

STATES OF JERSEY



SITES OF SPECIAL INTEREST: REMOVAL FROM LIST

Lodged au Greffe on 7th July 2010
by Senator J.L. Perchard

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree that Article 51(5) of the Planning and Building (Jersey) Law 2002, that sets out the grounds on which the Minister for Planning and Environment can remove a building or place from the List of Sites of Special Interest, should be amended to provide that the Minister shall also be able to remove a building or place from the List if the Minister is satisfied that there are important social or economic reasons for doing so; and
- (b) to request the Minister for Planning and Environment to bring forward for approval the necessary legislation to give effect to the decision.

SENATOR J.L. PERCHARD

REPORT

The listing of Sites of Special Interest (SSI) is covered by the Planning and Building (Jersey) Law 2002. With this proposition I seek to amend Article 51(5) of the Law, which sets out the grounds for which the Minister for Planning and Environment can remove a building or place from the SSI List.

I believe that the Law should be amended to provide the Minister with the ability to remove a building or place from the SSI List, if the Minister is satisfied that there are important social or economic reasons for doing so.

I copy Article 51 below and draw members' attention to the problem paragraph (5) –

51 Minister to maintain a List of Sites of Special Interest

- (1) The Minister shall maintain a list, called the List of Sites of Special Interest.
- (2) The Minister shall include on the List each building or place that the Minister is satisfied has public importance by reason of –
 - (a) its special zoological, ecological, botanical or geological interest; or
 - (b) the special archaeological, architectural, artistic, historical, scientific or traditional interest that attaches to the building or place.
- (3) On the List the Minister shall, in respect of each site of special interest –
 - (a) specify the site's special interest;
 - (b) describe the site either in words or by reference to a plan, or both, with sufficient particularity to enable it to be easily identified;
 - (c) if the site relates to the habitat of a wild creature or a plant, specify the type of habitat; and
 - (d) specify any activity referred to in Article 55(1) which may be undertaken on the site without the Minister's permission.
- (4) The Minister shall make the List available for inspection by the public at all reasonable hours.
- (5) **The Minister shall remove a building or place from the List if the Minister is satisfied that its special interest has ceased to exist.**
- (6) At least 28 days before doing so the Minister shall serve a notice of the Minister's intention to do so.
- (7) The notice shall be served –
 - (a) on the owner of the building; or
 - (b) by displaying it in a conspicuous place in or near the building or place.

The wording of paragraph (5) is quite specific. It clearly does not allow the Minister to remove a building from the List if it were in the public interest to do so. As members will be aware, circumstances change and a decision today may not be the correct one

for tomorrow. We as States members are often required to make decisions “on balance” and it is quite possible that important social and economic pressures, at times, will conflict with an SSI listing.

The Planning and Building (Jersey) Law 2002 is currently deficient, as it does not allow for the Minister to remove a building or site from the SSI List for any reason other than, if he “is satisfied that its special interest has ceased to exist”.

The Law limits the powers of the States in most planning matters, and in this case the States can only ‘request’ the Minister for Planning and Environment to remove a building or a place from the SSI List, as the Minister is required to follow his statutory obligations within the Law and the policies within Island Plan.

How any de-listing proposition may be worded, the Minister will always have to defer to the default position, in that such a decision is not discretionary and that he cannot simply de-list a building or place, even when a de-listing may be in the public interest.

The Minister may agree to review the listing of an SSI and in doing so will engage advisers to assist him. This group of advisers, because of SSI planning restrictions, will almost certainly claim that the status of the building or place is unchanged.

The problem is that these advisers are not required or qualified to consider the social and economic consequences of their decision; they will simply consider if the SSI “special interest has ceased to exist”. I confidently predict that these advisers will nearly always answer to the effect that there has been no material change in the SSI’s “special interest” and that the listing should remain.

The Minister will then inform members that his “hands are tied” and that he has no legal powers to remove the building from the SSI List.

If members support this proposition the Minister for Planning and Environment will have the ability to remove a building or place from the SSI List if the Minister is satisfied that there are important social or economic reasons for doing so.

Financial and manpower implications

I cannot foresee any extra financial or manpower implications for the States if this proposition is approved.