

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

**AMENDMENTS TO THE LAND PLANNING LEGISLATION RELATING TO PLANNING
APPLICATIONS**

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Amendments to Legislation Relating to Planning Applications' of the Development & Planning Authority, they are of the opinion: -

1. To approve the proposals to amend the Land Planning Legislation relating to planning applications so as to –
 - (a) remove the requirement for planning applications to be accompanied by four copies of plans and information; and
 - (b) remove the requirement that an application for outline planning permission must not be made where the application is also an Environmental Impact Assessment application ("EIA application"), and
2. To direct the preparation of such legislation as may be necessary to give effect to the above Proposition.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4 (1) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

29 May 2020

Dear Sir

1 Executive Summary

- 1.1 The Development & Planning Authority ('D&PA') is recommending two amendments to legislation which will enhance certain aspects of planning. The changes were identified through the requirement of the D&PA's Business Plan to continuously review work streams and is not part of the larger project to undertake a full review of planning legislation.
- 1.2 The first of the two relatively minor changes to the land planning legislation will assist with the making of planning applications and, in particular, when made through an online portal. It is proposed that the requirement in respect of all types of applications for four copies of plans to be submitted is removed. The second change was identified during the preparation of the Development Framework for the Leale's Yard Regeneration Area (the 'LYRA'). This change is recommended to enable an outline planning application to be made when it is an Environmental Impact Assessment (EIA) application.

2 Proposed Amendment to remove the requirement for four copies of plans and information

- 2.1 In 2019, following approval by the States on 12 June 2019 of the Policy Letter entitled “Future Digital Services”¹, the States of Guernsey signed a ten-year contract with specialist digital firm Agilisys that allowed the SMART Guernsey programme to begin in earnest. The Planning Service is involved with trials to provide some States’ services digitally, specifically in relation to introduction of a planning ‘portal’ which can receive and publish planning applications on-line. The Planning Service had been working on developing a solution for this for the past two years, liaising with local architects and parish officials, but progress had not been as rapid as hoped due to a lack of resources and digital capacity. With the partnership with Agilisys, the D&PA is hopeful that online services will be in place in the near future.
- 2.2 The Land Planning and Development (General Provisions) Ordinance, 2007 (‘the General Provisions Ordinance’) is made under the provisions of the Land Planning and Development (Guernsey) Law, 2005 (‘the 2005 Law’) and sets out in Part II provisions relating to the making of applications for planning permission. Amongst other things, the General Provisions Ordinance requires in section 7(1) that planning applications must be made on a form supplied by the D&PA and be accompanied by four copies of certain plans, drawings and information.
- 2.3 To support SMART Guernsey and streamline the planning applications process, the D&PA are seeking to facilitate the submission of applications electronically using a planning ‘portal’. As the requirement for four copies is superfluous for digital submissions, it is proposed to amend section 7(1) of the General Provisions Ordinance to remove, on implementation of the proposed digital ‘portal’ solution, the express requirement for four copies of plans and information, requiring instead a single copy of the necessary plans and information. In addition, this will apply to applications received from householders in hard copy as, during the transition phase, they would be scanned onto the portal, again only requiring one copy. After this transition phase, applications will be accepted fully through the portal in electronic form.

¹ Billet d’État X of 2019

3 Proposed Amendment to remove section 7(5)(d) of the General Provisions Ordinance

Outline Planning Applications

- 3.1 Section 15 of the 2005 Law provides that planning permission or outline permission may be granted by the D&PA on an application duly made to it, or on appeal. Outline permission is defined in Schedule 2 to the 2005 Law as planning permission subject to the reservation of particular matters for subsequent approval. These matters are known as 'reserved matters' as listed in section 18(1) of the General Provisions Ordinance. An outline planning permission usually sets high level land-use and design parameters and allows for subsequent reserved matters applications to be made for specific developments on individual sites in compliance with those outline parameters.
- 3.2 Section 7(5) of the General Provisions Ordinance states that an application for outline planning permission can only be made in respect of the erection, re-erection, extension or alteration of a building and must not be made in a number of specified circumstances. These circumstances include where the application is also an application for EIA development.

EIA Development

- 3.3 EIA development is defined in the Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007 ('the EIA Ordinance'). The EIA Ordinance sets out descriptions of development which will require an EIA² (Schedule 1 development) and of development which will require an EIA if a Screening Opinion has been issued³ (Schedule 2 development) confirming the development is EIA development.
- 3.4 Schedule 1 development includes for the disposal or processing of waste, storage of metals or vehicles for scrap, reservoirs and water management projects for agriculture, sludge deposition sites, quarries or mines, marine dredging, land reclamation, golf courses, airport runways, and non-domestic installations for energy production.
- 3.5 Schedule 2 development includes any development project, not falling within Schedule 1, including any business parks or industrial estates or retail or leisure development, where the area of the development exceeds one hectare. Schedule 2 development also includes, for example, construction of roads,

² in section 2(1) and Schedule 1

³ in section 2(2) and Schedule 2

harbours and port installations and works to provide new coastal and sea defences and reconstruct existing defences.

- 3.6 The EIA Ordinance requires the carrying out of steps necessary to assess the environmental effects of certain EIA development, or development plan policies. This involves a process of forecasting and evaluating a development's or policy's impact on the environment, including a detailed assessment of the likely significant environmental effects of the development or policy and the mitigation of adverse effects or EIA. The environmental information in such EIAs must be taken into account by the States when considering a policy change and the D&PA must take it into account when determining a planning application for the development.
- 3.7 The EIA Ordinance sets out in section 6 a process by which the D&PA considers whether an EIA is necessary by providing a 'Screening Opinion' before a planning application is made. A Screening Opinion is a written statement by the D&PA as to whether or not development is EIA development and, therefore, whether or not it requires an EIA.
- 3.8 Where the D&PA receives an application for development which automatically requires an EIA or where it has issued a Screening Opinion at the pre-application stage to the effect that the development is EIA development, it must then issue a 'Scoping Opinion' under section 7 of the EIA Ordinance, which is a written opinion specifying the matters that the EIA should address and the level of detail required.
- 3.9 Where the D&PA receives an application for a development which may require an EIA but where no Screening Opinion has been issued at the pre-application stage then the D&PA is required to issue a Screening Opinion and, if it decides the development is EIA development, a Scoping Opinion.
- 3.10 The reason for excluding EIA development from the circumstances where an outline application can be made as provided for in section 7(5) of the General Provisions Ordinance relates principally to the requirements for specific and detailed information to be available regarding EIA development in order for the D&PA to properly discharge its obligations concerning Screening and Scoping Opinions and subsequent determination of an EIA application.

Leale's Yard Regeneration Area

- 3.11 Leale's Yard is one of four Regeneration Areas designated in the Island Development Plan (IDP). A draft Development Framework has been prepared

for the Regeneration Area with the intention of facilitating a mixed-use redevelopment of the site.

- 3.12 Previous development proposals for the Leale's Yard site, for which planning permission was granted in 2016, were EIA development within Schedule 2 to the EIA Ordinance. A significant component of the proposals was submitted as a detailed application for planning permission, which was accompanied by an EIA, with an outline application submitted for the remainder of the site. The approved proposals were not implemented and the detailed permission lapsed in 2019.
- 3.13 The Development Framework for the Regeneration Area recommends a 'master-developer' approach as part of the delivery strategy for the site. This is where one lead or 'master' developer puts in the main site access and infrastructure to provide serviced parcels of land (or plots) that can be bought by others to build on. The main benefits are that the master-developer does not have to fund the whole scheme, just the up-front infrastructure costs and delivery can be phased.
- 3.14 In order to facilitate such a master plan, it is recommended that an outline planning permission can be given in respect of an EIA development. This would significantly assist the appropriate delivery of larger and more complex sites such as the Leale's Yard Regeneration Area by enabling a form of master plan. The potential for granting of outline permission across the whole site would have the benefits of providing a sound basis on which to secure comprehensive development. Such development would be as required by the Development Framework but an outline planning permission would provide an applicant with flexibility coupled with a high degree of certainty. It would also avoid the significant initial costs associated with a detailed application. It would be theoretically possible to develop Leale's Yard in other ways, and indeed joint outline and detailed applications for development of the site were approved in 2016 but were not implemented, but by allowing an outline application, it is believed that a barrier to development would be removed.
- 3.15 Similar issues are likely to arise in the other three Regeneration Areas (these being located in St Peter Port at South Esplanade/Mignot Plateau, Lower Pollet and Le Bordage/Mansell Street) and also in respect of the Harbour Action Areas in St Peter Port and St Sampson where in all cases large-scale development or redevelopment amounting to EIA development may be proposed and the potential for use of outline applications would be of benefit.
- 3.16 However, as described above, the submission of outline applications is currently not possible for EIA development by virtue of section 7(5)(d) of the

General Provisions Ordinance. By removing this requirement it is hoped that many more developments would be able to progress.

Repeal of section 7(5)(d) of the General Provisions Ordinance

- 3.17 To overcome this issue, it is proposed to delete/repeal section 7(5)(d) of the General Provisions Ordinance. This would enable an outline application to be made in respect of the erection, re-erection, extension or alteration of a building including where the application is also an EIA application.
- 3.18 A perceived consequence of this change might be the lack within an outline application of sufficient information for the D&PA to properly discharge its obligations concerning screening, scoping and subsequent determination of an EIA application. However, powers already exist under the EIA Ordinance to require further information to enable assessment of the application, if required. This would relate only to the adequacy of information pertinent to assessing the significant environmental effects of the development and would not require the equivalent of a detailed planning application to be submitted.

4 Compliance with Rule 4

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 4.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Development & Planning Authority.
- 4.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee in respect of land use and planning and its duties under the Land Planning and Development (Guernsey) Law, 2005, as amended. The proposed change to section 7(1) of the General Provisions Ordinance also supports the objectives and policies of the States relating to the provision of future digital services through the SMART Guernsey initiative.

Yours faithfully

D A Tindall
President

V S Oliver
Vice President

B J E Paint
L C Queripel
E A J Snowdon



Development &
Planning Authority

Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH
+44 (0) 1481 717200
planning@gov.gg
www.gov.gg

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

29 May 2020

Dear Deputy St Pier,

**Development & Planning Authority Propositions and Policy Letter: Amendments to the
Land Planning Legislation Relating to Planning Applications**

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Development & Planning Authority requests that the propositions and policy letter 'Amendments to the Land Planning Legislation Relating to Planning Applications' be considered at the States' meeting to be held on 15th July 2020.

The D&PA believes that the matters addressed in the Policy Letter are of urgent significance to the economic recovery post-COVID-19, particularly in relation to facilitating the progression of development of the Leale's Yard Regeneration Area, for which a Development Framework has now been approved, but also in terms of enabling the digital submission and processing of Planning and Building Control applications through the Smart-Guernsey initiative.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dawn Tindall'.

Deputy Dawn Tindall
President, Development & Planning Authority