time, particularly when the framework within which this guidance has been developed has already been approved by the States Assembly.

Supplementary planning guidance carries less weight than established Island Plan policies. It provides decision-makers with a further material consideration of which they will need to have regard when determining planning decisions, just as they are required to have regard to representations from neighbours.

The content of the proposed supplementary planning guidance is indeed supplementary to the bridging Island Plan. It supports the existing planning policy framework and helps to deliver its objectives, which have been approved by the States Assembly. It cannot and does not introduce anything that is far-reaching or contrary to the direction set by the plan.

And finally, the process of developing this guidance has been open and accessible to members and to any interested stakeholder. I am committed to having due regard to the feedback that I have received during the consultation, and I will publish my response to it as part of the review and adoption of the draft guidance.

On the basis of all of the above, I would respectfully request that this proposition is not supported.