

# **The Building and Development Control (Alderney) (Amendment) Ordinance, 2016**

**THE STATES OF ALDERNEY**, in pursuance of their Resolution of the 20<sup>th</sup> July, 2016<sup>a</sup>, and in exercise of the powers conferred on them by section 75 of the Building and Development Control (Alderney) Law, 2002<sup>b</sup> and all other provisions enabling them in that behalf, hereby order:-

## **PART I**

### **AMENDMENTS TO THE LAW TO TAKE EFFECT FROM 20TH JULY, 2016**

#### **Amendment of the Law.**

**1.** The Building and Development Control (Alderney) Law, 2002 ("**the Law**") is amended as follows with effect from 20<sup>th</sup> July, 2016.

**2.** In section 5 (applications for permission to develop, etc.), after subsection (2) insert the following subsection –

"(3) The Committee is not obliged to consider further an application made under the provisions of subsection (1) until the applicant has fully complied with all requirements of the Committee, required in relation to the application, under subsection (2)."

**3.** In section 6(5) (relating to refusal of an application under section 5) -

---

<sup>a</sup> See also Billet d'Etat for 21<sup>st</sup> October, 2015 (item III).

<sup>b</sup> Order in Council No. XII of 2003 as amended by Order in Council No. XV of 2004, Alderney Ordinances No. III of 2007 and No. III of 2014.

- (a) in paragraph (a), omit the words "or by the further information referred to in subsection 5(2)(a)", and
- (b) after paragraph (b), omit the word "or" and insert the following paragraph –

"(ba) in any case where an applicant fails to supply further information required by the Committee in accordance with the provisions of section 5(2)(a), or".

4. In section 7 (matters to be taken into account) –

- (a) after subsection (1)(g) omit the word "and" and insert the following paragraphs –

"(ga) the effect of the development or other work on the biological diversity of the Island,

(gb) the desirability of facilitating the sustainable development of land having regard to the competing demands of the community for its use, and", and

- (b) after subsection (2), insert the following subsection –

"(3) In this section, "**biological diversity**" means the variety and variability of living organisms and the ecological complexes within which they occur."

5. In section 12 (prohibition on building in certain areas) -

(a) in subsection (2) -

(i) in paragraph (a), for "minor extension" substitute "extension",

(ii) for paragraph (b), substitute the following paragraph -

"(b) the construction of -

(i) a freestanding residential annex for use in conjunction with and ancillary to an existing dwelling, or

(ii) a garage, gate, wall, fence, shed or other structure for use in conjunction with an existing immovable structure,"

(iii) for the comma at the end of paragraph (c) substitute a full stop and omit all the words following paragraph (c) to the end, and

(b) after subsection (2), insert the following subsections -

"(3) For the purposes of subsection (2)(a), development or

other work shall be considered to be a reconstruction of an existing immovable structure only if –

(a) in the case of development or other work relating to a dwelling within any part of a designated area zoned for residential development under the Land Use Plan, its position, dimensions, external design, external appearance and other characteristics are consistent with any relevant policy relating to such a reconstruction of a dwelling set out in the Land Use Plan, or

(b) in the case of any other reconstruction in any designated area –

(i) it occupies the same or approximately the same position, and

(ii) it is of comparable dimensions, external design and external appearance,

to the existing immovable structure.

(4) In this section "**dwelling**" means any building or part of a building which is occupied as a dwelling."

6. In section 23 (preparation of Land Use Plans), after subsection (2) insert the following subsection –

"(2A) Land Use Plans may include a section setting out a written statement of the Committee's general policies in respect of development or other work referred to in section 4 or other use of land in the Island."

7. After section 23 (preparation of Land Use Plans) insert the following section –

**"Supplementary planning guidance.**

**23A.** (1) The Committee may adopt and issue guidance, in connection with a Land Use Plan, to be known as supplementary planning guidance.

(2) The Committee, before adopting and issuing any supplementary planning guidance, must take such steps as it considers will ensure that –

(a) adequate publicity is given to the proposed guidance and the opportunity to make written representations under paragraph (b), and

(b) an adequate opportunity is given for any person to make written representations on the guidance within such reasonable period as may be specified by the Committee in writing.

(3) The Committee must, before adopting and issuing the supplementary planning guidance, consider any representations made to them within the period specified under subsection (2).

(4) Supplementary planning guidance may only deal with the provision of further information or detail in respect of the policies set out in a Land Use Plan.

(5) The Committee may issue amendments to or revoke any supplementary planning guidance and subsections (2) and (3) apply, with any necessary amendments, to –

- (a) the adoption and issuing of an amendment to any supplementary planning guidance, or
- (b) the revocation of any supplementary planning guidance,

as they apply to the adoption and issuing of supplementary planning guidance.

(6) For the avoidance of doubt –

- (a) supplementary planning guidance is not part of a Land Use Plan but it is required to be taken into account by the Committee in construing the relevant policy in the Land Use Plan to which it relates, and
- (b) where there is any conflict between the provisions of a Land Use Plan and any supplementary planning guidance the provisions of the Land Use Plan are to prevail."

8. In section 27(2) (planning inquiries), after paragraph (b) omit the word "or" and after paragraph (c) insert the word "or".

9. In section 76 (interpretation), in subsection (1) –

(a) in paragraph (a) of the definition of "**development**" omit the words "(as construed in accordance with subsection (3))", and

(b) in the definition of "**dwelling**", after the word "means" insert ", except in section 12,".

**Application of amendments made by Part I and transitional arrangements.**

10. The amendments made to the Law by sections 2 to 4, are to apply only in relation to an application under section 5 of the Law made on or after the 20<sup>th</sup> July, 2016.

PART II

AMENDMENTS TO THE LAW TO TAKE EFFECT FROM 1ST JANUARY,  
2017

11. The Law is further amended as follows with effect from 1<sup>st</sup> January, 2017.

12. In section 6 (grant or refusal of permission) –

(a) in subsection (1) –

(i) for "sections 10(4) and 33" substitute "section

10(4)",

(ii) in paragraph (c)(i), omit the words "or the period within which it must be completed," and

(iii) after paragraph (c)(ii), insert the following subparagraph –

"(iia) conditions limiting the period for which the permission is effective, and",

(b) in subsection (2), omit the words "by the person to whom such permission was granted", and

(c) subsection (3) is repealed.

13. After section 6 (grant or refusal of permission) insert the following section –

**"Effect of permission.**

**6A.** (1) A permission for development or other work granted under section 6(1) ceases to have effect unless the development or other work authorised by it is commenced within -

(a) a period of three years immediately following the date on which the permission is granted, or

(b) such shorter period as may be specified by



condition under section 6(1)(c)(ia).

(2) A permission enures (except insofar as the permission provides otherwise) for the benefit of the land in question and of every person for the time being having an interest in it.

(3) Where a permission is granted for the erection of a building, the grant of the permission may specify the purposes for which the building may be used.

(4) If no purpose is so specified, the permission is to be construed as including permission to use the building for the purpose for which it is designed.

(5) For the avoidance of doubt, the provisions of this section apply to a permission referred to in section 12(2).

(6) In this section,

**"land in question"** means the site or other land on which the permission in question authorises the carrying out of the development or other work; and

**"permission"** means permission for development or other work granted under section 6(1)."

**14.** In section 10 (register of applications), subsection (5) is repealed.

**15.** For section 10A(2) (preliminary declarations) substitute the following subsections –

"(2) A preliminary declaration issued under this section –

(a) enures (except insofar as the declaration provides otherwise) for the benefit of the land in question and of every person for the time being having an interest in it, and

(b) shall remain valid for –

(i) a period of three years from the date on which it was issued, or

(ii) such shorter period as may be specified by the Committee in the preliminary declaration.

(3) In this section, "**land in question**" means the site or other land in relation to which the preliminary declaration was issued."

**16.** In section 13 (restricted purposes) for the words "granted permission under the provisions of section 12(2)" substitute "having the benefit of a permission referred to in section 12(2)".

**17.** Section 15 (maximum number of dwellings) is repealed.

**18.** In section 20 (completion of development in accordance with planning conditions), for the words before paragraph (a) substitute "Where any person having the benefit of a permission to carry out development or other work granted under section 6 -".

19. Part V (control of construction of dwellings) is repealed.

20. In section 76 (interpretation) –

(a) in subsection (1), the definition of "**ordinarily resident in Alderney**" is repealed, and

(b) subsection (5) is repealed.

**Application of amendments made by Part II and transitional arrangements.**

21. (1) The amendments made to the Law by sections 13 and 15 relating to the effect and period of validity of a permission and a preliminary declaration apply only in relation to a permission or preliminary declaration issued by the Committee under section 6(1) or 10A of the Law, as the case may be, on or after 1<sup>st</sup> January, 2017.

(2) The effect and period of validity of a permission or preliminary declaration issued by the Committee under section 6(1) or 10A of the Law, as the case may be, before 1<sup>st</sup> January, 2017 is to be construed in accordance with the provisions of the Law as in force immediately before the 1<sup>st</sup> January, 2017 and not as amended by this Part.

**Amendments and repeals consequential upon Part II amendments.**

22. (1) In section 1 of the Building and Development Control (Alderney) (Amendment) Ordinance, 2007<sup>c</sup>, subsections (10), (14) and (15) are repealed.

---

<sup>c</sup> Ordinance No. III of 2007.

(2) Section 1(4) of the Building and Development Control (Alderney) (Amendment and Fees) Ordinance, 2014<sup>d</sup> is repealed.

(3) For the avoidance of doubt, all Ordinances made under Part V of the Law are repealed in consequence of the repeal of Part V of the Law under this Part.

### PART III GENERAL PROVISIONS

#### Interpretation.

23. (1) In this Ordinance -

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**the Law**" means the Building and Development Control (Alderney) Law, 2002, and

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

and other expressions, unless the context requires otherwise, have the same meaning as in the Law.

---

<sup>d</sup> Alderney Ordinance No. III of 2014.

(2) The Interpretation (Guernsey) Law, 1948<sup>e</sup> applies to the interpretation of this Ordinance.

(3) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation and commencement.**

**24.** (1) This Ordinance may be cited as the Building and Development Control (Alderney) (Amendment) Ordinance, 2016.

(2) This Ordinance, except for Part II, comes into force on the 20<sup>th</sup> July, 2016.

(3) Part II of this Ordinance comes into force on the 1<sup>st</sup> January, 2017.

---

<sup>e</sup> Ordres en Conseil Vol. XIII, p. 355.