

# Legal Review



## PLANNING UPDATE

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It is now five years since I wrote in this Review about the intention of the States of Guernsey to introduce a new planning law.

Matters have progressed to the stage where the new law has been drafted and approved. However, it cannot be brought into force until a number of Ordinances dealing with matters of detail relevant to the law have been prepared and approved by the States of Guernsey.

The Environment Department have embarked on a consultation process with regard to these Ordinances. The second and final set of draft Ordinances was released to the public at the end of 2006 and the period within which to make comments to the Department has recently ended.

Amongst the latest Ordinances is one dealing with enforcement of breaches of the planning laws.

The Department will be given a wide range of enforcement powers, including the ability to require building works to be stopped if they have not received planning permission and to insist that a development that has started is completed.

One of the essential features of the new law is the ability of the Department to take enforcement action against the owner of the property for the time being, even if that person was not responsible for the breach in question.

The Department has recognised that because of this change in the law, it will be necessary for the purchaser of a property to be reassured that there are no planning breaches relating to the property at the time of purchase. They are therefore proposing to introduce a procedure whereby application can be made for a certificate of compliance (known as an “immunity certificate”).

One aspect of the proposed procedure has caused significant concern to those involved in the process of buying and selling properties: the draft Ordinance specifies that an application for an immunity certificate cannot be made unless a binding contract for the sale of the property has been concluded. If this requirement is introduced, the following issues arise:-

1. All contracts for the sale of property will have to be conditional upon a certificate being issued. At present, no indication has been given of the likely timescale within which certificates can be produced and it is easy to foresee that delays and uncertainty will arise.
2. Purchasers will have committed themselves to significant expense in obtaining a survey and undertaking legal searches in relation to the property before the contract is signed. This could be wasted if a certificate is not issued.
3. The procedure will not be available to a person who, for example, has inherited a property and wishes to establish if there are any planning breaches without necessarily wanting to sell it.
4. The Ordinance does not address the fact that a large number of property transactions take place by way of the transfer of shares in the owning company.

Representations have been made to the Department to remove this restrictive requirement. It has also been suggested that the Ordinance should specify that the certificate should be issued within a specified period, failing which it will conclusively be deemed to have been issued. The intention is to try and avoid lengthy delays and uncertainty in the conveyancing process which, at present, is comparatively quick and straightforward.

It remains to be seen whether the Department will respond cooperatively.

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