

BUILDING AND DEVELOPMENT CONTROL COMMITTEE

POLICY MEETING 18 April 2017

Anne French Room at 1600 (after Site visits)

Present:

**Mr M Birmingham, Chairman
Mr M Dean
Mr A Snowdon
Mr S Roberts**

Mr J Young, Planning Officer

The Committee received a detailed report from the Planning officer on the work in progress for the Land Use Plan 2017 and the consequential law amendments. The following aspects were discussed and direction given to the Planning officer to enable drafting work to continue and plan and law changes to be finalised and published for public consultation:

1. Proposed Timetable and project plan

Land Use Plan

Publication of the draft Land Use Plan and associated documents, opening public consultation- 12 June 2017.

Closing date for submission of consultation responses – 11 August 2017

Planning Inspector publishes a note determining the procedure/ content/ timetable of the Planning Inquiry- deals with responses by open correspondence – 21 August 2017

Planning Inquiry due to commence – 4 September 2017

Expected duration of Planning Inquiry – 3 weeks (a fourth week is reserved if needed)

Time for the Inspector to produce his report to the BDCC – expected five weeks- due 30 Oct 2017

BDCC will publish a formal response to Inspectors report with the LUP which is formally submitted to the States with a resolution on the Billet for approval. This may make the November States, more likely it will be December 2017, depending on how much change and modification of the LUP is required. Once lodged on the Billet, the draft LUP is open to amendments lodged by States members.

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ARUP will deliver the Draft plan documents on 19 May. BDCC will hold an all-day meeting on 22 May at which ARUP will walk the committee through the draft plan. Between then and 31 May the LUP will be revised for BDCC instructions and published on 12 June for public consultation.

The committee approved the timetable and agreed the 22 May all day meeting with ARUP to consider the draft LUP

2. Consequential Law amendments

The consequential Law amendments enabling LUP policy changes will be submitted to the States for approval at the same sitting as the LUP.

The Committee considered a first draft of the following technical amendments to BDCC law which proposes procedural changes only which are not controversial

- (a) Section 23 - Scope of the LUP and legal effect
- (b) New power – Section 7A to issue statutory procedural guidance – required by proposed EIA, Major Projects and Change of Use policies.

This amending Ordinance will need to be finalised and lodged by 28 May on the June Billet for the States approval, **BEFORE** the publication of the Draft LUP and associated documents.

This was agreed. The Committee discussed the Planning Officers recommendation that the land use plan required to take account of Strategic documents approved by the States by resolution and agreed this should not be specific to the States Strategic Plan 2014 nor retrospective.

The Committee approved the draft amending Ordinance for the technical enabling procedural changes to the BDCC law, subject to final changes, for submission to the June States.

3. Major Projects Policy and possible change to Section 12

The Committee discussed the possible change to Section 12 which would be required if the States approved a major projects policy in the LUP. The Committee were advised that the law officers had required prior public consultation on any change to Section effecting the designated area. This would need to be included in a separate Ordinance (No 2).

The following proposal had been under consideration by ARUP

Major development proposals of island-wide significance and which may not accord with specific policies of the Land Use Plan may, exceptionally, be allowed where:

- the development is clearly demonstrated to be in the wider public interest of the Island;
- there is no alternative site available that is more suitable for the proposed development; and
- the proposals accord with the vision, guiding principles, and any relevant infrastructure specific policies set out in the Land Use Plan.

In the context of the LUP, major projects are considered to be those that are of such a scale or nature as to have the potential for island-wide economic, social and environmental impacts. Such a proposal would need to link to EIA – so could include large scale residential proposals or other schemes.

It was advised the Call for Sites assessment concluded that for some developments, the case for the proposals had not been sufficiently demonstrated at that time and/or the proposals were not sufficiently spatially defined at the time the LUP was prepared to enable a zone to be included and subject to the policies set out in Chapter 4. The LUP also will not make provision for development proposals that are clearly demonstrated to be essential to the public interest of the Island but are not envisaged at the time the LUP was prepared. Given the potential importance of these projects to the Island community, such proposals should be assessed against the criteria set out in a Major Projects Policy

BDCC agreed it would need to be satisfied that the particular choice of location for the proposed development can be clearly justified and that the proposals represent the best practicable option, taking into account all relevant economic, social and environmental considerations. A detailed and comprehensive site selection study, together with more technical evidence such as environmental, economic and social assessments, will be expected to be submitted to the BDCC in support of any planning application and draft statutory guidance on major projects complied with.

Measures to mitigate any harmful effects on the environment would need to be incorporated into any scheme from the outset and it will be expected that opportunities for environmental enhancement and compensation will be explored and implemented wherever possible.

The Committee agreed discussions should continue with the Law Officers and a draft produced for the Committee's consideration at a later date for public consultation after the Land Use Plan had been published.

4. Planning Inquiry into a Major Project

The Committee discussed with the Planning Officer whether such a project being promoted under this policy should be subject to a Planning inquiry or public hearing. There is no such provision in Guernsey, but exists in Jersey. The Law Officers advice is negative because there is opportunity of calling a public Inquiry under a departure from the LUP provisions. The Law Officers would want to give the viries of such a change further consideration.

The Committee agreed discussion should continue as this option should not be ruled out

5. Designated Area – Other land use and developments proposed to be permissible in the draft LUP subject to amendments to Section 12 of the 2002 Law

The Committee was advised there were significant inconsistencies between the existing LUP agreed in 2011 and Section 12 of the Law. The law officers advised the Law would override, so it is important that the new LUP and the law do not contradict.

The changes proposed remain broadly comparable to the current LUP. Exceptions in the new LUP are the removal of the commercial and protected zones and on the request of the BDCC, the introduction of a new tourism zone.

The Law Officers advised that including a schedule in the law under Section 12 would be a more appropriate mechanism of reflecting the land uses and development, which the BDCC wishes to be permissible under Section 12 of the 2002 Law and the LUP. A draft of this changes will be available in time for 22 May BDCC meeting.

A preliminary copy of the draft LUP policy for the designated area was provided to BDCC including:

- Existing Residences
- Residential Annexes
- Tourism (New Zone)
- Agriculture
- Recreation & Open Space
- Alderney Railway
- Utilities
- Consolidation of Solid Waste facilities

The Committee approved these instructions and agreed they be finalised with the Law officers

6. Planning Exemptions - Repeal Section 67 and 76.

Current BDCC instructions to the Planning officer are to rationalise the States and Utility exemptions as part of the law changes which accompany the new LUP policies for Infrastructure to ensure that Utility and infrastructure maintenance, like for like

replacement and normal day to day work is not burdened with unnecessary time consuming bureaucratic processes which add no value.

However new infrastructure projects and those which effect the designated area and historic assets, should be subject to a prior Planning application and comply with the Land Use Plan

At present the law is very unsatisfactory, Section 67 (1) of the BDCC law provides almost blanket exemption for the States and their employees and agents acting on behalf of the States. There is a long standing consensus this needs to be much more selective.

The exemption under 67(2) for public utility services provided by the States and named bodies currently AEL ,Guernsey telecoms , Guernsey Post and any other named by Ordinances, is out of date , too restrictive and the exemption from the LUP is entirely illogical .

Section 67 (3) provides useful definitions of what is meant by the provision of Public Utility Services and defines the public utility services themselves, which should be retained

The 2007 exemption Ordinance based on Guernsey's exemptions is inconsistent with the law. The Law Officers advise this should be corrected. As the law overrides the exemption Ordinance is not generally applied to the States and Utilities.

The Planning officer and ARUP having discussed this problem with the LOC proposed a solution. The exemption Ordinance is very detailed and makes a good attempt to identify what should be exempt. The Committee were recommended to rely on the exemptions listed in Category 5 from the schedule to this Ordinance, transferring in the definitions of public utilities from Section 67 (3), and repeal the section 67 (1) and (2) exemptions in the BDCC law entirely. This change is simple and practical.

The Law Officers have advised In principle, they are in agreement with this recommended approach however have set out a number of provisos detailed in the Planning officers report which the Committee decided it need not discuss in detail.

The Committee accepted the recommendation to repeal States and Utilities exemptions in sections 67 and 76. It delegated the task to the Planning Officer to finalise these changes with the Law Officers ensuring that the Law Officers requirements and their provisos were met.

7. Possible restriction on new dwelling units to restrict second home occupation

The Committee discussed public and members concerns over the effect of the repeal of C permits for new housing units effective from 1st January 2017 in particular the potential loss of housing land for local residents to off island (second or holiday home) persons who left these homes unoccupied for large part of the year. This would be detrimental to the recovery of the Island's economy and increases in resident population.

The Planning officer had sought advice from ARUP and been informed about the St Ives (Cornwall) Planning condition imposed on new dwelling units. This had been subject to a UK Planning inquiry and the following policy adopted, after a local referendum and unsuccessful legal appeal. ARUP have conducted research .The key example is Policy H2 (Full Time Principal Residence Requirement) in the St Ives Area Neighbourhood Development Plan.

Due to the impact upon the local housing market of the continued uncontrolled growth of dwellings used for holiday accommodation (as second or holiday homes) new open market housing, excluding replacement dwellings, will only be supported where there is a restriction to ensure its occupancy as a Principal Residence.

Sufficient guarantee must be provided of such occupancy restriction through the imposition of a planning condition or legal agreement. New unrestricted second homes will not be supported at any time.

Principal Residences are defined as those occupied as the residents' sole or main residence, where the residents spend the majority of their time when not working away from home. The condition or obligation on new open market homes will require that they are occupied only as the primary (principal) residence of those persons entitled to occupy them. Occupiers of homes with a Principal Residence condition will be required to keep proof that they are meeting the obligation or condition, and be obliged to provide this proof if/when Cornwall Council requests this information. Proof of Principal Residence is via verifiable evidence which could include, for example (but not limited to) residents being registered on the local electoral register and being registered for and attending local services (such as healthcare, schools etc.).

The Committee were informed of examples of similar policies (e.g. Lynton and Lynmouth Neighbourhood Plan) or slightly different (Lake District Housing Provision SPD – restricts local housing to those with an identifiable local need) being used in National Parks – however, as National Parks have a duty to deliver local needs affordable housing (English National Parks and Broads UK Government Vision and Circular 2010), these are not applicable to the Alderney context

ARUP initial advice is that whilst a policy similar to that adopted in St Ives could be appropriate, that the current evidence collected is not sufficient to demonstrate that second homeownership is increasing, or is sufficiently damaging to Alderney to warrant this type of restrictive policy – particularly as the Housing Strategy does not come to this conclusion, and says:

'Second home owners, when on island, make a significant contribution to the local economy and have a role to play in supporting sustainable service provision. It is therefore recognised that a portion of homes on the Island will continue to be for second home owners. The impact of second home owners on housing provision should continue to be monitored.'

The Law Officers advised they would need to consider whether such a condition would meet the tests for conditions under English case law, and there was a less certain legal basis for applying such conditions in Alderney without Part V of the law, repealed in December.

The Committee decided they were in favour of including a policy proposal in the draft LUP to apply a minimum occupancy condition to all new housing units, but would defer a decision on whether this should be a reserve or contingent policy or of immediate effect. The Committee authorised drafting of the Policy.

8. Call for Sites / LUP - Fort Albert/Arsenal

ARUP have requested preliminary thoughts on future development of the Arsenal. Mount Hales submission proposes a range of possible uses and associated indicative schemes (based on historic work), which focus on developing land within the curtilage of the Arsenal curtain wall which is currently undeveloped/open land. The majority of the Arsenal is not in the Building Area (just the main building), with the existing residential block within the Residential Zone of the Designated Area.

Arup's' advice last year was no to housing. That remains unchanged. However, the site is an asset for the Island and a case could potentially be made for new tourism accommodation within the site should that be desirable. Arup do not advise further commercial (office) floor space should be provided here. The Committee were requested for a preliminary tentative view of the provision of tourism accommodation.

The Committee initial reaction concurred against housing and commercial office development of the Arsenal but was not opposed to tourism development being considered, subject entirely to the due process of the Planning Inquiry. The planning officer was requested to communicate with ARUP without a commitment.

9, Land in Recreation Zone (at Saye Bay and between the cemetery and golf course)

ARUP have been reviewing the land which is currently subject to the Recreation Zone in the Designated Area. There are two parcels of land (at Saye Bay and between the cemetery and golf course) which do not appear to be in active recreation purpose. These sites are not used for a recreation purpose(s) which we are aware of. Should they be de-designated and show as 'white space' in the Designated Area where no development is permissible.

The Committee agreed to show these land parcels as white space in the draft LUP

10. Change of Use

In response to long standing BDCC Instructions, the Planning Officer has again considered with ARUP and the Law Officers how the presently ambiguous BDCC law can be improved to give clarity for a material change of use which requires a planning application.

The use of the TRP classes as was previously proposed by BDCC is not recommended. Guernsey has recently reduced the number of use classes to a manageable number. It is proposed to include a schedule in the law listing material changes applicable in Alderney. The definitions will be those used in the latest Guernsey Ordinance with adjustments (including for non-serviced visitor economy). It is further proposed to use the new power for statutory procedural guidance to accompany the schedule of uses.

The uses would follow those use classes covered in the draft LUP policies i.e.

- Residential (including non-serviced visitor accommodation)
- Visitor economy (serviced accommodation)
- Retail (including hot food on/off consumption and financial services shop?)
- Office (Admin, Prof, Financial services)
- Agricultural
- Industrial
- Storage / distribution
- Public Amenity
- Mixed Use
- Sui Generis (Not included in any of the above – individual)

A change of use from one of these groups to another group would require an application. This could enable early improvement from the present unsatisfactory position as part of the LUP. Otherwise this would have to be delayed until 2018 or later.

The Committee accepted this recommendation and instructed the Planning Officer to progress the change with the Law officers, if possible by Ordinance.

Meeting closed: 6.00pm

Signed: Matt Birmingham

Dated: 17 August 2017