

STATES OF JERSEY



ISLAND PLAN 2011: REVISED DRAFT REVISION – APPROVAL (P.37/2014) – NINTH AMENDMENT (P.37/2014 Amd.(9)) – AMENDMENT

**Lodged au Greffe on 14th July 2014
by the Minister for Planning and Environment**

STATES GREFFE

PAGE 2, AMENDMENT (a) –

For the words “materially harm the amenities of neighbouring properties”, substitute the words “unreasonably harm the amenities of neighbouring uses, including the living conditions for nearby residents”.

MINISTER FOR PLANNING AND ENVIRONMENT

This amendment has been lodged by the Minister for Planning and Environment for less than 6 weeks before the start of the debate in accordance with the provisions of Article 4A of the Planning and Building (Jersey) Law 2002. Paragraphs 4A(2), (3) and (4) are in the following terms –

“4A Procedure for and following lodging of draft Island Plan

- (2) An amendment to a draft Island Plan cannot be debated by the States unless it has been lodged for a minimum period of 8 weeks.
- (3) An amendment to an amendment to a draft Island Plan cannot be debated by the States unless it has been lodged for a minimum period of 6 weeks.
- (4) Paragraph (2) or (3) does not apply to an amendment lodged by the Minister if the States agree that the amendment may be debated forthwith or on a day or at a time approved by the States.”

In accordance with the provisions of paragraph (4), the Minister for Planning and Environment will seek the agreement of the States to debate this amendment during the debate on P.37/2014: Island Plan 2011: revised draft revision – approval.

REPORT

Summary

Whilst appearing to be a relatively minor amendment, if adopted, Deputy J.H. Young of St. Brelade's amendment has hugely significant implications and cannot be supported. It centres around the extent to which new development has an impact on neighbouring properties and the test used to determine whether or not the impact of such development is acceptable.

The Deputy's proposed amendment seeks to reduce the level of this test to such a low level that it would effectively render much development anywhere in the Island, but particularly in the Built-up Area, extremely difficult to achieve. This could have seriously adverse implications for one of the key strategic principles of the Island Plan, which is to ensure that the Island meets most of its development needs from within the Built-up Area.

Having considered this matter, the independent Planning Inspectors have helpfully suggested a form of words which facilitate developments that, while they may be unwelcome to neighbours, would not cause them unreasonable adverse impacts.

This is a balancing exercise crucial to the determination of many planning applications, particularly in built-up areas, and it is considered that the additional amendment of this proposed change, as I have set out in my further amendment, results in the best outcome. This will continue to enable much-needed development and regeneration in urban areas, whilst providing appropriate safeguards for the amenity of neighbours.

Detailed response

Whilst Deputy Young's amendment appears to be relatively minor, his proposed change, if adopted, has hugely significant implications and cannot be supported.

It centres around the extent to which new development has an impact on neighbouring properties and the test used to determine whether or not the impact of such development is acceptable.

The proposed amendment seeks to reduce the level of this test to such a low level that it would effectively render much development anywhere in the Island, but particularly in the Built-up Area, extremely difficult to achieve. This could have seriously adverse implications for one of the key strategic principles of the Island Plan, which is to ensure that the Island meets most of its development needs from within the Built-up Area.

The test of 'material harm', proposed in this amendment is a very low and almost benign one: it could be argued that almost any development will cause some harm to the amenities of neighbouring properties. The independent Planning Inspectors agree with the Minister on this point, and make the following comment¹ –

¹ Report to the Minister for Planning and Environment: Further Examination in Public (July 2014)

“ ‘Materially harm’ would mean any impact relevant to planning that might be held to affect neighbours’ living conditions adversely, or the amenity at nearby non-residential properties, even in the most minor degree and regardless of any other consideration. Decision-makers would be bound to have regard to this.

It could also lead, for example, to perfectly acceptable residential extensions, not opposed by neighbours, being found contrary to the policy because, objectively assessed, the outcome would cause, say, even very limited overshadowing, hemming in of outlook or increased overlooking. The impending merits based appeals system would not provide a remedy since it too would be subject to the amended policy.

In short, this seemingly simple rewording of Policy GD1 would risk substantial difficulties in the determination of applications, perhaps negating reasonable expectations on the part of applicants, and we could foresee legal challenge.

There is also a danger that it would become more difficult to achieve development within the Built Up Area, where the strategy and plan propose that most should take place.

Such restrictions should not be introduced in response to individual dislikes of some particular developments.”

The Planning Inspectors further suggest that the use of the current term ‘serious harm’ in Policy GD1 may be giving rise to misconceptions and misinterpretation about how the policy is being used in practice.

They recognised that assessing the impact of development, even where it might be unwelcome to neighbours, is a balancing act, and the test should be based on an assessment as to where it causes them unreasonable adverse impacts. The Inspectors have helpfully suggested wording which reflects this and which might be incorporated into the Policy to deal with his issue.

The Minister is content to accept their advice as set out in this further amendment.

Financial and manpower implications

There are no direct financial or human resource implications arising from this further amendment.