

## LAND CONTROLS LEGISLATION

~~1. This report has been prepared at the request of the Committee for more information on existing~~ legislation and policy on land controls which were transferred to that Committee on 23<sup>rd</sup> November 2004 from the Economic Development Committee.

### 1.1 Agricultural Land (Control of Sales and Leases) (Jersey) Law 1974, as amended

#### Purpose

- To control the occupation and use of agricultural land
- To ensure that a stable, viable agricultural land bank is retained for the farming industry

#### Background

In 1970 the then Agriculture and Fisheries Committee presented a report to the States on future agricultural policy in which it proposed, in respect of land tenure, to control the sales and occupation of agricultural land. The Committee wanted authority not only to impose conditions on the future use of the land but also to prevent sales in certain cases; particularly the subdivision of fields.

After consultation with Law Officers and the Agricultural Industry, in 1974 the Agricultural Land (Control of Sales and Leases) ( Jersey) Law, (74 Law) stemming from the report was introduced and this empowered the Committee to refuse consent to any transaction, or to grant consent, either unconditionally or subject to such conditions as it might think fit, having particular regard to reserving the land for the use of bona fide agriculturalists and when the 74 Law was amended in 1992, also with regard to the principles of “good husbandry”

#### Bona fide agriculturalists

The Agriculture Department of the Economic Development Committee has records of who it considers to be bona fide agriculturalists and who are therefore able to occupy agricultural land under the 74 Law. The legal definition of a bona fide agriculturalist for the purpose of the 74 Law is a ‘person who is wholly or mainly engaged in work of an agricultural nature in the Island for his own benefit and profit and also requires that person to have experience to farm the land, spend the majority of his working time on the land, receive the majority of his income from agriculture/horticulture and have the necessary machinery to work the land’

#### General Policy

It has been accepted since before the promulgation of the 74 Law that a stable, viable agricultural land bank needs to be maintained for the use of the Industry. However, it is now recognised that land is required for a whole range of uses which not only requires Planning permission but also the approval of the Land Control Section of the Environment Department (The Section) who administer the 74 Law.

The Section’s main role in the area of land control is to assess the agricultural value of land involved in any land transaction, and to decide whether this land needs to be protected for the sole use of bona fide agriculturalists by imposing agricultural use and occupancy conditions under the 74 Law or, whether the land can be used for other purposes including agri tourism, horse grazing, the creation of orchards or smallholdings by people who are not classified as bona fide agriculturalists. These uses are not classified as agricultural for the purpose of the Law and in such cases amended conditions can be imposed which can allow non commercial agricultural activity. A number of considerations are taken into account when deciding on the viability of land, including the aspect, size, topography, access, drainage, depth of soil and the presence of stone.

Whilst most requests fall into one of these categories, in a number of cases, requests are received for

agricultural land to be used to extend garden areas or for development etc. Although the general policy is to preserve agricultural land for the use of bona fide agriculturalists, each case is viewed on its merits and in certain circumstances it may be appropriate to release parcels of land which are too small or awkward in shape to be cultivated, or which, due to their nature, are of no real use for commercial agriculture. In any event the applicants are always referred to the Planning Department to apply for a change of use under planning legislation and only if planning permission is granted will the agricultural conditions be removed, although the two legislations are applied independently of each other.

The Sections Officer's have delegated authority from the previous Agriculture and Fisheries Committee and when the functions transferred, the Economic Development Committee, to decide whether to release agricultural land permanently from controls on land up to 1 vergées in size, without reference to the Committee. If permission is refused by officers, the applicant can appeal to the Committee.

A licencing scheme is now in place for areas of land over 2 vergées in size that allows landowners to occupy the land for agricultural purposes including horse grazing, where it can be proved that there is no interest from the agricultural industry by advertising in the JEP under a BOX NO. This is a voluntary procedure which is not covered by the Law but helps to ascertain any likely demand for the field and its potential loss to commercial agriculture. Decisions on issuing licences are also made by officers under delegated powers.

### **Policy on horse grazing**

- i. Viable agricultural fields will automatically be issued with a restriction of the grazing of horses in the conditions of consent on any sale, transfer or gift of land, under the 74 Law.
- ii. Vacant fields under two vergées, will, if requested, be assessed and if found not to be commercially agriculturally viable, ie rough grazing ,wet pasture etc., permission may be given for permanent horse grazing.
- iii. A request for horse grazing can be made to the Section for vacant fields that are over two vergées that have agricultural conditions imposed in a previous transaction. The applicants are advised to advertise the land to let in the JEP to gauge the demand for the land, if any. If there is no interest from bona fide agriculturalists, a temporary 3 year licence to occupy may be issued for the grazing of horses.
- iv. A prospective purchaser of previously unrestricted land who wishes to graze horses, should seek advice of the Section's Officers to assess whether permission would be forthcoming before entering into any binding transaction.
  - a) If there is a history of horse grazing and stables are constructed in the field or are part of a property attached to the land, the Section will usually consider a request for horse grazing sympathetically.
  - b) Permission for rotational horse grazing on larger parcels of land may be given with the consent of the tenant
- v. If land is unrestricted (no controls under the 74 Law), the owner is allowed to graze horses without reference to this Section.

Decisions on all the above are within officers existing terms of reference.

### **General Points**

In the case of land transactions where agricultural land is subject to a planning application for a development, initially, full agricultural conditions are imposed and their removal is only permitted subsequent to a planning permit being granted. If, in the opinion of the Section's Officers the land should be retained in agriculture and have objected to the development in the consultation process, agricultural conditions can be maintained even though planning permission has been obtained. The onus is on the developer to seek the removal of the agricultural conditions. Planning permits include the following caution "the grant of this consent is purely permissive and in no way absolves the parties concerned from obtaining, nor does it over rule, any other permission that may be required from other Departments"

Only in certain circumstances will the sale of part of fields be allowed under the 74 Law, such as small strips

which straighten off the boundaries of fields which do not impact on the working of the land. Normally the subdivision of fields into separate ownership is resisted, as this leads to the creation of smaller areas of workable land which makes fields less viable.

The 74 Law provides control on the following uses which take land out of commercial production (Planning permission for these uses is not required)

- horse grazing
- tree planting schemes
- creating park land
- splitting of fields
- environmental planting schemes.

**Conditions which may be imposed are as follows:-**

**Full Agricultural conditions (a) & (b)**

- (a) that the land involved in the transaction, shall not, without the consent of the Environment and Public Services Committee, be occupied by anyone other than a bona fide inhabitant of the Island specifically approved by the Committee who is wholly or mainly engaged in work of an agricultural nature in Jersey for his own benefit and profit;
- (b) that the land involved is used for agricultural or horticultural purposes only; this excludes the grazing of equine animals and the growing of trees without the written consent of the Committee;

**Conditions added to (a) & (b) if land purchased by non agriculturalist**

- (e) that the land involved shall not be occupied by the purchaser(s)

**Condition (g) added to (a) & (b) if land purchased by non agriculturalist but has a sitting tenant**

- (g) the purchaser shall notify the Committee if there is a change of tenant of the land involved by completing and returning the enclosed Land Transaction Form

**Condition (h) added to (a) & (b) if the land is unoccupied at the time of purchase by non agriculturalist**

- (h) the purchaser shall notify the Committee of the leasing arrangements of the land involved by completing and returning the enclosed Land Transaction Form

**Agricultural conditions if a non agriculturalist is allowed to occupy the land**

- (b) that the land involved is used for agricultural or horticultural purposes only;

**Leasing conditions**

- (1) that the land involved is used by the lessee for agricultural or horticultural purposes only;
- (2) that the land involved is not used for the grazing of equine animals or the growing of trees;

**Gardens or non agricultural land**

- (c) unconditional:- the issue of this consent is purely permissive and does not exempt the purchaser from any other statutory controls. In particular the permission of the Planning Department may be required before any of the land is considered to be part of the domestic curtilage of the property.

**Condition if the land is non agricultural but worth preserving in its natural state eg. woodland, gorseland, dune.**

- (d) material changes to this area of (*woodland*) may be regarded as detrimental to the landscape and you are advised to contact the Planning Department, South Hill, St Helier, for advice on

**conservation matters before making any changes;**

## **1.2 Protection of Agricultural Land (Jersey) Law 1964**

### Purpose

- to ensure that agricultural land is reinstated to the satisfaction of the Land Controls Section after use for building site service ie. building material storage and access.
- To prevent spoliation of agricultural land which is not regulated under the 74 Law

The Protection of Agricultural Land (Jersey) Law, 1964 (64 Law) enables the Section to enforce the reinstatement of agricultural land. The Law is enforced for all types of material misuses of agricultural land.

Developers require permission from this Section under the 64 Law to use land for building site service. Procedures are in place so that the Section's Officers can monitor the reinstatement of the land to ensure that is done correctly. Planning does not control the use of agricultural land for development site service as it is an exempt development under Planning regulations, this is controlled and monitored by this section under the above Law.