STATES OF JERSEY

PLANNING AND BUILDING LAW: REPEAL OF MINISTER'S POWER TO GRANT PERMISSION THAT IS INCONSISTENT WITH THE ISLAND PLAN

Lodged au Greffe on 10th June 2010
by Senator B.E. Shenton

STATES GREFFE

PROPOSITION

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

(a) to agree that the relevant Articles of the Planning and Building (Jersey) Law 2002 that allow the Minister for Planning and Environment to grant planning permission that is inconsistent with the Island Plan should be repealed to remove this power from the Minister; and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 B.E. SHENTON

Note: The relevant Articles of the Planning and Building (Jersey) Law 2002 that refer to the Minister's current power read as follows –

12 Public inquiries

(1) This Article applies in respect of an application for planning permission where the Minister is satisfied that if the proposed development were to be carried out –

(b) the development would be a departure (other than an insubstantial one) from the Island Plan.

19 Grant of planning permission

(3) The Minister may grant planning 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.

22 Minister to give reasons for certain decisions

(1) This Article applies where the Minister decides –

(d) to grant planning permission for development that is inconsistent with the Island Plan.

REPORT

To say that I have a few concerns about the operation of the Planning Department would be a huge understatement. I watch with incredulity a department operating in a somewhat maverick style, overseen by a Minister whose own vision for the Island seems to take precedence over an Island Plan passed by the States Assembly. Having watched the destruction of La Coupe, and the development of the Waterfront in the style of a poorly designed trading estate complete with a hotel disguised as a prison block, it is the duty of all of us to ensure that the beauty of the Island is not destroyed by award-winning architects based in the UK.

It was the sheer arrogance of the official comment to P.62/2010 that prompted me to take action and bring forward this proposition. It concerns the decision of the Minister to pass properties for construction by Dandara in a field, a decision contrary to the Island Plan.

Field 530A is a small field of 3.07 vergées (5,527m^2) which abuts onto the JMMB (Jersey Milk Marketing Board) site at Five Oaks and which forms part of the land sold to Dandara. Although it forms part of the old Jersey Dairy site it was used until comparatively recently for the grazing of cattle. Whilst the field had been in filled and, in the process, gained a covering of top soil, this had not stopped its use as grazing land.

The Comment states –

> *"F.530A, which is part of the designated Countryside Zone in which there is a presumption against development. However, Article 19(3) indicates that the Minister may grant permission that is inconsistent with the Island Plan if he considers there is sufficient justification to do so."*
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> *"The Minister made it clear that, as he believed it would improve the scheme from an aesthetic perspective, and having taken into account the condition and history of F.530, he would approve a significantly lesser number of houses on a smaller area of F.530A. The Minister is bound by his Decision."*
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> *"Accordingly, the applicant has a justifiable expectation that the Minister will approve a reduced number of houses on F.530A, and should he fail to do so, there would be grounds for an appeal to the Royal Court."*
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> *"The Planning and Building (Jersey) Law 2002, under Article 9, confers the power to make planning application decisions on the Minister for Planning and Environment. The States Assembly has expressly entrusted the Minister for Planning and Environment with the task of carrying out this function. With the greatest of respect to Members, they have already decided, through the Planning and Building Law, that the States Assembly will have no legal role in determining planning applications."*
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> *"The States Assembly carries out the vital role of amending, debating and determining the Island Plan, but once the Plan is approved it has vested the delivery of the Plan in the Minister for Planning and Environment. Consequently, in this case, lodging a proposition requesting the Minister to amend the Island Plan with the specific purpose of influencing the outcome, this current planning application can have little effect as the Minister is bound*

to determine the application under the planning policies that prevailed at the time the application was submitted in October 2009."

The above comment is just plain nonsense and one can understand why we have a Department that is haemorrhaging taxpayers' funds in Court cases and settlements.

The Minister has taken Article 19(3) in complete isolation and determined the application in a positive way without taking the wishes of the States Assembly or Article 12(b) into account. Why did he decide to go against the wishes of the Island Plan? Why did he decide to give permission without holding a Public Inquiry first?

Having made his decision his hands are tied as any subsequent reversal would result in a Court Case as the developer would be likely to take legal action. He states – "*the applicant has a justifiable expectation that the Minister will approve a reduced number of houses on F.530A"* which may be true, but it is only due to his decision to approve the development.

He writes – ""*The States Assembly carries out the vital role of amending, debating and determining the Island Plan, but once the Plan is approved it has vested the delivery of the Plan in the Minister for Planning and Environment."*

This is true – but the States Assembly has passed that power to the Minister on the basis that he will actually deliver the Island Plan in the manner expected – not destroy the Island through over-development. And why the desire to get the approval through under Article 19(3) when we are currently debating a new Island Plan which could have rezoned the area? Was he concerned that the people of Jersey may actually take precedence over the developers and there was a risk that the re-designation may be to Green Zone?

I do not believe that the Minister should have the power to grant permission that is inconsistent with the Island Plan as this power may be abused and there are currently no checks and balances in place to prevent this. If this Article is revoked there is nothing to prevent amendments to the Island Plan, debated and passed by the States Assembly, if the Island Plan is found wanting.

As it stands the Minister can go outside the Island Plan if he feels justified in doing so – yet this ruling is woolly, setting no minimum criteria under which a justification may be justified. The Minister could believe that the decision is justified simply because the architect has a knighthood! The development of the Island has, effectively, been placed in the hands of one person and, as he points out, the States Assembly has no role in determining planning applications.

In theory the business of Government should be fairly straightforward – the politicians represent the people and define policy, legislation is developed to reflect that policy, and the civil servants are employed to implement policy.

The role and skill set of each is quite separate. The politician's skill should be to understand the public's requirements, often adjusting conclusions to take note of other economic or social issues. The legislator's task is to develop legislation that reflects the wishes of the States Assembly. The Minister's job is to ensure that policy is followed and the wishes of Government upheld. His role is very defined and he requires no specific qualifications in relation to the department under his control. The

possession of qualifications relevant to the area under Ministerial control can both be a hindrance and a help.

It appears however that policy passed by the States Assembly can be largely ignored if it does not fit in with the philosophy of the Minister for Planning and Environment.

The Island Plan is a detailed document, written in a style that allows considerable flexibility in its interpretation. Hopefully the new document will be tighter. However there is one overriding principle that is beyond reproach and one that will be endorsed by all 52 of my political colleagues – there *is a presumption against development in the Green Zone and the Countryside Zone*. The States Assembly expects this very important policy to be upheld by the Planning Department.

I will use this Report to highlight instances whereby I believe the Minister for Planning and Environment has gone against the policy of the Island Plan passed by the States Assembly, and therefore the wishes of the States Assembly.

When the Island Plan was passed, the Assembly was cognisant of the fact that an outright ban of development in the Green Zone would cause some difficulty for householders that wished to extend their properties very slightly. Policy C5 of the Island Plan does state that extensions to dwellings may, in principle, be acceptable. Sadly the Planning Department has grasped this loophole to go against the wishes of the States Assembly and, in their own words, "extensions to properties in the Green Zone have been approved on many occasions." Indeed in the submission of application P/2009/2329 where the extension represented an increase in the floorspace of the property by 90% and a substantial re-design of the whole premises, the applicants architect states – "There is no restriction on the size of extensions in the green zone."

It could be viewed as being extremely unethical to discard the wishes of the States Assembly in such a cavalier fashion. The 'extension' to the property referenced above is not even an extension – it is the complete restructuring of an existing property. To merely describe it as an extension is somewhat misleading. As a rebuild there is a presumption against development and calling the project an extension does not allow Planning to circumvent Government policy. A complete restructuring of a property in height, depth, and width is not an extension – it is a restructuring.

This brings me to a further point – the interference in Departmental running by the Minister. As far as I am aware, the Minister for Planning and Environment does not have any qualifications specifically relevant to planning, architecture, or the environment. His job is to ensure that policy is being followed, such as the presumption against development in the Green Zone, and to give direction. The qualified staff within the Department are tasked with the actual implementation of policy and should be allowed to undertake their role with the minimum of interference.

It is therefore somewhat galling to find that the Minister is stepping beyond his brief and acting in a manner that would suggest that he considers himself to be an expert in planning matters. In some cases this attitude has cost the taxpayer dear.

In the case of Field 604 the pre-application advice, according to the application, was given by the Minister for Planning and Environment himself and not by one of the professionals in his Department. The Officers followed the Island Plan and

recommended that the application be rejected. However, the professionals were overruled by the Minister who allowed car storage on the site and the construction of an agricultural shed. An electrical supply powerful enough for a car wash facility was subsequently installed on the site.

It was only as a result of a third party appeal by a neighbour, willing to risk her own monies in order to preserve the sanctity of the countryside, that the decision was overturned. The field is still surrounded by a high fence which is not in keeping with the area. In this case, and others, we have a layman Minister, in my opinion, overstepping his powers and giving direction contrary to the wishes of the States Assembly. So where are the checks and balances so vital to good Government?

The brave person that appealed in the above case is still out of pocket as Planning are refusing to settle her costs in full. It is not just the financial cost that is relevant; it is also the emotional cost and stress inflicted on a widow.

At a Planning Application Panel meeting on the 20th May the consideration of a planning application in respect of a property called L'Oasis was on the agenda. Its application was drawn to my attention by the St. Martin's Conservation Trust, who are opposed to the development.

The States Assembly is the Island's legislator and as a politician I am tasked with setting the law, and upholding the law. The Planning Department is charged with carrying out its business in a largely independent manner – at all times upholding the principles and restrictions of the current Island Plan and Planning Laws. They do not have the legal flexibility to ignore policies clearly set out within the Plan.

The application was recommended for approval by the Department, which given that it is contrary to an important planning policy, is quite alarming. It implies that Planning are acting, once again, outside their powers and using subjective opinion outside their remit.

Policy C4 – Zone of Outstanding Character states that there is the strongest presumption against any development. The redevelopment of existing properties will only be permitted where they are within the same or lesser sized footprint of the existing dwelling and where any such proposal makes a positive contribution to the character of the area.

I reproduce below the Summary/Conclusion on the Planning and Environment Report P/2010/0064 –

> "The principle of erecting a replacement dwelling within the Zone of Outstanding Character is not precluded by the Island Plan policies. However, Policy C4 of the Plan states that the redevelopment of existing properties within this Zone will only be permitted where they are within the same or lesser sized footprint of the existing dwelling and where any such proposal makes a positive contribution to the character of the area."
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> "In this instance, the existing structure has been extended over the years in a very piece-meal fashion which has resulted in the building losing any intrinsic character that it may once have held. A structural report has also shown that the original building has no foundations and is, overall, in a very poor state

and uneconomic to bring up to standard. The Department therefore accepts that the demolition and replacement of the dwelling is justified."

"In terms of floor area the proposed dwelling would be double that of the existing dwelling and garage [455 sq.m compared with 258 sq.m existing]. Owing to the strict wording of Policy C4, this represents a departure from the Plan as it clearly exceeds the footprint of the existing dwelling. Nevertheless, the Department is recommending approval for the scheme, based on the grounds of securing the highest quality of architecture, but also for the potential improvements to the character and appearance of the area. The dwelling will be a relatively low profile structure, not readily visible from the coast road. Moreover, the removal of the existing dwelling and the shunting of the new structure to the north, will release views from the coast road to the wooded cotils to the west of the site. With a substantial, integrated planting scheme implemented from the outset, the new development should contribute significantly to the landscape character of the area."

"For the reasons outlined above the Department recommends approval, as an insubstantial departure from Policy C4 of the Island Plan."

Contrary to the view of Planning this is a substantial departure from Policy C4, a policy that the purpose of the Department is to uphold. Policies are not subjective thoughts open to interpretation, directions that can be ignored if inconvenient. It is almost as if the Planning Department believes that the Planning Law and States policies do not apply to them. Witness the determination of the Minister for Planning and Environment to build on 'important open space' within the North St. Helier Masterplan. Here we appear to have a department charged with upholding policy regularly ignoring it.

Finally I shall refer to the Westmount Quarry application, another Dandara development that the Minister appears very keen to pass.

It is my opinion that the application, approved but successfully opposed through third party appeal, is contrary to the following Planning guidelines –

1. Policy G2, of the Island Plan passed by the States in 2002.

Applicants need to demonstrate that the proposed development:

(i) will not unreasonably affect the character and amenity of the area;

(ii) will not have an unreasonable impact on neighbouring uses and the local environment by reason of visual intrusion or other amenity considerations.

2. Policy G3 of the Island Plan passed by the States in 2002.

A high standard of design that respects, conserves and contributes positively to the diversity and distinctiveness of the landscape and the built context will be sought in all developments. The Planning and Environment Committee will require the following matters to be taken into account as appropriate:

(i) the scale, form, massing, orientation, siting and density of the development, and inward and outward views;

(ii) the relationship to existing buildings, settlement form and character, topography, landscape features and the wider landscape setting.

3. Policy G4 of the Island Plan passed by the States in 2002.

Where a development is likely to have a significant impact on the quality and character of the physical and visual environment due to its location, scale or type of development, the Planning and Environment Committee will require an applicant to submit a design statement with the planning application.

4. G5 of the Island Plan passed by the States in 2002.

The Planning and Environment Committee will require that an Environmental Impact Assessment is carried out for developments of a scale, type or location that could have a significant impact on the environment.

5. Policy BE5 of the Island Plan passed by the States in 2002.

Tall buildings, defined as those either above five storeys in height, or rising more than two storeys above their neighbours will only be permitted where the accompanying design statement fully justifies their exceptional height in urban design terms.
In addition to needing to be in accordance with all other policies and principles of the Plan, tall buildings will be critically assessed for their:
(i) appropriateness to the location and context;
(ii) visual impact;
Development proposals which fail to justify their exceptional height will not normally be permitted.

6. Policy H8 of the Island Plan passed by the States in 2002.

Proposals for new dwellings, extensions or alterations to existing dwellings or changes of use to residential, will normally be permitted within the boundary of the built-up area as defined on the Island Proposals Map, provided that the proposal:
(ii) will not unreasonably affect the character and amenity of the area;
(iii) will not have an unreasonable impact on neighbouring uses and the local environment by reason of noise, visual intrusion or other amenity considerations;
(vii) is appropriate in scale, form, massing, density and design to the site and its context.

This Proposition effectively clips the wings of the Minister and the Department. If they don't get their act together, I have no doubt that further propositions will follow to force the Department to carry out the wishes of the States Assembly through the Island Plan, rather than consistently go against it. I would rather the Department were allowed to undertake their task with an element of discretion, but if they fail to step up to the plate I have no doubt that discretion will be removed.

Financial and manpower implications

There are no financial or manpower implications for the States arising from this proposition.