

BUILDING AND DEVELOPMENT CONTROL COMMITTEE

GREEN PAPER- – For Public Consultation

Draft Building and Development Control (Alderney) (Amendment) (No 2), 2017 as explained in this paper

Q. When will the draft Ordinance be submitted to the States for approval?

A. Not until the Land Use Plan 2017 has been considered before the public inquiry, the Planning Inspector has reported to the Building and Development Control Committee and the Plan put before the States for approval towards the end of 2017.

Q. What is the purpose of the draft Ordinance?

A. The draft Ordinance will amend the Building and Development Control (Alderney) Law 2002, as a consequence of –

- proposed amendments to the Law to remove certain disapplications of the Law and the Land Use Plan to the States and public utilities so that the same legal provisions apply to them as to individuals and companies; and
- proposed amendments to planning policy in the draft Land Use Plan 2017.

The draft Ordinance amends Section 12 of the law for the designated area. It has three main purposes which are explained in this green paper.

Q. What is the effect of section 12?

A. Section 12 is a prohibition against the Committee granting planning permission in the designated area. Therefore, if development is prohibited the Committee **cannot** consider an application. If an exception is made to the prohibition this **does not mean permission will be granted** but that the Committee may consider an application and make a decision against the policy in the Land Use Plan and other planning considerations.

Q. Why is an amendment needed to section 12 to add more exceptions?

A. There are three reasons for this amendment to Section 12:

1. the removal of States and Public Utilities exemptions
2. to achieve consistency between the Land Use Plan and the BDC law
3. to permit BDCC to consider a Planning application for development or other work of strategic importance.

Each of these reasons is explained as follows.

1. Removal of States and Public Utilities exemptions

The law (Section 67) completely exempts the States from the need to make Planning applications for any work or any development they wish, whether it is carried out in designated area (Green Zone) or Building Area. This has been considered unsatisfactory for some years. Informal policies agreed between States Committees have resulted in planning applications being made for certain States Developments but some States developments were treated as exempt. The proposed removal of the exemptions in the Law will mean that there is a legal requirement for the States to make an application which will be considered under policies in the draft land Use Plan.

Similarly the law (Section 76) contains provisions with a similar effect so that Alderney Electricity and Sure are not required to apply for planning permission in either the Building Area or the designated area for any works for the purpose of laying new mains or for work to existing mains, pipes or apparatus including digging up land or a highway.

There is also a wider disapplication of the Land Use Plan (Section 67) to the States and certain public utility companies for the purposes of providing public utility services so that the policy safeguards in the Plan do not apply to those works.

Some planning applications to date have been made on a voluntary basis (substations) whereas there is a recent example where cable laying in the designated area in an area of registered heritage importance, did not. This is unsatisfactory.

As these current States and public utility disapplication's **are being removed from the Law**, the exceptions to the prohibition in section 12 need to be amended to ensure that a planning application can be made for certain essential States and public utility works which are too significant to be exempted altogether from planning control under the Exemptions Ordinance. The Committee can then consider an application against the Land Use Plan and other planning considerations.

The proposed change to Section 12 will allow a Planning application to be made for development or other work carried out by the States or named public utilities in the designated area for the following purposes mainly relating to supply of essential services to the public. Whether or not permission is granted will depend on assessment of the proposals against the policies of the Land Use Plan and other planning considerations;

- *The supply of electricity;*
- *The supply of telecommunications services;*
- *The supply of sewerage disposal services;*
- *The supply of water;*
- *The provision of waste disposal or recovery facilities;*
- *The provision of postal services;*

- *The provision of a system for the delivery of heat to premises;*
- *The construction or maintenance of any highway or private pedestrian road, street, track or path or installation or maintenance of street furniture (street lighting, public seating etc.);*
- *The safe navigation of ships or aircraft;*
- *The safe operation of a port or airport;*
- *Coastal defences;*
- *Water courses or outfalls or for the carrying out of land drainage;*
- *Provision of a cremation, burial or other facility for the disposal of human remains;*
- *The extraction of aggregates or minerals in any part of the designated area zoned for minerals under the Land Use Plan;*
- *For archaeological investigation or evaluation;*
- *The Alderney railways.*

The proposed Law amendments in the draft Ordinance also include the removal of the States and public utility exemptions and provide for a transitional 6 month period to allow the States and public utilities to finish developments carried out without planning permission but started before the date the exemptions are removed.

2. **To achieve consistency between the Land Use Plan and the BDC law**

Historically the BDCC have applied Land Use Plan policies which seek to permit certain minor developments in the designated area but which are inconsistent with the Law. The wide review of the Law and the Land Use Plan has highlighted that some inconsistencies have developed over time between the Law and the Land Use Plan and between practice and the provisions in the Law and Land Use Plan. The opportunity is now being taken to deal with these confusing inconsistencies so that the legal position is clear for individuals and businesses.

For example, field shelters for animals and memorial benches were allowed in the designated area without specific exceptions in the Law. Also, the current exceptions in section 12 of the Law only provide clearly for exceptions for certain building operations and not to the erection of signs or adverts, the carrying out of works which might affect the character or appearance of a historic building or changes of use. This probably arose as the current Law is a consolidation of earlier laws which had a narrower scope and did not require planning permission for such works so that the original exceptions from section 12 only covered building works. The amendments make the position clear by dealing with these kinds of development.

For this reason the draft Ordinance clarifies the position for these other kinds of development by –

- removing some of them from the prohibition against granting permission so that an planning application can be made (e.g. works which only require permission

because they are carried out on a registered building or a building in a conservation area or the erection of signs or adverts-see new section 12(2)); and

- providing for specific exceptions for others-e.g. construction of animal shelters and material changes of use except for a change of use to a dwelling reflecting the policy not to allow new dwellings in the designated area (see paragraphs 1(3) and 2 of new Schedule 1) .

An exception has also been added, reflecting policy in the draft Land Use Plan, for development necessary to construct recreation facilities but only in a part of the designated area zoned for recreation and open space in the Land Use Plan.

3. Development or other work of strategic importance. (Paragraph 13 of Schedule 1 to the draft Ordinance)

This part of the amendment proposes a substantive change to the present restriction of BDCC power to approve an application in the designated area which falls outside the present exceptions.

The present exceptions enable the BDCC to approve an application for the following subject to assessment against the policies in the Land Use Plan and other planning considerations:

- *the reconstruction, extension or alteration to existing structures in the designated area*
- *the construction of a freestanding residential annex ancillary to an existing dwelling*
- *structure solely for Public utility*
- *structure solely for Agricultural purposes*
- *Garage, wall, gate, fence or shed or other structure used in conjunction with an existing structure*

This part of the proposed change to the Law is intended to enable greater flexibility as proposed in the draft Land Use Plan 2017 (Policy S7 on page 3-17) for projects in the designated area. The projects would be decided by resolution of the States at a States Meeting, on the recommendation of the Policy and Finance Committee, to be of **strategic importance**.

THIS PARTICULAR PROVISION IS DEPENDENT ON THE PROPOSED MAJOR PROJECTS POLICY OF THE LUP BEING APPROVED BY THE STATES AS CURRENTLY DRAFTED TO APPLY TO THE DESIGNATED AREA.

It is recognised that this part of the proposed law change is significant. **It will therefore only be proceeded with if the States adopt the proposed Land Use Plan 2017 policy for major projects (S7) applicable to the designated area.** **If this policy is not approved by the States the relevant paragraph (13 of Schedule 1) will be removed from the draft Ordinance and will not be taken further.**

The wording proposed within paragraph 13 has been drafted by the Law Officers to ensure the decision is at a strategic level and does not anticipate the full planning considerations which would be considered by the BDCC as planning authority when any planning application is decided. The following needs to be emphasised.

- *The decision that development is of strategic importance is not for the Policy and Finance Committee but for **the whole States** so that any proposed decision will be subject to prior discussion at a peoples' meeting and in the States; P&F role is to make a recommendation to the States to pass the resolution.*
- *The P&F Committee and the States in making a decision to recommend or pass a resolution must do so only in accordance with strict criteria set out in the Law which must **all be met**:*
 - *It must reasonably appear to the States that the development is likely to be of significance for the whole of or a significant part of the Island or is very significant for the Island in any other way;*
 - *There appears to be a real possibility that the development will be of long term benefit to the public or the Island in such that there is a real possibility that it will be in the wider public interest, and;*
 - *The potential long term benefit is so significant, having regard to the long term interests of the Island, so as to justify an exception from the prohibition in section 12.*

Even if the States decide that a development is strategically essential under this proposed law change and therefore a Planning application may be submitted to BDCC for the development in the designated area, such application can only be approved by BDCC if it is consistent with the relevant policies in the Land Use Plan in particular **the criteria of the proposed major projects policy S7**. The BDCC would also need to take into account other material planning considerations in the Law in considering whether or not to grant permission.

In the event of a Planning application being submitted which is inconsistent (in more than a minor way) with the Land Use Plan policies, the BDCC law cannot grant permission. It must either refuse permission or if it wants to approve the application must arrange for the holding of a further public inquiry into amendments to the Land Use Plan to allow the application to be granted.

The special importance of the Land Use Plan in Alderney

Under planning Law in Alderney (as in Guernsey) the LUP policies carry more weight than planning policies in some other British jurisdictions such as England and Jersey where other considerations can outweigh the plan policies.

The BDCC only has a power to make a minor departure from the LUP policies when making a decision so that if it wanted to do more than that e.g. for development which was resolved to be of strategic importance, it could not grant permission if this was a more than a minor departure from the LUP policies without a public inquiry to amend the LUP.

This is set out in section 31(2) of the Law although a developer would have a right to appeal to the Court of Alderney a decision to refuse permission on the basis that what was proposed was more than a minor departure from the LUP policies.

The Land Use Plan policies are, therefore, a very important consideration and carry significant weight.

The draft Ordinance was produced after extensive advice from the Law Officers as part of the draft land use plan policy preparation. The announcement of the BDCC intention to publish this draft Ordinance for consultation has generated significant public comment prior to its publication. Understandably the BDCC is aware of concerns that the change being considered might weaken the protection of the designated area.

The Committee wishes to emphasise that it regards it as essential to the future of Alderney that a high level of protection is maintained for the designated area. The more detailed policies within the draft Land Use Plan 2017 are designed to ensure that this protection is ensured whilst at the same time allowing certain development with minimal impacts or that which is necessary to provide public services or which is strategically essential so as to help us achieve a more sustainable community in Alderney.

Q. Are there further safeguards which could be introduced?

A. Further Proposal from BDCC (Not included in the draft Ordinance)

The BDCC has given further consideration to how this draft law change might be strengthened to provide a further procedural safeguard to protect the designated area. It has taken further advice from ARUP and Law Officers on this point.

It has considered experience in Jersey, where major projects which affect a significant part of the Island or its population may be subject to a Planning Inquiry, but there is **currently no provision in BDC law for a Planning Inquiry into a Planning application in Alderney.**

The concerns expressed are that the draft proposed provides a “back door” for the BDCC to give consent. This is not intended, but it is recognised that at present if someone wanted to carry out development not benefitting from an exception under section 12, legislation would be required either to add a further exception to the Law or to remove the relevant site from the designated area.

Also, a consequential Land Use Plan amendment is likely to be required, subject to a public inquiry process, to reflect the change to the designated area or the exceptions in the Law.

The Committee has considered whether an additional safeguard should be included if the Major Projects Policy is adopted as currently drafted and the strategic development exception in the Law is approved.

To ensure equivalence with the existing safeguards as far as possible the Committee is seeking public comments on whether it should include additional provisions in the amending Ordinance.

To give the BDCC new powers to request the holding of **a Planning Inquiry into a planning application** which has been submitted following a resolution by the States that the development is strategically essential (i.e. under paragraph 13 of Schedule 1). The provision would also provide for the BDCC to set the terms of reference for the Independent Inspector and for outline procedure for the inquiry.

In this case the Inspector would be required to hear evidence and representations on the main points referred to him or her and recommend whether or not the BDCC should grant permission having regard to the Land Use Plan policies and other planning considerations.

Reservations about a Planning Inquiry provision

The possibility of an Inquiry into a Planning application has not been previously suggested by the Committee nor is it included in the draft Land Use Plan which is published for consultation. The draft Statutory Guidance would also require amendment.

This provision would not be a complete panacea, the BDCC as the planning authority would have to reach a decision itself on any application following a recommendation from the Planning Inspector.

It is arguably unnecessary as the Law already prevents the BDCC from granting permission in the Designated Area under section 12 except for development specifically excepted and provides for an inquiry into a Land Use Plan amendment (but only where the BDCC are disposed to grant an application which would be a departure from the Land Use Plan Policies).

There would also be cost and delay implications in having a public inquiry for both the States and any future applicants. However costs could be constrained if the power for the BDCC to request an inquiry enabled it to set out the particular matters/terms of reference for the Planning inquiry having regard to public representations made on the planning application.

Whilst it is standard to provide for a power to hold an inquiry into major applications in most other parts of the British Islands, it has never been part of the system in Alderney or Guernsey probably because the development plans carry more weight so that a significant departure from those plans would require an inquiry to amend the plans.

Although this provision is not currently included in the draft Ordinance **the Committee consider the option of holding a Planning Inquiry into a relevant Planning application should be part of this public consultation.**

Public Comments

The Committee **invite comments from the public** on the draft Building and Development Control (Alderney) (Amendment) (No 2) 2017 Ordinance and policy as explained in this paper, including the possible addition relating to the Planning Inquiry. The Comments will be taken in account by the Committee in finalising the draft.

Comments should be submitted in writing to the Planning Office, States of Alderney, P O Box 1001, Island Hall, Alderney, GY9 3AA or by email to Planning@alderney.gov.gg **to be received by 0900 on Monday 4 September 2017**. Please address any queries to Planning Officer John Young 825531 or john.young@gov.gg

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