

**QUESTIONS ASKED OF THE PRESIDENT OF THE DEVELOPMENT & PLANNING
AUTHORITY PURSUANT TO RULE 14 OF THE RULES OF PROCEDURE BY DEPUTY LESTER
QUERIPEL**

I would like to respond to the following questions submitted by Deputy Lester Queripel pursuant to Rule 14 of the Rules of Procedure of the States of Deliberation and their Committees, seeking clarification on what is stated in the Development and Planning Authority Policy Letter P.2022/100, 'Proposal for Provisions to Address Land which is Affecting the Amenity of an Area'.

Question 1

I can't help but get the feeling the DPA are using a sledgehammer to crack a nut here, and I say that with the utmost respect, because apart from a few shops in Mill St and a couple on the Bridge, I don't see an abundance of unsightly properties here in the island. Regarding redundant hotels: the former St Martins Hotel is barely visible from the road due to all of the trees in front of it, as is the former St Margarets Hotel, so surely they can't be considered to be too much of a problem. So can you please tell me what the problem is exactly, and where all of these unsightly properties are, that are of such great concern to the DPA?

Answer

Section 46 of the 2005 Land Planning and Development Law, 2005 provides that the States may provide, by Ordinance, to control matters connected with the impairment of amenity in any locality including land in an unsightly condition. In this context, 'Land' includes buildings.

The proposals set out in the D&PA's Policy Letter are not a 'sledgehammer to crack a nut', and are simply providing necessary powers, which exist elsewhere and have done for some time, to fill a significant gap in Guernsey's legislation, as was envisaged at the time the 2005 Law was approved.

Examples of matters that could be addressed through powers provided by an Ordinance under section 46 include derelict premises in Town, for example in the Old Quarter, or unsightly redundant visitor accommodation establishments. Another example is where a vehicle 'graveyard' is an unsightly blot on an otherwise beautiful rural landscape.

Powers are largely absent to enable the Authority to tackle known eyesores in our urban centres and rural areas and thereby to support the Government Work Plan. Some existing eyesore sites can cause economic loss to their neighbours as well as discouraging inward investment to an area. The proposed powers will play an important part in securing revitalisation and act as a deterrent to prevent the future creation of eyesores through allowing dereliction and neglect.

Question 2

In paragraph 1.3 of the Policy Letter, it is stated that some Douzaines identified possible opportunities for involvement at a Parish level, to assist with the removal, or remediation, of eyesores. However the Policy Letter makes no reference to what those opportunities are considered to be, so with that in mind, can you tell me what those opportunities are please?

Answer

We have heard from a number of Douzaines that they would welcome involvement, whether through helping to identify to the D&PA instances of impairment of amenity or assisting in the resolution of cases without the need for formal action. For example, we are aware in one particular well known eyesore case that a Douzaine had offered to remove the offending items free of charge, however in the absence of legal powers that would be provided to the D&PA to issue a notice through this Ordinance, when the landowner declined this offer there was nothing further that could be done.

Question 3

Paragraph 1.7 states that savings benefits to the States exist through tackling eyesore cases early, but doesn't expand on that claim, so can you explain what those savings benefits are please and how they will be attained?

Answer

In the absence of legislation to deal expressly with eyesores and dereliction, States' services have to rely on negotiation to resolve problems, which is time consuming, costly and often unsuccessful. Having the proposed Ordinance enabling directed and effective action will avoid such costs and abortive work, overall saving the States money.

Question 4

Can you please tell me who will be supplying the 'States controlled labour' referred to in paragraph 1.7 and can you give me an assurance that that labour will be Data Protection compliant at all times?

Answer

This is a reference to States Works. Appropriate data sharing agreements will be in place to ensure compliance with data protection.

Question 5

Paragraph 1.7 also refers to 'cost recovery mechanisms', so in relation to that, can you please tell me what those mechanisms are and if the mechanism fails due to the fact the property owner can't afford to pay, what happens next?

Answer

This refers mainly to the ability to recover costs from the owner if the D&PA has to carry out work itself, including where costs are significant via a legal charge on the land as referred to in paragraph 5.6 of the Policy Letter. It is envisaged that, as with existing planning enforcement powers, any such direct action would be a last resort. In fact, it has not been necessary to take direct action under the existing enforcement powers in relation to land planning and similarly it is anticipated that direct action under the proposed Ordinance would be rarely if ever used. However the powers for such action and ability to recover the costs are nevertheless required in case this eventuality ever arises.

Question 6

Paragraph 2.1 refers to a power to control matters connected with the impairment of amenity in any locality, including the placing of caravans on land. So in relation to that, A) Can you please tell me if it's an offence for someone to place a caravan in the driveway of their house or in their garden? B) And if it is an offence, can you please tell me the rationale behind that?

Answer

It will not be an offence under the proposals to do this. A notice could not be served in relation to the keeping of one caravan in a normal condition, as a part of ordinary residential use, but a notice could potentially be served, the breach of which would be an offence, if a garden of a dwelling was used to keep a significant number of caravans or other vehicles and the garden was unsightly as a result.

Question 7

Paragraph 2.4 states that the DPA wanted to progress introducing an ordinance in 2018, but other priorities prevented the work being progressed. So in relation to that, can you please tell me what's changed and don't those other priorities, or perhaps even new priorities, exist currently?

Answer

The D&PA has worked on and introduced several new Laws and Ordinances in recent years, including in relation to High Hedges and Certificates of Lawful Use. Most recently, the D&PA has been focussed on the review of the Planning Exemptions Ordinance, which will return to the States for final approval in February 2023. In order to support the Government Work Plan, the D&PA has also been able to bring forward this Policy Letter and believes that the time is right for the States to consider enacting the proposed Ordinance now, for the reasons set out in the Policy Letter.

Question 8

Paragraph 5.3 refers to redundant glasshouses having 'items disposed of on site'. So can you tell me please what sort of items are the DPA referring to and what criteria will they be

employing to enable them to come to the conclusion the items have BEEN disposed of and aren't simply 'in storage' in the glasshouse?

Answer

This refers to the use of redundant glasshouse sites as repositories for all manner of unsightly items on a long-term basis, which could potentially be tackled under the proposed powers if resulting in significant impairment of amenity and not resulting in the ordinary course of events from the carrying out of lawful operations on the land which are not in breach of planning control. In any specific case it would be necessary for the D&PA to carefully consider all relevant matters before deciding on a course of action.

Question 9

Paragraph 5.5 states that the DPA would consider it to be an 'undesirable situation' if one States committee were to issue a civil notice against another, therefore States owned or occupied land, will be exempt from the legislation that is being proposed. I'm struggling to see how it would be an 'undesirable situation', so A) Can you please tell me the rationale behind the DPA adopting that view? B) And how will the DPA deal with accusations of favouritism and discrimination should they arise?

Answer

The main reason why it is proposed to exempt the States or individual Committees in respect of States' owned or occupied land relates to ensuring consistency with the existing provisions of the 2005 Land Planning Law, which does not apply the main land planning enforcement and appeal provisions to the States and States' Committees. If decided otherwise this would be inconsistent with the main land planning enforcement and appeal provisions in that the D&PA is not able to issue a compliance notice against a States' Committee in relation to unlawful development on States' owned and occupied land. Additional drafting would also be required for new appeal provisions.

Therefore, to be consistent with the provisions of the 2005 Law, and to avoid a situation where one States' Committee is issuing a civil notice against another, the D&PA has included an exemption for the States and its Committees, in accordance with the legal advice which we have received at the time of drafting the Policy Letter and subsequently.

If a States' property affected the amenity of an area sufficiently for action under the Ordinance to be considered, then the recourse for the D&PA would be directly with the States' Committee concerned. This process would ensure that there is equitable treatment of private and public land. It would also be likely to result in less public money being spent than involved in a formal notice process. It is hoped, nonetheless that this situation would never arise in practice.

Question 10

When a property is granted permission to be developed and the owners take say, as long as two years before they undertake development, for the whole of those two years, the

property not only remains an eyesore, but falls into an even greater state of disrepair. So in that 'interim period', will the DPA demand that the owner 'cleans up' the property?

Answer

The proposed Ordinance powers could potentially be used in relation to sites such as Deputy Queripel has described, but only if the impairment of amenity is significant and not resulting in the ordinary course of events from the carrying out of lawful operations on the land which are not in breach of planning control, action to address it is clearly in the public interest, and having regard to all other relevant matters. In particular, a site may not be unsightly just because development has not been commenced.

Question 11

Regarding German bunkers that are currently privately owned here in the island, will the DPA be demanding that any exterior walls that are crumbling be repaired: any walls covered in algae be pressure cleaned: and rusty girders and doors be repainted, or even replaced, if the propositions in the Policy Letter are supported by the majority of the States Assembly?

Answer

The proposed Ordinance powers could potentially be used in relation to sites such as Deputy Queripel has described, but only if the impairment of amenity is significant and not resulting in the ordinary course of events from the carrying out of lawful operations on the land which are not in breach of planning control, action to address it is clearly in the public interest, and having regard to all other relevant matters.

Date of Receipt of the Questions: 28 December 2022

Date of Reply: 10 January 2023