

STATES OF JERSEY



KEPPEL TOWER: PETITION (P.67/2015) – COMMENTS

Presented to the States on 14th July 2015
by the Minister for Planning and Environment

STATES GREFFE

COMMENTS

Background

1. The Keppel Tower development is a proposal of 17 apartments set out in 3 blocks on the east side of the Grouville coast road, just to the north of Seymour Slip. Immediately to the south of the site is Seymour Cottage, a Listed cottage owned by Mrs. Herold.
2. The original application was approved by the former Minister, former Deputy R.C. Duhamel of St. Saviour. Mrs. Herold appealed and, although most of her grounds of appeal were dismissed, the Royal Court did find that the Minister had not properly taken into account the heritage policy of the Island Plan (HE1), in that he had not assessed the impact of the development upon the setting of Listed buildings in the area. He was instructed to do so.
3. The applicant resubmitted and the application was reassessed. The former Minister visited the site. He asked for a scaffold profile to be erected showing the impact on the Listed buildings, and he then requested that changes be made to the scheme. The applicant submitted the changes and the Minister decided that the application should be approved. Mrs. Herold appealed again.
4. The Royal Court, at the second appeal, found that the Minister had erred and ordered that the permission be cancelled. In particular, the Court found that the Minister had applied the wrong test. The development did not 'preserve or enhance' the setting of Seymour Cottage and the impact upon its setting was not minor. The Minister should not have traded enhancements to the setting of Keppel Tower (which were acknowledged to be significant) with a detriment to the setting of Seymour Cottage. The cottage was entitled to the protection afforded by Policy HE1. Secondly, the Court ruled that the Minister had misunderstood the policy: the phrase 'preserve or enhance' must be strictly observed – the setting must either stay the same or be improved.

The Minister's position

5. The Minister is charged with producing and administering the Island Plan on behalf of the government. The Island Plan is the primary consideration in all planning decisions and is a collection of policies which guide decisions on development in Jersey. The policies are detailed and, as may be expected, often pull in different directions. This is not at all unusual. The role of the Planning Department and the Planning Applications Committee is to assess and carefully balance the impacts of an application with its benefits.
6. The Minister considers that the Royal Court has taken too strict an interpretation on the policy requirement to 'preserve or enhance' the setting of Listed buildings. The Island is fortunate to benefit from a very rich heritage, much of which is in the built environment. If planning applications are forced to 'preserve or enhance' the setting of Listed buildings on every occasion (using the Court's interpretation), many incidental changes within heritage settings will fail to gain approval and the strategy of the Island Plan will ultimately fail. Further, the Royal Court has ruled incorrectly on the meaning of 'preserve', contrary to a decision of the House of Lords.

7. The Minister has therefore appealed the Royal Court's decision to the Appeal Court.
8. The Minister's intention was to focus the appeal on the Court's interpretation of the HE1 Policy phrase 'preserve or enhance' in relation to the setting of Listed buildings, although the appeal was made on several grounds.

Recent developments

9. The Minister is aware of the public perception of this case and, although he has been at pains to distance himself from the development itself (and the developer), there is a view that he should not be challenging the lower Court's decision. However, the Minister wishes to emphasize that he is focussed solely on the policy point.
10. The Minister is quite content to leave the decision of the Court alone and to abandon certain grounds of appeal so as to ensure that the planning permission remains cancelled. However, the point of principle here is the ability of the Minister to deliver the States' approved Island Plan. These are genuine concerns which are quite separate to the effect of the decision on this planning application on either the applicant or the neighbour.
11. In order to prevent any perception that the Minister is aligned with the developer, or opposed to Mrs. Herold, the Minister proposes to amend his grounds of appeal to the extent that it focuses solely on the points of policy interpretation (which it does not do at present), and he is writing to the Court of Appeal accordingly. Any challenge to the Court's view about actual harm to the setting of Seymour Cottage will be dropped. The Court's cancellation of the permission will not be challenged.
12. The Minister will seek to correct, in his appeal, the Royal Court's interpretation of the HE1 Policy phrase 'preserve or enhance'. This will achieve the Minister's aim of allowing future developments to be assessed on a balanced basis, whilst protecting Mrs. Herold's position.
13. If the Minister does not appeal this decision, the Planning Applications Committee and the Planning Department will be left with a decision which hampers the delivery of development within the Built-Up Area, and which undermines the central strategy of the Island Plan – to protect the countryside.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were received by the States Greffe after the deadline set out in Standing Order 37A following further consideration of the matter by the Minister.