

Developing land in Jersey: issues for the unwary

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In the current economic climate margins have reduced considerably for all business and those developing property whether for residential or commercial uses are no exception. Below are a few salient reminders for those considering a site for development:

The "special" nature of the site

Jersey is rightly renowned for its beautiful natural environment but this in turn means that anyone seeking permission to build can face particular hurdles depending on the nature and location of the land in question.

Jersey's latest Island Plan came into force in June 2011 requiring planning applications that might affect important or protected biodiversity sites to be accompanied with an appropriate level of ecological information.

To protect a current total of 51 specified unique or endangered plants and animals under the Planning and Building (Jersey) Law 2002, natural sites of special interest (SSIs) are listed on a special register to ensure applications for development are sympathetic to the particular species identified and often special measures will be required.

Jersey currently has 13 ecological sites and 21 geological sites listed but the Environment Department is continuing to consider and add sites on a regular basis. The list can be inspected at either the Planning and Environment Department's Offices at Howard Davis Farm, Trinity or at South Hill, St Helier.

Even if not listed, all developers need in any event to be alert to the fauna and flora of the site under consideration.

The Planning and Building (Environmental Impact) (Jersey) Order 2006 requires the planning authorities to order an Environmental Impact Assessment (EIA) in certain instances for example most developments exceeding 0.5 hectares (= 1.23552 acres or 1 acre and 1139.9 yd² or 2.78 verges). However other applications can result in an EIA being sought. The developments at the former Jersey Dairy site and at Castle Quays both required EIAs. The EIA process aims to promote sustainability by enabling environmental factors to be given weight alongside economic and social consequences of a potential development. Developers need to be particularly wary of the entirety of the site - for example will stabilisation works be required to a cotil or even retrenchment of adjoining land? If so an EIA could be ordered which includes the whole area on which even initial demolition or stabilisation works are to be undertaken; whilst the main site may have no significant fauna or floral, many former quarry sites are now homes to green or wall lizards or a colony of the Jersey vole may have established itself in adjoining woods or farmland whose presence may well mean delays during the planning process and costly alleviation measures.

Specialist advice is often essential and we have established links with companies such as BGS who have recently been involved with a number of projects in the Channel Islands. Senior Ecologists at the firm recently completed a programme of live-trapping of the vole, under licence from the States Environment Department at a former agricultural site near St Helier, "marking" them by trimming hair on their flanks and then releasing them. Later recapture enabled the ecologists to compare unmarked and marked individuals to allow an estimate of population size to be determined.

Some species of fauna and flora are of significance for altogether less salubrious reasons. For example, the infamous Japanese knotweed *Fallopia japonica* is infamous for causing delays and expense to developers where identified on a site. The development of a site in the absence of appropriate Japanese knotweed controls can result in the spread of the plant (both within and off-site) and can result in subsequent damage to property once the plant re-grows. "The plant is capable of re-growing from very small fragments of rhizome and is capable of growing through tarmac, around paving slabs, through and around foundations" (Helen Evriviades, Principal Ecologist with Baker Shepherd Gillespie). The use of specialist contractors who can provide warranty-backed Japanese knotweed eradication programmes in advance of development is always recommended.

Bats too, if found on a site, are bad news for developers. Because of the decline in numbers of bats, they are now fully protected by law and it is illegal to kill or injure a bat or disturb them or their roosts. This includes blocking up entrance holes. The States of Jersey have published a leaflet summarising signs to look for which can be found by [clicking here](#). If evidence of bats is identified then a full bat survey is often needed and, because of their Winter hibernation patterns, this needs to take place before mid Autumn in any year. Otherwise you may find you have to wait until the following Easter before ANY works can take place; an expensive period of inactivity for any developer.

At a more extreme level yet, a site could have the potential to be contaminated land with the attendant obligations and costs of potential remedial action. Whilst Jersey has a limited history of heavy industrial uses which leave a legacy on sites, certain current and historic land uses can pose a risk, for example chemical works, ceramics and glass works, petrol stations, burial grounds etc. Planning conditions are often used to require investigation and where appropriate remediation to bring the land to an acceptable condition as part of the development process.

"Special" buildings

The structures on the land as well as the fauna and flora of the site also need particular consideration.

In January 2011 the way in which historic places and buildings in Jersey are protected was changed; heritage assets formerly designated a Site of Special Interest are now known as Listed Buildings or Places - again this is to protect the archaeological historic or traditional importance of such buildings to the Island. Additionally some sites are designated Areas of Archaeological Potential (AAPs). Prudent searches of the relevant registers by lawyers acting for developers will reveal any current listing but non-listed sites too can have structures which lead to delay and additional costs.

Several of Jersey's now derelict sites have traditional granite structures on them, for example old pig houses which may be required to be relocated or even retained as part of the planning consent process.

Drafting considerations

Whilst many developers have favoured "tried and tested" precedent contracts, it is always worthwhile ensuring these are reviewed periodically and ensure they reflect any relevant case law.

Whilst a decision in the English Courts, the recent case of Nirah Holdings v Hanson provides a salutary warning for a developer to ensure their option agreement contains an obligation on an owner to sign any planning agreement. There, a 180 acre clay pit site was to be redeveloped into a £375 million mixed use site with aquarium, hotel and exhibition facilities as well as housing. After applying for planning permission as required by their contract with the landowner, Nirah were successful in securing planning subject only to a planning obligation agreement to which Hanson, the then owner of the site were required to be a party. However when Nirah approached Hanson, they refused to sign, citing their own concerns about the terms of the agreement, largely founded on the potential adverse impact on their adjoining land which they wanted to develop.

Ultimately the English Courts found that Hanson's reasons for refusing to sign the planning

agreement were inappropriate in the circumstances but the case provides a warning to ensure contracts are drafted so as to ensure an owner cannot frustrate a conditional contract for its own gain.

Changes to the Law

Finally any developer should of course keep a watchful eye on the projects published by the States. Although the controversial Land Development Tax was narrowly out-voted in the States Assembly on 3rd November 2011, there is ongoing consultation regarding the issue of social housing and developers can expect further legislation proposals on the subject during 2012. The potential impact on profits for a developer means that a watchful eye must be kept on any such proposals.

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