

Island of



Guernsey

Ordinance of the States

XXII

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Made26th September, 2007

The Land Planning and Development (Plans) Ordinance, 2007

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2007**

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The Land Planning and Development (Plans) Ordinance, 2007

THE STATES, in pursuance of their Resolutions of 27th June 2002 and of the 26th January 2005^a and in exercise of the powers conferred on them by sections 11(3), 12(1) and (2), 38(3)(b), and 89 of the Land Planning and Development (Guernsey) Law, 2005^b, and of all other powers enabling them in that behalf, hereby order:-

PART I

CONTENT OF PLANS AND LOCAL PLANNING BRIEFS

Designation of areas of special control.

1. (1) Where proposals make provision for the designation of a conservation area then they must specify -

- (a) the special architectural or historic interest of the area,
and
- (b) the character or appearance of the area which it is desirable to preserve or enhance by application of the provisions in chapter 3 of Part IV of the Law and, for the avoidance of doubt, such character or appearance may be contributed to by -

^a Billet d'État No. XI of 2002 and Article I of Billet d'État No. I of 2005.

^b Order in Council No. XVI of 2005.

- (i) open spaces, and
- (ii) buildings and structures which are not of special architectural or historic interest but are sited within an area which is generally of such interest.

(2) Where proposals make provision for the designation of a site of special significance they must -

- (a) specify the archaeological, historical, botanical, geological, scientific, cultural, zoological or other interest which gives the site special significance,
- (b) state why it is desirable to preserve, manage or enhance such a site by application of the provisions in chapter 4 of Part IV of the Law, and
- (c) include a map showing the location and dimensions of the area of special control and such map can be part of any map required under section 8(4) or 10(4) of the Law.

(3) An area of special control may be as large or as small as, in the opinion of the Department, is necessary to protect or support the special interest which gives rise to the designation.

Environmental Impact Assessment.

2. Where proposals include policies relating to EIA development, the non-technical summary of the Environmental Statement prepared as part of that statement must be annexed to the proposals.

PART II

INITIATION OF PROPOSALS FOR A FRESH, REPLACEMENT OR
AMENDED PLAN OR LOCAL PLANNING BRIEF

**Notice of intention to prepare proposals for a fresh, replacement or amended
Plan or Local Planning Brief.**

3. (1) Where the Department -
- (a) decides to prepare a draft Plan or Local Planning Brief pursuant to section 8(1), 9(1) or 10(1) of the Law,
 - (b) decides to prepare amendments to a Development Plan pursuant to section 8(1) of the Law,
 - (c) decides to prepare amendments to a Subject Plan or a Local Planning Brief pursuant to subsection (2),
 - (d) is required to prepare -
 - (i) a draft Subject Plan by a direction in the Strategic Land Use Plan in accordance with section 9(1) of the Law,

- (ii) a draft Local Planning Brief by the Strategic Land Use Plan or a Plan in accordance with section 10(1) of the Law, or
 - (iii) a draft of or amendments to a Plan or a Local Planning Brief by a resolution of the States pursuant to subsection (3), or
- (e) decides to prepare a draft of or amendments to a Plan or a Local Planning Brief pursuant to section 14,

then it shall as soon as reasonably possible after such decision or adoption of the Strategic Land Use Plan or Plan in question, as the case may be, give notice as required by subsection (4).

(2) The Department must prepare amendments to a Subject Plan or a Local Planning Brief for the consideration of the States where it appears to it that any such amendments are necessary.

(3) The Department must prepare a draft of or amendments to a Plan or Local Planning Brief if required to do so by a resolution of the States.

(4) Notice is given for any of the proposals in subsection (1) by -

(a) the placement of a notice in La Gazette Officielle, setting out the Department's intention to prepare the proposals, which must include -

(i) the reasons why it has decided or been required to prepare the proposals,

- (ii) the steps that will be taken to inform the public of the main issues under consideration prior to the publication of the proposals under section 8, and
 - (iii) where the Department considers at the time that this is the case, that the proposals include or may include policies relating to EIA development,
- (b) notifying the following persons that it intends to prepare the proposals and, where the Department considers at the time that this is the case, that the proposals include or may include policies relating to EIA development -
- (i) any department of the States whose area of responsibility may be affected by the proposals,
 - (ii) any public utility provider whose operations may be affected by the proposals, and
 - (iii) the Constables of each parish within any area covered or affected by the proposals.

Pre-publication consultation.

4. (1) During the preparation of the proposals and prior to their publication pursuant to section 8 the Department must consult in writing on the main issues it considers relevant to such proposals with -

- (a) any department of the States whose area of responsibility may be affected by the proposals,
- (b) any public utility provider whose operations may be affected by the proposals,
- (c) the Constables of each parish within any area covered or affected by the proposals,
- (d) where the proposals include policies relating to EIA development, such persons or bodies who reasonably appear to the Department to have appropriate expertise relating to the development in question,

and where the proposals contain policies relating to EIA development, any such consultation under this subsection shall include consultation on the scope of the EIA of those policies that it proposes to carry out.

(2) Where the Department consults on the scope of any EIA then the consultation document must include -

- (a) a brief description of the nature and purpose of the EIA development to which the policies relate,
- (b) a brief description of the relevant policies, and

- (c) a copy of any Screening Opinion issued pursuant to section 3(1) of the EIA Ordinance^c.

(3) The documents on which the Department consults pursuant to subsection (1) must include a statement explaining the steps which have or are to be undertaken, prior to publication of the proposals pursuant to section 8, to meet the requirement in subsection (1).

(4) The Department shall consider any written comments made to it in response to the consultation under this section before publishing the proposals pursuant to section 8.

Certification of consistency with Strategic Land Use Plan.

5. (1) Prior to publication of the proposals pursuant to section 8, the Department must have a certificate of consistency of the proposals with the Strategic Land Use Plan and a written request for such a certificate must be sent, with a copy of the proposals, to the Strategic Land Planning Group.

(2) Where the Strategic Land Planning Group receives a request from the Department for a certificate of consistency it must respond in writing by -

- (a) certifying that the proposals are consistent with the Strategic Land Use Plan, or
- (b) stating that the proposals are inconsistent with the Strategic Land Use Plan and giving its reasons for that decision.

^c Approved by resolution of the States on 26th September, 2007.

(3) Where the Strategic Land Planning Group gives a decision falling within subsection (2)(b) the Department must revise the proposals and send a further written request for a certificate of consistency with a copy of the revised proposals to the Strategic Land Planning Group.

(4) The Department must send the relevant certificate of consistency to the inspector appointed pursuant to section 7 before the start of an inquiry into the proposals.

PART III

APPOINTMENT OF INSPECTOR AND PUBLICATION OF PROPOSALS

Request for appointment of inspector.

6. (1) The Department must request the Policy Council in writing to appoint an inspector to conduct an inquiry into any proposals as soon as reasonably possible after the date it receives a certificate of consistency for those proposals.

(2) The Department may make a request for the appointment of an inspector to conduct an inquiry into proposals at any time on or after the date of its first request for a certificate of consistency for those proposals.

Appointment of inspector.

7. (1) Where the Policy Council receives a request under section 6 it must appoint an inspector to conduct an inquiry into the proposals.

(2) A person is eligible to be appointed an inspector in relation to particular proposals if that person appears to the Policy Council to have -

(a) qualifications and experience in planning matters,

- (b) where proposals include a fresh or replacement Subject Plan or significant amendments thereto, qualifications and experience relevant to the issue or proposal which that Subject Plan addresses,
 - (c) experience in the conduct of inquiries, and
 - (d) no prior involvement directly or indirectly with the preparation of those proposals.
- (3) A person may not be appointed as an inspector if he is -
- (a) a Member of the States of Deliberation within the meaning of the Reform (Guernsey) Law 1948^d,
 - (b) an employee of the States who is employed by the States within the Department, a member of the Department or a person who carries out work for, or provides services to, the Department in relation to any functions of the Department under the Law or the repealed enactments,

^d Ordres en Conseil Vol. XIII, p. 288 as amended by Vol. XIV, p. 407; Vol. XV, p. 279; Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, pp. 84 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, pp. 164 and 278; Vol. XXXII, p. 41; No. V of 1993; No. II of 1996; No. III of 1998; No. X of 1998; No. XIII of 2003; No. III of 2004; and Ordinances XXXIII of 2003 and III of 2004.

- (c) a member of the Strategic Land Planning Group or the Planning Panel,
- (d) a person who holds appointment to any judicial office in Guernsey, or
- (e) a person who has a significant direct or indirect personal or financial interest in any of the matters set out in the proposals,

or has fallen within any of paragraphs (a) to (d) at any time within the period of two years before the date of the proposed appointment.

(4) The terms of appointment of an inspector are to be agreed between the inspector and the Policy Council.

(5) Where an inspector is appointed to conduct an inquiry pursuant to this section in carrying out that inquiry he shall, in particular, consider -

- (a) whether or not the relevant requirements of sections 8 to 11 of the Law and sections 1 to 5 and 8 of this Ordinance have been complied with in relation to the proposals,
- (b) whether or not the proposals are sound and in considering this the inspector shall in particular consider whether -

- (i) the policies in the proposals represent the most appropriate ones in all the circumstances, having considered relevant alternatives, and whether they are founded on robust and credible evidence,
 - (ii) there are clear mechanisms for the implementation and monitoring of any policies in the proposals containing targets or milestones or any other similar measurable matter, and
 - (iii) the proposals are reasonably flexible to allow them to deal with changing circumstances.
- (c) where the proposals include policies relating to EIA development, whether or not the Environmental Statement includes all the matters that must be included in the Environmental Statement pursuant to the EIA Ordinance.

Publication of proposals.

8. (1) Subject to subsection (2), when the Department receives a certificate of consistency for proposals then it must, as soon as reasonably possible, take the steps set out in subsection (3).

(2) If at the date of receipt of the certificate of consistency for proposals an inspector has not been appointed pursuant to section 7(1) in relation to those proposals, then the Department does not have to take the steps set out in subsection (3) until as soon as reasonably possible after an inspector is so appointed.

(3) The steps to be taken by the Department referred to in subsections (1) and (2) are -

(a) to place a notice in La Gazette Officielle on two consecutive weeks, setting out -

(i) that the proposals have been published,

(ii) the times and public places at which copies of the proposals, and where they include policies relating to EIA development, the Environmental Statement, are available for public inspection and purchase pursuant to subsection (3)(b), and

(iii) the steps which are to be taken in the process of adoption of the proposals,

(b) to make the proposals and, where they include policies relating to EIA development, the Environmental Statement available -

(i) for inspection at the Greffe and such other public places as the Department considers appropriate, and

(ii) for inspection and purchase of a copy, on payment of a reasonable fee, at the Department,

- (c) to inform in writing the Policy Council and the Constables of each parish, within any area covered or affected by the proposals, of the publication of the proposals and, where they include policies relating to EIA development, that the Environmental Statement is available for public inspection, and
- (d) to send a copy of the proposals and, where they include policies relating to EIA development, a statement to this effect and to the effect that the Environmental Statement is available for public inspection, to -
 - (i) the persons and bodies consulted prior to publication pursuant to section 4(1), and
 - (ii) any other person or body who, in the reasonable opinion of the Department, appears appropriate.

(4) The Department may take any additional steps it considers appropriate to bring to the attention of the general public -

- (a) the proposals, and
- (b) where relevant, the fact that the proposals include policies relating to EIA development and that an Environmental Statement is available for public inspection.

PART IV
APPROVAL OF PROPOSALS AND REVIEW OF PLANS AND LOCAL
PLANNING BRIEFS

Inspector's report.

9. (1) After the close of the inquiry the inspector must make a report in writing to the Department which must include -

- (a) his conclusions and recommendations on the proposals including any changes he recommends to the proposals, and
- (b) his reasons for such conclusions and recommendations.

(2) Subject to subsection (5), the Department must consider any written representations, the inspector's report and, where the proposals include policies relating to EIA development, the Environmental Statement and refer the following to the Strategic Land Planning Group -

- (a) the report and, where the proposals include policies relating to EIA development, the Environmental Statement, and
- (b) the Department's written conclusions on -
 - (i) the inspector's report, and
 - (ii) the written representations,

(iii) where the proposals include policies relating to EIA development, the Environmental Statement, and

(iv) its written reasons for those conclusions including, where relevant, its reasons for rejecting any recommendations of the inspector.

(3) The Strategic Land Planning Group may give comments in writing to the Department but only in relation to the following matters -

(a) the matters referred to in the proposals, and

(b) the documents referred to in subsection (2),

and shall inform the Department in writing if it does not intend to give any such comments.

(4) Subject to subsection (5), after the Department has had a reasonable time to consider any written comments made pursuant to subsection (3), the Department must request the Policy Council to lay before the States in writing -

(a) the proposals, as published pursuant to section 8, and where the proposals include policies relating to EIA development, the Environmental Statement,

(b) the inspector's report,

(c) any written comments duly made by the Strategic Land Planning Group,

(d) the Department's conclusions on -

(i) the inspector's report,

(ii) the written representations, and

(iii) where the policies include policies relating to EIA development, the Environmental Statement,

and its reasons for those conclusions including, where relevant, its reasons for rejecting any recommendations of the inspector, and

(e) any changes recommended by the Department to the proposals, and its reasons for those changes, having taken into account -

(i) the written representations,

(ii) where the proposals include policies relating to EIA development, the Environmental Statement,

(iii) the inspector's report, and

(iv) any written comments duly made by the Strategic Land Planning Group.

(5) In carrying out its functions under subsections (2) and (4), the Department may disregard any representations, evidence or other document received -

- (a) where an inquiry hearing has been held, after that hearing has closed, or
- (b) where no inquiry hearing has been held, after the expiry of the relevant time limits specified for the making of written representations pursuant to the Plans Regulations,

other than written comments duly made by the Strategic Land Planning Group pursuant to subsection (3).

States consideration of proposals.

10. (1) After consideration of the inspector's report and the Department's conclusions and recommendations, the States may -

- (a) adopt the proposals, as amended in accordance with any recommendations made by the Department under section 9(4)(e),
- (b) reject the proposals, or

- (c) seek additional amendments to the proposals before adopting them in accordance with any rules of procedure for the time being in force.

(2) Where the States seek additional amendments to the proposals, they shall give the Department an opportunity to withdraw the Department's proposals so that the Department may consider any implications of such amendments including -

- (a) the implications of the amendments for other parts of those proposals, and
- (b) where the proposals include, or would include as so amended, policies relating to EIA development, the implications in relation to the duty of the Department to carry out or secure the carrying out of an Environmental Impact Assessment under the EIA Ordinance.

(3) Where the States give the Department an opportunity to withdraw its proposals then the Department may recommend to the Policy Council that the Policy Council refer the proposals back to the inspector, or to a different inspector, to re-open the inquiry to consider any amendments sought by the States and if the Policy Council rejects such a recommendation it must notify the Department of this and of the reasons why.

(4) Any Plan, Local Planning Brief or amendments thereto adopted by the States must, for the purposes of identification, be signed and dated by the Presiding Officer of the States and lodged at the Greffe.

Date of coming into effect of Plan or Local Planning Brief or amendments thereto.

11. A Plan, Local Planning Brief or amendments thereto shall have effect from their date of adoption by the States.

Notice of adoption.

12. The Department must, as soon as reasonably possible after the date on which a Plan, Local Planning Brief or amendments thereto have been adopted by the States -

- (a) place a notice in La Gazette Officielle specifying in relation to that Plan, Local Planning Brief or those amendments -
 - (i) the date of adoption, and
 - (ii) the times that copies are available for public inspection at the Greffe and at specified offices of the Department, and
- (b) make copies available for public inspection as specified in the notice in La Gazette Officielle and, on payment of a reasonable fee, for purchase.

Effective period of Plan or Local Planning Brief.

13. A Plan or Local Planning Brief shall have effect for 10 years from the date of its adoption by the States subject to -

- (a) the extension of that period at any time by resolution of the States in which case it shall have effect until the date specified in that resolution, and
- (b) such alterations as may from time to time be made to it pursuant to the Law and this Ordinance.

Review of Plans and Local Planning Briefs.

14. The Department must review a Plan or Local Planning Brief at least once every 10 years and, if it appears to the Department that an alteration or a replacement is necessary, it must prepare proposals in accordance with the Law and this Ordinance.

PART V
MISCELLANEOUS

Conflict between Plans and Briefs.

15. Where there is a conflict between the provisions in any Plan or Local Planning Brief and those in any other Plan or Local Planning Brief, the more recently adopted provisions shall prevail.

Availability of documents on a website.

16. Where documents are required to be made available for public inspection pursuant to this Ordinance, the Department may also make such documents available at the same time on a website and where it does so the notice in La Gazette Officielle which specifies the times and places at which those documents are available shall also include -

- (a) the address of the website, and

- (b) details of how the documents may be accessed from that website,

and such information shall also be displayed at the places where the documents are made available for public inspection.

Interpretation.

17. (1) In this Ordinance, unless the context requires otherwise -

"area of special control" means a conservation area or a site of special significance,

"certificate of consistency" means a document certifying the matters set out in section 5(2)(a),

"conservation area" means an area which is identified in a Plan or Local Planning Brief as being of special architectural or historic interest and the character or appearance of which it is desirable to preserve or enhance by application of the special provisions in chapter 3 of Part IV of the Law,

"Department" means the States of Guernsey Environment Department,

"department of the States" includes any council or committee (however called) thereof,

"development" shall be construed in accordance with section 13(1) of the Law and Part I of the Land Planning and Development (General Provisions) Ordinance, 2007^e,

"Development Plan" means a current adopted plan prepared pursuant to sections 8 and 11 of the Law including any current adopted amendment thereto,

"EIA development" shall be construed in accordance with section 2 of the EIA Ordinance,

"EIA Ordinance" means the Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007,

"Environmental Impact Assessment" means carrying out the steps necessary to assess the environmental effects of the Plan or Local Planning Brief policies in question in accordance with the requirements of the EIA Ordinance,

"Environmental Statement" shall have the meaning in section 13(1) of the EIA Ordinance,

"inquiry" means the process which an inspector is appointed to conduct under section 7 in order to -

- (a) consider particular proposals,

^e Approved by resolution of the States on 26th September, 2007.

(b) consider any written representations and response by the Department in relation to such proposals, and

(c) conduct any inquiry hearing into such proposals, written representations and responses,

so as to make a report to the Department with his conclusions and recommendations in relation to such proposals,

"**the Law**" means the Land Planning and Development (Guernsey) Law, 2005,

"**Local Planning Brief**" means a current adopted brief prepared pursuant to sections 10 and 11 of the Law including any current adopted amendment thereto,

"**non-technical summary of the Environmental Statement**" means the non-technical summary prepared pursuant to paragraph 1(f) of Schedule 6 to the EIA Ordinance,

"**notice**" means notice in writing,

"**notifying**" means notifying in writing and related terms shall be construed accordingly,

"**Plan**" means a Development Plan or a Subject Plan,

"Planning Panel" means the Panel established under section 86 of the Law,

"Plans Regulations" means the Land Planning and Development (Plans Inquiry) Regulations, 2007,

"Policy Council" means the States of Guernsey Policy Council,

"proposals" means proposals for a fresh or replacement Plan or Local Planning Brief or for amendments thereto,

"public utility provider" means a provider of a public utility service,

"public utility service" means -

- (a) water, gas, electricity, telecommunications, transport or sewerage disposal services, or
- (b) any other service appearing to the States to be of public utility,

"screening opinion" shall have the meaning in section 13(1) of the EIA Ordinance,

"site of special significance" means an area which is identified in a Plan or Local Planning Brief as having special significance (whether because of archaeological, botanical, geological, scientific, cultural, zoological or any other interest) and which it is desirable to

preserve, enhance or manage by the application of the special provisions in Chapter 4 of Part IV of the Law,

"Strategic Land Planning Group" means the Group appointed under section 3(1) of the Law,

"Strategic Land Use Plan" means the plan which is the current Strategic Land Use Plan pursuant to sections 4 and 5 of the Law including any current adopted amendment thereto,

"Subject Plan" means a current adopted plan prepared pursuant to sections 9 and 11 of the Law including any current adopted amendment thereto,

"subordinate legislation" means any ordinance, statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"under the Law or the repealed enactments" includes provisions made under the Law or the repealed enactments and related expressions shall be construed accordingly,

"written representations" means representations duly made to the inspector in accordance with the requirements of the Plans Regulations and not withdrawn,

and other terms used in this Ordinance which are not defined in it but are defined in the Law shall have the same meaning as in the Law.

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

Amendment of the Law.

18. (1) The Law is amended as follows.

(2) In section 7 (transition from current plans to Development Plans, Subject Plans and Local Planning Briefs) in subsections (1) and (2) for the words "known as" substitute "deemed to be".

(3) In section 11 (further provisions as to the contents of Development Plans, Subject Plans and Local Planning Briefs) in subsections (1) and (2) -

(a) for the words "or Subject Plan" substitute ", Subject Plan or Local Planning Brief", and

(b) for the words "the Plan" substitute "the Plan or Brief".

(4) In Schedule 2 (Interpretation) -

(a) in the definition of "conservation area" for the words "or Subject Plan" substitute ", Subject Plan or Local Planning Brief",

(b) for the definition of "**Development Plan**" substitute -

"**Development Plan**" means a current adopted Plan prepared pursuant to sections 8 and 11 including any current adopted amendment thereto,"

- (c) for the definition of "**Local Planning Brief**" substitute-

"**Local Planning Brief**" means a current adopted Brief prepared pursuant to sections 10 and 11 including any current adopted amendment thereto,"

- (d) in the definition of "site of special significance" for the words "or Subject Plan" substitute ", Subject Plan or Local Planning Brief",

- (e) for the definition of "**Strategic Land Use Plan**" substitute -

"**Strategic Land Use Plan**" means the Plan which is the current Strategic Land Use Plan pursuant to sections 4 and 5 including any current adopted amendment thereto," and

- (f) for the definition of "**Subject Plan**" substitute -

"**Subject Plan**" means a current adopted Plan prepared pursuant to sections 9 and 11 including any current adopted amendment thereto, ".

Transitional provisions.

19. Section 7 of the Law shall apply to any -

- (a) adopted Detailed Development Plan prepared under section 6 of the Island Development (Guernsey) Law, 1966^f, and
- (b) outline planning brief adopted by the States,

which was in effect immediately before the commencement of Part II of the Law and which is not listed in Schedule 1 to the Law as it applies to those listed in that Schedule.

Citation.

20. This Ordinance may be cited as the Land Planning and Development (Plans) Ordinance, 2007.

Commencement.

21. This Ordinance shall come into force on the same date as the Law.

^f Ordres en Conseil Vol. XX, p. 276 as amended by Vol. XXII, p. 573, Vol. XXIII, p. 231, Vol. XXXI, p. 61, Vol. XXXII, p.33.