WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 21st FEBRUARY 2022
ANSWER TO BE TABLED ON MONDAY 28th FEBRUARY 2022

Question

Will H.M. Attorney General state whether, within Jersey's planning legislation, there is a legal distinction in planning requirements between those that apply to the growing of hemp or cannabis on a site (such as for agricultural use) and those that apply to the processing of the same crops on the site (namely for industrial use) and, furthermore, whether there is any legal distinction in the applications and permissions that need to be made and obtained for these two uses?

Answer

The key element of planning control is now to be found in Article 7 of the Planning and Building Law 2002 (the "2002 Law") which prohibits a person from developing land except with and in accordance with planning permission. It is generally unlawful to carry out development without planning permission. Ownership of land therefore no longer carries the right to develop the land as the owner thinks fit. Ownership only carries with it the right to continue the use of land for its extant lawful use, or the right to apply for planning permission to develop land.

Whether the activity is growing hemp or cannabis, or processing hemp or cannabis, the "planning requirements" are the same. If the activity is one that involves development, then the 2002 Law is clear that "*A person who requires planning permission not granted by a Development Order must apply to the Chief Officer for it*." [Article 9(1) of the 2002 Law].

Article 1(1) of the 2002 Law provides '*"develop" has the meaning given to that expression by Article 5 and "development" shall be construed accordingly*'. The key sections of Article 5 provide:

5 Meaning of "develop"

(1) Except as provided by paragraph (5), in this Law "develop", in respect of land, means –

(a) to undertake a building, engineering, mining or other operation in, on, over or under the land;

(b) to make a material change in the use of the land or a building on the land.

(2) Without prejudice to the generality of paragraph (1), "develop", in respect of land, includes –

(a) to demolish or remove the whole or any part of a building on the land;

(b) to create a new means of access to the land from a road;

(c) to enlarge an existing means of access to the land from a road;

(d) to remove a hedgerow or banque or other physical feature defining a boundary of the land or of any part of it;

(e) to use a building on the land previously used as a single dwelling-house as 2 or more separate dwelling-houses;

(f) to use 2 or more premises on the land (whether they are in separate buildings or are parts of the same building) previously used as separate dwelling-houses as a single dwelling-house;

(g) to use a building or part of a building on the land previously used as a dwelling-house for short term holiday lettings;

(h) to create a time sharing scheme in respect of a building on the land, being a scheme whereby a person is granted a right entitling the person to occupy the building or a part of it for a specified period each year while the right subsists;

(i) to display an advertisement on a part of a building on the land not normally used for that purpose;

(j) to deposit refuse or waste material on the land except to the extent set out in paragraph (3).

Essentially, Article 5 characterises development as either operational development (Article 5(1)(a)), or the making of a material change in use (Article 5(1)(b)). As set out in my answer to WQ.500/2021, assessing what constitutes a "material" change in use is unfortunately not straightforward. It is a matter of fact and degree in each case. This also requires regard to ordinary and reasonable practice for whether the degree of processing undertaken can properly be said to be ordinarily incidental to the growing of the crop.

Where planning permission is required, the 2002 Law draws no distinction between the two uses. There may though be different requirements as to qualifying criteria where the development is one that is caught by the Planning and Building (Environmental Impact) (Jersey) Order 2006 thus requiring an environmental impact statement. This will depend on whether the development is prescribed development for the purpose of Article 13(1)(a) of the 2002 Law. The 2006 Order draws a distinction between types of proposed development such as the agricultural industry and the chemical industry. Although largely a question of fact, the latter is more likely to require an environmental impact statement than the former. Development is not prescribed development for the purpose of Article 13(1)(a) if the Minister is satisfied that by virtue of factors such as the nature, size or location of the proposed development it would be unlikely, if carried out, to have a significant effect on the environment, either of Jersey or elsewhere.