

Island of



Guernsey

Ordinance of the States

XXV
2007

Made26th September, 2007

The Land Planning and Development (Special Controls) Ordinance, 2007

**The Land Planning and Development (Special Controls)
Ordinance, 2007**

ARRANGEMENT OF SECTIONS

PART I

PROTECTED MONUMENTS AND PROTECTED BUILDINGS

1. The protected monuments list and the protected buildings list.
2. Area to be regarded as part of a protected monument and extent of a protected building.
3. Effect of listing.
4. Notifications and publicity.
5. Transition from Register to lists.
6. Consultation with experts.
7. Preservation notices.
8. Contravention of preservation notice.
9. Execution and costs of works required by preservation notice.
10. Reporting and recording of finds.

PART II

TREE PROTECTION ORDERS

11. Content of order.
12. Provisional effect of order.
13. Procedure after making an order.
14. Objections and representations.
15. Procedure for confirmation of tree protection order.
16. Notification of decision in respect of tree protection order.
17. Register of tree protection orders.

PART III
APPEALS

18. Appeals against listing.
19. Appeals against preservation notices.
20. Appeals against confirmation of tree protection orders.
21. Making of appeals under section 18, 19 or 20.

PART IV
MISCELLANEOUS

22. Interpretation.
23. Amendment of the Law.
24. Citation.
25. Commencement.

The Land Planning and Development (Special Controls) Ordinance, 2007

THE STATES, in pursuance of their Resolutions of the 27th June 2002 and the 26th January 2005^a and in exercise of the powers conferred on them by sections 29(3) and (4), 31(2) and (3), 33(4) to (6), 35(2), 43(5), 81 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

PROTECTED MONUMENTS AND PROTECTED BUILDINGS

The protected monuments list and the protected buildings list.

1. (1) The protected monuments list and the protected buildings list must be kept at the principal offices of the Department and at the Greffe and made available for inspection at those offices by the public, free of charge and at all reasonable times.

(2) The Department may also keep such lists in electronic form and may make either or both of them available on a website.

(3) In relation to each protected monument or protected building the following information must be included in the relevant list –

(a) the date of the entry,

(b) its name (where applicable) and its address,

^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.

- (c) in the case of a protected monument, a plan identifying the location and extent of the area to be regarded as part of the protected monument for the purposes of chapter 1 of Part IV of the Law, and
- (d) in the case of a protected building, a plan identifying the location and extent of the area to be regarded as part of the protected building for the purposes of chapter 2 of Part IV of the Law.

(4) The protected monuments list may also include, in relation to any protected monument, a description of any particular special interest by reason of which it is listed although any such description shall be indicative only and shall not be taken to be an exhaustive description of any relevant special interest.

(5) The protected buildings list may also include, in relation to any protected building, a description of any particular special interest by reason of which it is listed and of any feature which the Department considers it is desirable to preserve although any such description shall be indicative only and shall not be taken to be an exhaustive description of any relevant special interest or of any such feature.

Area to be regarded as part of a protected monument and extent of a protected building.

2. (1) The area to be regarded as part of a protected monument for the purposes of chapter 1 of Part IV of the Law shall include not only the land in or on which it is situated but also any adjoining land which appears to the Department to be necessary for the support or preservation of the monument or for the preservation of its setting.

(2) For the avoidance of doubt, any man-made object or structure

fixed to a protected building forms part of that building.

(3) The area to be regarded as part of the protected building for the purposes of chapter 2 of Part IV of the Law shall include not only the land in or on which it is situated but also any land in the vicinity of the protected building which appears to the Department to be necessary for the preservation of any –

(a) man-made object or structure forming part of the land,
or

(b) any object not forming part of the building,

and which is of special historic, architectural, traditional or other interest and is associated with the building.

Effect of Listing.

3. (1) For the avoidance of doubt –

(a) the listing of any –

(i) monument, structure, artefact, cave, ruin or other remains in the protected monuments list,
or

(ii) building in the protected buildings list,

has effect from the time that the information required to be included under section 1(3) is entered in the list, and

(b) any amendment to an entry on the relevant list shall take effect from the time of that amendment or deletion.

(2) Subject to subsection (3), the listing of any monument, structure, artefact, cave, ruin or other remains as a protected monument or any building as a protected building shall not affect the validity of any planning permission, including in relation to any development which has not been carried out under it, as at the time of listing.

(3) Where, as a result of the listing of any protected monument or protected building, operations constitute development on a basis which did not apply immediately before the listing, including by virtue of such operations –

(a) no longer falling within a description of exempt development, or

(b) falling within section 1 or 2 of the General Ordinance^c,

then the development in question may not be carried out without a grant or a further grant of planning permission for the description of development in question, notwithstanding that the development may also fall within another description of development for which there is an extant planning permission and in these circumstances where there is a conflict between the terms of any extant planning permission and the terms of any later planning permission required in accordance with this subsection, the terms of the later planning permission shall take precedence.

Notifications and publicity.

4. (1) As soon as practicable after an entry on the protected monuments list or the protected buildings list is inserted (except by way of inclusion in the list under section 5(1)), amended or deleted the Department shall –

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

- (a) notify the following persons of that fact and include with that notification a copy of the entry in question –
 - (i) any owner and occupier of the protected monument or protected building in question, and
 - (ii) any other person appearing to the Department to have an interest in the land comprising the protected monument or protected building in question which may be materially affected by the listing,
- (b) place a notice in La Gazette Officielle of that fact which must also include –
 - (i) the name (where applicable) and address of the protected monument or protected building, former protected monument or protected building in question, and
 - (ii) brief details of where and when the entry on the relevant register may be inspected.

(2) A notification under subsection (1)(a), in relation to a new or modified entry, must be accompanied by brief particulars of -

- (a) brief particulars of the right of appeal against listing under section 18, and
- (b) brief particulars of the grounds on which, period

within which and manner in which such an appeal must be made.

Transition from Register to lists.

5. (1) The Department shall on first preparing –

(a) the protected monuments list include in it any building, structure or object –

(i) included on the Register of Ancient Monuments and Protected Buildings as maintained by Her Majesty's Greffier under the 1967 Law^d ("**the Register**") immediately before the commencement of chapter 1 of Part IV of the Law, or

(ii) in respect of which the Department has issued a direction pursuant to section 2(1) of the 1967 Law but which has not been registered in the Register immediately before the commencement of chapter 1 of Part IV of the Law,

and which it considers appropriate to list as a monument, structure, artefact, cave, ruin or remain falling within section 29(1) of the Law,

(b) the protected buildings list include therein any building, structure or object –

^d Ordres en Conseil Vol. XXI p. 219.

- (i) included on the Register immediately before the commencement of Chapter 2 of Part IV of the Law, or
- (ii) in respect of which the Department has issued a direction pursuant to section 2(1) of the 1967 Law but which has not been registered in the Register immediately before the commencement of chapter 2 of Part IV of the Law,

and which it considers is appropriate to list as a building falling within section 33(1) of the Law.

(2) As soon as practicable after any building, structure or object is included in the protected monuments list or the protected buildings list pursuant to subsection (1), the Department shall notify the following persons of that fact and include with that notification a copy of the entry in question –

- (a) any owner and occupier of the protected monument or protected building in question, and
- (b) any other person appearing to the Department to have an interest in the land comprising the protected monument or protected building in question which may be materially affected by the listing.

(3) A notification under subsection (2) must be accompanied by brief particulars of -

- (a) the right of appeal against listing under section 18, and

- (b) the grounds on which, period within which and manner in which such an appeal must be made.

Consultation with experts.

6. (1) The Department may consult in writing with any person or body who reasonably appears to the Department to have appropriate expertise where the Department is –

- (a) preparing and keeping under review the protected monuments list or the protected buildings list,
- (b) deciding whether or not to insert, amend or delete an entry on the protected monuments list or the protected buildings list, or
- (c) deciding whether or not to serve a preservation notice,

and the Department shall in carrying out the function in question take into account any written representations received from that person or body, within, where relevant, any period specified by the Department pursuant to subsection (2).

(2) Where the Department consults a person or body pursuant to subsection (1), it may require in writing that any representations are made to it within a specified period of not less than 14 days beginning with the date on which the Department first consulted that person or body in relation to the matter in question.

(3) Where the Department takes into account written representations made under this section it must send a copy of such representations with -

- (a) any notification of a new or modified entry on the protected buildings list or the protected monuments list under section 4,
- (b) any notification of its decision to include a building, structure or object on the protected monuments list or the protected buildings list under section 5(2), and
- (c) any preservation notice served on a owner of a protected building or protected monument pursuant to section 7.

Preservation notices.

7. (1) If it appears to the Department that any works are urgently necessary to –

- (a) preserve or protect a protected monument or protected building, or
- (b) prevent the deterioration of a protected monument or protected building,

it may serve a notice, specifying the matters set out in subsection (3), on the owner requiring him to carry out such works ("**a preservation notice**").

(2) The Department must, within 7 days beginning with the date of service of the preservation notice, serve a copy on the occupier of the land, if he is not its owner, and on any other person appearing to the Department to have an interest in that protected monument or protected building, as the case may be, which is materially affected by the notice.

(3) A preservation notice must –

- (a) identify the protected monument or protected building to which it relates (by means of a plan or otherwise),
- (b) specify why the Department considers that works are urgently necessary to preserve or protect the protected monument or protected building or to prevent its deterioration,
- (c) specify the works the Department requires the owner to carry out to preserve or protect the protected monument or protected building or to prevent its deterioration,
- (d) specify the period within which the Department requires the works to be carried out (which may differ where more than one lot of works is required),
- (e) specify that there is a right of appeal to the Planning Tribunal against the notice under section 19,
- (f) give brief particulars of the grounds on which, period within which and manner in which an appeal must be made, and
- (g) specify that a failure by the owner to carry out any of the works specified in the notice within the relevant period required is an offence in accordance with section 8.

Contravention of preservation notice.

- 8.** (1) If any works required to be carried out by a preservation

notice are not carried out within the relevant period specified in the notice, the owner of the protected monument or protected building in question, is guilty of an offence.

(2) It is a defence for a person charged with an offence under this section to prove that he took all reasonable steps to secure compliance with the notice.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Execution and costs of works required by preservation notice.

9. Section 50(1) to (5) of the Law (execution and cost of works required by compliance notice) shall apply in relation to works required to be carried out by a preservation notice and not carried out within the period required for the works in question as it applies to measures required to be taken by a compliance notice and not taken within the compliance period.

Reporting and recording of finds.

10. (1) This section applies where any person finds an object –
- (a) of archaeological or historic significance and the find –
 - (i) is made at a protected monument or in the vicinity of such a monument, or
 - (ii) is made elsewhere and is likely to be material in determining whether any monument, structure, artefact, cave, ruins or remains become a protected monument or any site is designated as a site of special significance,

- (b) of historic significance and the find –
 - (i) is made at a protected building or in the vicinity of such a building, or
 - (ii) is made elsewhere and is likely to be material in determining whether any building becomes a protected building.

(2) The person making the find shall –

- (a) inform the Department in writing, within a period of 28 days, beginning with the date the find was made, of the nature of the object and the precise place at which it was found,
- (b) where required in writing by the Department –
 - (i) give the Department such further information as it may require, and
 - (ii) produce the object to the Department.

(3) The Department shall copy any information received by it pursuant to subsection (2) to the Culture and Leisure Department and keep a record in writing of such information.

(4) A person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

PART II
TREE PROTECTION ORDERS

Content of order.

11. A tree protection order must contain or have annexed to it a map indicating the position of the tree, group or area of trees or woodlands to which the order relates and where the map is annexed to an order it shall be treated as part of the order.

Provisional effect of order.

12. An order taking effect under section 43(3) of the Law shall take effect for a period of six months from the date it is made and, thereafter, shall only continue in force if confirmed by the Department in accordance with section 15.

Procedure after making an order.

13. (1) As soon as practicable after making a tree protection order, the Department shall –

- (a) place a copy of the order on the register of tree protection orders kept in accordance with section 17, and
- (b) serve on any –
 - (i) owner and occupier of the land affected by the order, and
 - (ii) other person appearing to the Department to have an interest in the land which may be materially affected by the order,

a copy of the order and a notice containing the matters set out in subsection (2).

- (c) place a notice in La Gazette Officielle setting out –
 - (i) that a tree protection order has been made and specifying the protected tree in relation to which it was made,
 - (ii) that a copy of the order is available for inspection at the principal offices of the Department, free of charge, at all reasonable times, and
 - (iii) the period within which objections and representations in respect of the order can be made.

(2) The matters referred to in subsection (1)(b) are –

- (a) a summary of the effect of the order including of –
 - (i) the operations which constitute development for which planning permission is required where carried out in relation to a protected tree and the additional material considerations to which the Department must have regard in determining an application for such permission, and
 - (ii) development in relation to a protected tree which is exempt development for which

planning permission is not required,

- (b) a statement that objections and representations with regard to any protected tree to which the order relates may be made to the Department in accordance with section 14, and
- (c) a copy of section 14.

Objections and representations.

14. (1) Objections and representations in relation to the making of a tree protection order must be made to the Department in writing within a period of 28 days beginning with the date of service of the notice under section 13(1)(b) and –

- (a) must specify the protected tree in relation to which they are made, and
- (b) in the case of objections, must include the reasons for the objections.

Procedure for confirmation of a tree protection order.

15. (1) The Department must consider any objections and representations duly made under section 14 and not withdrawn in deciding whether to –

- (a) confirm the tree protection order, with or without modifications, in which case it shall continue in effect beyond the provisional six month period unless and until revoked by a further order of the Department, or
- (b) make a further order revoking the tree protection order.

(2) Where an order is confirmed it shall be endorsed to that effect and the endorsement shall also indicate –

- (a) that the order was confirmed with or without modifications, as the case may be, and
- (b) the date on which it was confirmed.

(3) Where an order is confirmed with modifications, the modifications shall be indicated in the order by a distinctive type or other means.

(4) Where the Department revokes an order, it shall, as soon as practicable endorse the order with a statement to that effect and with the date of its decision.

Notification of decision in respect of tree protection order.

16. The Department must notify the following persons of any decision made under section 15 (1) –

- (a) any owner and occupier of the land affected by the order,
- (b) any other person appearing to the Department to have an interest in the land which may be materially affected by the order, and
- (c) any person who made duly made objections or representations concerning the tree protection order that were not withdrawn,

and, where an order is confirmed with modifications, send with the notice a copy of

the order as modified and confirmed.

Register of tree protection orders.

17. (1) The Department shall prepare and maintain a register of tree protection orders which must contain –

- (a) a copy of any tree protection order in force, and
- (b) a copy of any order revoking a tree protection order.

(2) Where a tree protection order is -

- (a) endorsed or modifications are indicated on it pursuant to sections 15(2) to (4), or
- (b) modified pursuant to section 8(3) of the Land Planning and Development (Appeals) Ordinance, 2007,

the copy of the order on the register must be replaced with a copy of the order as so endorsed, endorsed and modified or modified.

(3) The register must be kept at the principal offices of the Department and made available for inspection by the public free of charge at all reasonable times.

PART III
APPEALS

Appeals against listing.

18. (1) Where the Department insert (including by way of inclusion in the list under section 5(1)) or amend an entry on the protected monuments list, any person who the Department is required to notify of that fact under section 4 or 5(2)

may, subject to subsection (2), appeal to the Planning Tribunal on the ground –

- (a) that the protected monument has no special interest,
- (b) that land regarded as part of the protected monument is more than is necessary for its support or preservation or for the preservation of its setting,
- (c) that the entry is in any material respect factually incorrect, or
- (d) that the insertion or amendment of the entry was (for any other reason) ultra vires or unreasonable.

(2) No appeal lies against a listing under section 5(1)(a) except –

- (a) on a ground falling within subsection (1)(b) or (c) in respect of a material difference in the entry on the protected monuments list from the corresponding entry on the Register, or
- (b) on the ground that the building, structure or object should have been listed on the protected buildings list instead.

(3) Where the Department insert or amend an entry on the protected buildings list (including by way of inclusion in the list under section 5(1)), any person who the Department are required to notify of that fact under section 4 or 5(2) may, subject to subsection (4), appeal to the Planning Tribunal on the ground –

- (a) that the protected building has no special interest,

- (b) that land regarded as part of the protected building is more than is necessary to protect –
 - (i) any man-made object or structure forming part of the land in the vicinity of the building, or
 - (ii) an object not forming part of the building,
 - (c) that the entry is in any material respect factually incorrect, or
 - (d) that the insertion or amendment of the entry was (for any other reason) ultra vires or unreasonable.
- (4) No appeal lies against a listing under section 5(1)(b) except -
- (a) on a ground falling within subsection (3)(b) or (c) in respect of a material difference in the entry on the protected buildings list from the corresponding entry on the Register, or
 - (b) on the ground that the building, structure or object should have been listed on the protected monuments list instead.

Appeals against preservation notices.

19. Any owner of land on whom a preservation notice is served may appeal to the Planning Tribunal on the ground –

- (a) that any works specified in the notice are not urgently necessary to preserve or protect, or prevent the deterioration of, the protected monument or protected

building in question,

- (b) that the period specified in the notice for carrying out any such works is unreasonably short, or
- (c) that the issue of the notice was (for any other reason) ultra vires or unreasonable.

Appeals against confirmation of tree protection orders.

20. Where the Department confirm a tree protection order, any person who the Department are required to notify of that fact under section 16(a) or (b), may appeal to the Planning Tribunal on the ground that -

- (a) it is not in the interests of amenity to provide for the protection of the tree, group or area of woodlands in question or of any tree in such group or area, or
- (b) the confirmation of the order was (for any other reason) ultra vires or unreasonable.

Making of appeals under section 18, 19 or 20.

21. An appeal under section 18, 19 or 20 must be made –

- (a) within a period of 28 days beginning with the date on which –
 - (i) in the case of an appeal against listing, the appellant was notified under section 4 or 5(2),
 - (ii) in the case of an appeal against a preservation notice, the notice was served on the appellant under section 7(1), or

- (iii) in the case of an appeal against the confirmation of a tree protection order, the appellant was notified under section 16,
- (b) by notice served on the Minister of the Department stating the grounds and material facts on which the appellant relies; and the Department shall immediately transmit the notice to the Chairman of the Planning Panel to enable him (or, if he is unavailable, the Deputy Chairman) to appoint, from the membership of the Panel, the members of the Planning Tribunal to hear and determine the appeal, and
- (c) in accordance with other relevant requirements set out in the Land Planning and Development (Appeals) Ordinance, 2007^e.

PART IV
MISCELLANEOUS

Interpretation.

22. (1) In this Ordinance, unless the context requires otherwise –

"1967 Law" means the Ancient Monuments and Protected Buildings (Guernsey) Law, 1967,

"Chairman of the Planning Panel" means the person who is designated, from time to time, as the Chairman of the Planning Panel pursuant to section 86(3)(c) of the Law,

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

"Department" means the States of Guernsey Environment Department,

"Deputy Chairman" means the person who is designated, from time to time, as the Deputy Chairman of the Planning Panel pursuant to section 86(3)(d) of the Law,

"development" shall be construed in accordance with section 13(1) of the Law and Part I of the General Ordinance,

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

"Exempt development" means development –

- (a) specified in the Schedule to the Land Planning and Development (Exemptions) Ordinance, 2007^f, or
- (b) falling within section 6 of the General Ordinance,

"feature" in relation to a protected building includes anything falling within section 2(2) and paragraphs (a) and (b) of section 2(3),

"General Ordinance" means the Land Planning and Development (General Provisions) Ordinance, 2007,

"the Law" means the Land Planning and Development (Guernsey)

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

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,

"notice" means notice in writing,

"notify" means notify in writing,

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

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

"Planning permission" means the permission which is required under section 14 of the Law for the carrying out of any development of land,

"Planning Tribunal" means the Tribunal the members of which are appointed under section 87 of the Law to hear and determine an appeal under the Law,

"preservation notice" shall be construed in accordance with section 7(1),

"protected building" means a building, or any part of a building, which is of special historic, architectural, traditional or other interest and which is listed on the protected buildings list,

"protected buildings list" means the list of protected buildings prepared, maintained, and kept under review by the Department under section 33(1) of the Law,

"protected monument" means a monument, structure, artefact, cave, ruin or remains which are of archaeological, historic, traditional, artistic or other special interest and which is listed on the protected monuments list,

"protected monuments list" means the list of protected monuments prepared, maintained and kept under review by the Department under section 29(1) of the Law,

"protected tree" means any tree, group or area of trees or woodlands in relation to which a tree protection order has been made,

"Register" shall be construed in accordance with section 5(1)(a)(i),

"relevant list" means, in relation to a protected monument, the protected monuments list and, in relation to a protected building, the protected buildings list,

"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,

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

"tree protection order" means an order made under section 43(1) of the Law for the protection of any tree, group or area of trees or woodlands,

"under the Law" includes provisions made under the Law,

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 is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Amendment of the Law.

23. (1) The Law shall be amended as follows.

(2) In the arrangement of sections, after the entry relating to section 45 insert -

"
CHAPTER 5A
GLASSHOUSE LAND ETC.

45A. Glasshouse land etc."

(3) In sections 31(2)(c) and 35(2)(c), which make provision for the execution of works for the protection and preservation of protected monuments and protected buildings respectively, at the end add -

"and for appeals in connection with such provisions including matters corresponding to provision made by or under Part VI or VIII of this Law".

(4) In section 33(6)(c) (provision for appeals against listing of a protected building), for the words "Part VI" substitute "Part VI or VIII".

(5) In sections 38(1) (general functions of authorities as respects conservation areas) and 40(1) (control of development, etc. on sites of special significance) of the Law, for the words "any powers" substitute "any functions".

(6) For section 43(5) (Ordinance making powers in relation to tree protection orders) substitute the following subsection –

" (5) The States may, by Ordinance under this subsection, make such provision as they think fit in relation to tree protection orders, including, without limitation, provision in relation to –

- (a) the matters to be taken into account in determining what is in the interests of amenity under subsection (1),
- (b) the publicity to be given to the making of such orders,
- (c) the duration of such orders,
- (d) the making of objections to the making of such orders, and
- (e) appeals against the making or confirmation of such orders (including matters corresponding to provision made by or under Part VI or VIII of this Law)."

(7) After section 45 insert the following chapter -

*"CHAPTER 5A
GLASSHOUSE LAND ETC.*

Glasshouse land etc.

45A. In this Law and in any Plan or Brief, land of the following descriptions, except for land used as a garden (other than a market garden) shall be treated as land used for agriculture –

- (a) land used or, with the application of good husbandry, capable of being used, for –
 - (i) dairy farming,
 - (ii) production, rearing or maintenance of livestock, or
 - (iii) market gardening or the outdoor cultivation of flowers, bulbs or nursery stock,
- (b) land which is covered by a glasshouse, or
- (c) land which was covered by a glasshouse and falls within paragraph (a)."

(8) In section 46(2) and (5), for the words "Chapters 1 to 5" substitute "Chapters 1 to 6".

(9) In Schedule 2 (interpretation), in the definition of "**protected buildings**" after the words "means buildings" insert ", or any parts of buildings,".

Citation.

24. This Ordinance may be cited as the Land Planning and Development (Special Controls) Ordinance, 2007.

Commencement.

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