

States of Alderney.

Policy Letter on Behalf of the Building and Development Control Committee.

Proposed approval of the 2018 Land Use Plan and Associated Legislative Changes.

1. Background.

In 2014, the Building and Development Control Committee, (BDCC), undertook a review of the current planning system to assess as to whether it was fit for purpose for the 21st century. As part of that review the States of Alderney, (SOA) engaged ARUP as independent consultants to compile a detailed report into the island's planning system¹. This brought forward a number of recommendations for improving the operation of the States' Planning department for the future and identified a number of issues that needed addressing which included the creation of a robust policy framework to improve the quality of BDCC decision making in the future.

Alongside this report the BDCC had become aware of a number of inconsistencies between the island's existing Land Use Plan, (LUP), and the Building and Development Control (Alderney) Law, 2002 ("the Law") under which it is made. The BDCC were also aware of the statutory requirement for a review of the Land Use Plan (LUP) to be take place in 2016 and in addition, the long-standing aim of the SOA that the main parts of the Law and the LUP should apply to the States and development carried out by them.

It was recognised, after consultations between the BDCC, the Law officers and Arup, that the review of policy would have to be dealt through the LUP process including a public planning inquiry. This would allow for the formation of a robust policy based upon which BDCC could make adjudications in the future and would be a transparent and open process through which the public could engage. It was decided that associated amendments to legislation would be progressed at the same time but the LUP process would recognise that certain amendments to the LUP were dependent on amendments to legislation being approved.

Therefore, the BDCC decided to pursue reform of certain parts of the Law by ordinance such as amendments to the designated area provisions consistent with policies in the LUP and applying the main parts of the Law and the LUP to the States and public utilities bringing cohesion to the Law and the LUP; the amendments also, deal with certain other matters raised by the ARUP report.

¹ Review of the Planning and Development Control Process on Alderney, May 2014.

As such, the BDCC began the LUP review process in autumn 2015. It was quickly identified that due to the timescale and volume of work required that it would not be possible to conduct the full reform of the planning system in the statutory timescale required for the review of the 2011 LUP. Therefore, the decision was taken to split the process into 2 phases.

The Land Use Plan 2016 (Phase 1 of the review) established a vision for the Island and updated policies in respect of residential development. It was subject to a LUP Inquiry during spring 2016 and was subsequently approved by Full States in July 2016. It was proposed that Phase 2 of the review would further update the LUP to take account of economic, natural environment and built heritage considerations (plus any updates to the contents of the Phase 1 review as required) to produce a consolidated revised Land Use Plan. Phase 2 of the LUP was also subject to a period of public consultation ahead of the Land Use Plan Inquiry as had been the case with Phase 1.

In parallel, the BDCC also released for public consultation a proposed draft amending ordinance and green paper explaining the amendments to the Law. This dealt with the inconsistencies between the Law and the LUP that had been previously identified, applied the main parts of the Law and the LUP to the States and public utilities and proposed amendments to the designated area provisions. The designated area amendments were mainly to permit the BDCC to consider planning applications for essential States and public utility works in that area and other development of strategic importance and to achieve consistency between the LUP and the Law.

The draft LUP was presented to full public inquiry in September 2017 chaired by an independent inspector and his report was subsequently published in November 2017.

Consultation of the draft amending ordinance was undertaken until the end of November 2017. Over 320 representations were received in relation to the consultation on the Ordinance and green paper. These representations (redacted of personal information) may be accessed via the SOA website.

2. Consultation Response.

The Committee requested Mr Young, our former Planning Officer acting for the Committee to compile an analysis of the responses. It was found that while there was support for the requirement for the island to have flexibility to consider its future infrastructure needs, the overwhelming response was to raise concerns in relation to the proposed changes. These responses fell into two distinct categories.

- a. Some of the concerns were fundamental, based upon long standing public perceptions particularly about the function of the “Designated Area”.
- b. Some were detailed implementation issues raising concerns about how the proposed law changes would operate in reality, particularly in relation to the major projects policy S7 proposed within the LUP.

These concerns can be summarised:

1. Opposition in principle to consideration of any development of strategic importance being considered by BDCC in the “designated area” on environmental and heritage grounds.
2. That the proposals were motivated by a desire to over develop Alderney for private financial gains.
3. That the amendments were being rushed through, motivated entirely by a desire to facilitate the FAB project.
4. That the amendments would leave the island exposed to inappropriate short-term decision making by the States, due to frequent turnover of members.
5. That there was a lack of procedural safeguards in relation to the process for the Policy and Finance Committee (P&F) making a recommendation to the States under the proposed exception in the Ordinance for development or other work of strategic importance.
6. That any P & F recommendation in relation to development it considers to be of strategic importance needs to be supported by evidence, and should be based on objective, independent judgement rather than a member’s personal whims.
7. That there was insufficient clarity in the wording of the criteria which had to be satisfied for P&F and the States to be satisfied that work is of strategic importance and a lack of clarity as to what amounts to work of strategic importance.
8. That any proposed developments under S7 should be subject to prior public consultation or a plebiscite.
9. That there should be a requirement for a public inquiry process for a major planning application, which is currently absent in Alderney planning law.
10. That any legal changes should be affected by a review of the entire Law by Projet de Loi and not selectively by Ordinance.
11. There was a perception that BDCC members are not seen to be independent, as they are also P & F members and that the Planning Office cannot be impartial as it is part of the SOA.
12. The SOA has inadequate resources and the Planning Office lacks expertise to support the BDCC to ensure large scale applications are subjected to proper objective independent scrutiny.

3. **Committee Actions.**

Having carefully considered the representations, and undertaken discussions with ARUP, the Law officers and Mr John Young, the BDCC have concluded that there were a number of points with which the Committee has great sympathy for, or agrees with. Therefore, the Committee has decided upon a number of changes to be made to the final legislation to address some of the points raised within the consultation.

These include -

- Introduction of new procedural requirements applicable to P & F Committee recommendations that development is of strategic importance. P&F would be required to include with any recommendation to the States;

- a description of the proposed development and its location including by reference to a map.
 - P & F's reasons for making the recommendation.
 - a reference to the evidence P&F has relied upon including any SOA, approved policy document it is required to take into account under the legislation.
 - express requirement for P & F to base their opinion on robust and credible and objective evidence.
 - evidence relied upon by P&F should be publicly available (subject to commercial confidentially considerations).
- Amendments are to be made to the criteria for P & F recommendations resolutions to remove references to "reasonably appears" and "appears" which were not intended to dilute the criteria;
- SOA procedural rules for Billets should be changed so that any proposed recommendation is published no less than 28 days before the States are due to debate any such proposal. This should ensure there is an opportunity for the public to comment through their elected representatives.
- In the event that such evidence is not published for 28 days before the States debate, the item would be deferred until such time as it had.
- A power for the BDCC to request a Planning Inquiry into *any* application in any area of the Island for development or other work which is very significant for the island and where objections have been made by the public to the application. This extends the original proposal for an additional inquiry power beyond proposals in the designated area.
- Procedural rules for the Inquiry into such a planning application including the setting of terms of reference for the Inquiry. Minor amendments are also proposed, for consistency, to the procedure for LUP inquiries;
- The inspector of any such inquiry shall be required to consider the application and objections to it and then produce a report with recommendations to the BDCC which would include whether or not the application departs from/is consistent with the LUP.
- In the event of a departure/inconsistency with the LUP the inspector will be required to determine whether this can be considered as a minor departure from the LUP, or whether it is a more significant departure from the LUP. In the latter case, this would require a second planning inquiry under the Law to enable the States to approve the change to the LUP.
- Where relevant, the inspector will consider, as part of his report, whether a proposal in the designated area is substantially the same as that described in the States resolution that the development is of strategic importance.
- Planning applications which are subject to a planning inquiry will have two opportunities for public representations to be submitted, firstly when the application is submitted (following the current procedures) and secondly, when the timetable for the Inquiry is announced. There will be minimum notice periods which will not run concurrently to ensure there is adequate time for public representations.

In addition, to these adjustments to the proposed amending ordinance, the Committee has also under taken additional actions to address some of the additional matters raised by the consultation.

These include the following:

- The Planning fee structure will be revised to increase the fees for larger or more significant applications to ensure BDCC has the resources to contract in the support required to evaluate objectively and professionally such major applications with all their complexities. At the moment such applications place the department's single planning officer and BDCC under unacceptable pressure. The maximum fee will be £125,000.
- The draft Major Projects statutory guidance will be revised to ensure pre – application consultation and to take into account the proposed amendments and particularly the new Planning Inquiry provisions for planning applications.

The States also debated at the January 2018 States meeting, at the Committee's request, the option of appointing non- States members to BDCC. The BDCC obtained expressions of interest from quality persons who could had added much to BDCC decision making capability in terms of independence and expertise. However, at the present time there seems to be is insufficient public or States Member support for this. This proposal will therefore be held in abeyance for the time being.

4. Other Considerations.

There were a number of other issues that arose as part of the law consultation but were either beyond the scope of the law consultation or beyond the powers of the BDCC. These were:

A) Matters which fall outside the scope of the law consultation.

- Policy S7. The Policy S7 for the designated area was considered in detail at the 2017 LUP Public Inquiry and the Inspector was generally in support of the policy, but suggested some recommendations in detail. These recommendations have been taken into account in proposed revised wording of the supporting text to the policy in the final LUP and are explained in the Committee's response to the Inspectors report.

B) Other Issues raised.

- The suggestions that the proposals were motivated by the FAB project.

The BDCC has strived since 2015 to ensure that its focus is on formation of appropriate and fair planning policies, procedures and legislation whilst ensuring that it retains an

open mind, as planning authority, in relation to any potential planning application for FAB link or any other major project in Alderney. The BDCC has sought to keep this work separate from the P & F functions in relation to the FAB link project. Separate advice has been provided to the BDCC by external advisers, the Law officers and the planning officer, to ensure that the proper split between the functions has been maintained. The major projects policy, S7 stood on its own merits and was endorsed by an independent planning inspector at the LUP enquiry. It now appears that the French regulator has effectively put the main FAB link project on hold while the Brexit negotiations continue, this should disperse any perception that this is a factor in progressing the LUP and legislation changes.

- The suggestion that the law changes should be progressed by Projet de Loi.

The BDCC considers that the Law requires major change. The BDCC has sought to improve the law by modification by ordinance on 4 occasions and it has been guided in these matters by the Law Officers throughout. If the law changes were postponed, the BDCC are advised that it would take around two years to conclude a Projet de Loi. This could be further delayed by external issues relating to demands on law officer time in relation to Brexit. From the experience of other jurisdictions, reviewing an entire planning law is demanding, complex often controversial and very time consuming. This huge task would be likely to take many more years and with it incur substantial extra cost.

It would mean many of the policies of the LUP could not be implemented and the full benefit of the significant investment already made could be lost. It would also depart from the original course of action to improve the planning system as set out in the recommendations proposed by ARUP in 2014.

- Many of the critical public comments expressed issues which relate to the governance of Alderney which is at present under review. These issues fall beyond the scope of BDCC.

5. Intended actions

The Committee have instructed the Law Officers on the changes outlined in this policy paper and intend to lodge the revised draft amending Ordinance on the billet by 23 Feb 2018 for debate at the March 2018 States Meeting in conjunction with the proposed, finalised Land Use Plan.

Matt Birmingham

Chairman
Building and Development Control Committee
18th^h January 2018