

ORDER IN COUNCIL

IX
1991

ratifying a Projet de Loi

ENTITLED

The Development Control (Sark) Law, 1991

(Registered on the Records of the Island of Guernsey
on the 20th August, 1991.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 20th day of August, 1991 before Sir Charles Frossard, Kt., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 26th day of June, 1991, approving and ratifying a *Projet de Loi* of the Chief Pleas of Sark entitled “The Development Control (Sark) Law, 1991”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island.
2. That an extract of this present Act together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Seneschal of Sark for registration on the records of that Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 26th day of June 1991

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 31st day of May 1991 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee a humble Petition of John Michael Beaumont, Seigneur of Sark, Lawrence Philip de Carteret, Seneschal, and Alfred William John Adams, Prevôt, of the Island of Sark, setting forth:—

“1. That, in pursuance of their Resolution of the 3rd day of October 1990 the Chief Pleas of the Island of Sark, at a Meeting held on the 3rd day of October 1990 approved a Bill or “Projet de Loi” entitled “The Development Control (Sark) Law, 1991”. 2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the Chief Pleas of Sark entitled “The Development Control (Sark) Law, 1991”, and to order that the same shall have force of law in the Island of Sark.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Sark.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Bailiwick of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Bailiwick, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney

PROJET DE LOI

ENTITLED

The Development Control (Sark) Law, 1991

THE CHIEF PLEAS OF SARK, in pursuance of their Resolution of the 3rd day of October, 1990, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in this Island.

PART I

The Development Control Committee

Appointment of the Development Control Committee

1. The Chief Pleas shall, in accordance with the succeeding provisions of this Part of this Law, appoint a Committee to be styled the Development Control Committee (hereinafter referred to as "the Committee") with authority to exercise the powers and perform the duties conferred and imposed upon it by or under this Law.

Constitution of Committee

2. The Committee shall be constituted in such a manner as the Chief Pleas may, from time to time, by Resolution direct save that at least one member thereof shall have experience in the agricultural industry.

3. The Chairman and members of the Preservation of Natural Amenities and Agricultural Land Control Committee, being the committee constituted by Resolution of the Chief Pleas for the purposes of the Preservation of Natural Amenities and Agricultural Land Control (Sark) Law, 1961(a), in office immediately before the date on which this Law comes into force shall, on that date, take office by virtue of this section as the first Chairman and members of the Committee.

(a) Ordres en Conseil Vol. XVIII, p. 303.

PART II

Control of Development

Control by Ordinance of Development

4. The Chief Pleas may, from time to time, by Ordinance make such provision as they may deem necessary or expedient for controlling development in this Island, and, without prejudice to the generality of the foregoing, they may, from time to time, by Ordinance, provide for all or any of the following matters:—

- (a) the control of development of any land;
- (b) the control of the placing, erecting or re-erecting on any site or the making of any structural alteration to the exterior (including demolition or partial demolition) of any movable or immovable structure whether or not visible from any public or other place to which the public has access;
- (c) the control of the placing, erecting or re-erecting on any site or the making of any structural alteration to the exterior (including demolition or partial demolition) of any movable or immovable structure which when so placed, erected or re-erected, will be visible from any part of the territorial waters adjacent to this Island.
- (d) the demolition in whole or in part of any wall, hedge, bank or fence which is visible from any public or other place to which the public has access;
- (e) the control of the outdoor exhibition of any sign (which expression shall include any poster, bill, notice, advertising banner or flag) on or attached to the exterior of any movable or immovable structure, the placing of any such sign on any site and the painting of any such sign on any exterior surface of

any movable or immovable structure where such sign so painted bears any reference to a commercial or industrial undertaking;

- (f) the control of the re-siting or the exterior decoration or re-decoration of any movable structure, and the removal of any such structure from any site in any case where, in the opinion of the Committee, its presence detracts from the amenities of the locality;
- (g) the removal of any refuse dump from any site where, in the opinion of the Committee, its presence is offensive or unsightly;

Considerations to be taken into account

5. The Chief Pleas may, from time to time, by Ordinance determine the factors which the Committee shall take into account in exercising any of its powers in respect of the control of development or otherwise under any Ordinance made under the provisions of section 3 and, without prejudice to the generality of the foregoing, may from time to time, by Ordinance, provide that all or any of the following factors shall so be taken into account by the Committee:—

- (a) the effect of the development or other work on the natural beauty of the area and the desirability of keeping land adjacent to the foreshores and cliffs of the Island in its natural state;
- (b) the degree of suitability of the land to which the application relates for residential or industrial purposes;
- (c) whether the movable or immovable structure or other work in relation to which permission is applied for would be incongruous with its surroundings because of its siting, design, exterior appearance or because of the materials to be used;

- (d) in the case of an application for permission to carry out any development of agricultural land, the degree of suitability of the land as agricultural land;
- (e) the extent to which the development or other work would detract from the character or the amenity of the locality concerned or of the Island;
- (f) the effect of the development or other work on roads, traffic, services, public health, playing fields and other open spaces and the effect on adjoining properties; and
- (g) the availability and proximity of services, including roads, electricity, water and sewage disposal.

PART III

Conservation areas

6. (1) The Chief Pleas may by Ordinance designate areas of the Island to be known as “conservation areas”.

(2) An Ordinance under subsection (1) shall identify the conservation area with sufficient particularity to ensure that its boundaries are capable of precise determination.

(3) Notwithstanding any other provision of this Law or of any Ordinance thereunder, the Committee shall not, subject to subsection (4), grant permission to carry out or do within a conservation area any development or other thing for which, by virtue of an Ordinance under section 4, the permission of the Committee would be required.

(4) Nothing in subsection (3) prohibits the Committee from permitting in a conservation area—

- (a) the reconstruction, minor extension or minor alteration of an existing immovable structure;

- (b) the construction of a gate, wall, fence, shed or other structure for use in conjunction with an existing immovable structure;
- (c) the construction of an immovable or other structure designed and intended for use solely for the purposes of a public utility undertaking or for agricultural purposes;

and accordingly the provisions of Part II of this Law and of any Ordinance thereunder shall apply in relation to any such works.

(5) The Chief Pleas may by Ordinance amend or repeal subsection (4)(a), (b) or (c).

(6) A person granted permission in pursuance of subsection (4)(c) shall not use or attempt to use the structure for any purposes other than those specified in subsection (4)(c).

PART IV

General

Period of validity of declarations, permissions, permits or licences

7. Any preliminary declaration, permission, permit or licence given or issued under the provisions of this Law or of any Ordinance made hereunder shall remain valid for one year from the date on which it was given or issued.

Applications for preliminary declarations

8. A person who desires to carry out any operation or development which is controlled by an Ordinance made under the provisions of this Law may, before making an application to the Committee in that behalf, apply to the Committee for a preliminary declaration as to whether, in principle, the Committee, on the submission to it of information or detailed

plans or both, as the Committee may require of the proposed operation or development, would be likely to grant permission in pursuance of the provisions of an Ordinance as aforesaid.

Prescription of penalties by Ordinance

9. The Chief Pleas may, from time to time, by Ordinance prescribe the penalties which shall be incurred by any person who contravenes or attempts to contravene or fails to comply with the provisions of this Law or of any Ordinance made under the provisions of this Law or any conditions attached by the Committee to any permission granted under any such provisions.

No compensation for refusal to grant permission

10. In the event of the Committee refusing to grant an application under the provisions of any Ordinance made under the provisions of this Law, no compensation shall be payable by the Chief Pleas for any loss suffered by the applicant for such permission or any other person by reason of such refusal.

Service of notices

11. Any notice which may be served for the purposes of this Law or of any Ordinance made hereunder shall be validly served:—

- (a) on any person, if delivered to him, left, or sent by post addressed to him, at his usual or last known place of abode;
- (b) on any firm, if delivered to any partner of the firm, or left at, or sent by post to, the principal or last known principal place of business of the firm;
- (c) on any body corporate, if sent by post to its registered office or if left at, or sent by post to, its principal or last known principal place of business.

Appeals

12. (1) Subject to the provisions of this section, any person aggrieved by any decision of the Committee under any of the provisions of this Law or of any Ordinance made hereunder may appeal therefrom to a tribunal (hereinafter referred to as “the tribunal”) which shall be constituted in such manner as the Chief Pleas may, from time to time, by Ordinance direct and of which the members shall, from time to time, be appointed by the Chief Pleas by Resolution either generally or in respect of a particular appeal.

(2) A person may appeal to the tribunal under the provisions of the last preceding subsection on the grounds that the decision of the Committee was ultra vires or was an unreasonable exercise of its powers and any such appeal shall be instituted before the expiration of a period of six months commencing on the day on which notice of such decision was served on that person.

(3) An appeal under the provisions of subsection (1) of this section shall be instituted by way of a summons served on the President of the Committee to show cause why the decision appealed from should not be set aside or varied.

(4) On any appeal under the provisions of subsection (1) of this section the burden of satisfying the tribunal that the decision of the Committee which is the subject of the appeal is intra vires or reasonable shall be discharged by the Committee and the appellant shall be entitled to a final right of reply.

(5) The tribunal may, in such manner as shall be directed by Order of the Royal Court, refer to the Royal Court sitting as a Full Court (hereinafter referred to as “the Royal Court”) for decision any question arising in connection with the determination of an appeal by the tribunal under the provisions of this section and certified as a question of Law by Her Majesty’s Attorney General.

(6) Any person aggrieved by a decision of the tribunal on any question of law may appeal from that decision to the Royal Court in such manner and within such period as shall be directed by Order of the Royal Court.

(7) A decision of the Committee or of the tribunal, as the case may be, on any question in respect of which there has been no appeal under the provisions of this section, shall be final and conclusive.

Powers of Committee to visit sites

13. In the exercise of its powers under this Law or of any Ordinance made hereunder the Committee may, for the purposes of arriving at any decision, visit any site, and no application under this Law or of any Ordinance made hereunder shall be refused by the Committee until it has first visited the site concerned.

Chief Pleas not bound by this Law

14. Nothing contained in this Law or in any Ordinance made hereunder shall be taken to apply to the Chief Pleas or to any servant or agent of the Chief Pleas when acting for or on behalf of the Chief Pleas within the course of their employment or agency.

Interpretation

15. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“agricultural land” means any land used or capable of being used for the purpose of any trade or business of dairy farming, the breeding, rearing or maintenance of livestock, market gardening or the outdoor cultivation of vines or trees (in each case as a cash crop), flowers, bulbs or nursery stock but does not include land used as a garden other than a market garden;

“conservation area” means any area of the Island defined in any Ordinance made in pursuance of the provisions of section 6 of this Law;

“development” means the carrying out of any building, engineering, mining or other operation in, on, over or under land and includes the making of any material change in the use of any building or land:

Provided that the following operations or use shall not be deemed, for the purposes of this law, to involve development, that is to say:—

- (i) the carrying out of works for the maintenance of any building;
- (ii) the laying down, lifting, or repairing of cables, wires, drains or water, gas or other pipes or the sinking of bore holes and wells for water;
- (iii) the use of any building or land within the curtilage of a dwelling for a purpose relating to the enjoyment of the dwelling as such;

“immovable structure” means any building or structure of whatsoever material or in whatsoever manner constructed and whether permanent or temporary which is, or on erection will become, realty;

“movable structure” means any structure (not being an immovable structure and other than a marquee or a tent) used or intended for any one or more of the following purposes, namely:—

- (a) human habitation or purposes ancillary thereto;
- (b) housing animals or birds;
- (c) the sale of refreshments;

- (d) use as a store, shed, workshop, work place or shelter;

“refuse dump” means a heap or collection of any organic matter (whether waste or dead animal), rubble, old metal, glass, china, earthenware, tin, cartons, paper or other rubbish whatsoever.

(2) The Interpretation (Guernsey) Law, 1948(b), shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

Repeals

16. The Preservation of Natural Amenities and Agricultural Land Control (Sark) Law, 1961, is repealed.

Commencement

17. This Law shall come into operation on such date as the Chief Pleas may by Ordinance appoint and any such Ordinance may provide different dates as respects different provisions of this Law.

(b) Ordres en Conseil Vol. XIII, p. 355.