

**Draft Advice Note:**

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**Consultation Draft**

# **The protection of Employment Land**

**February 2012**



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# Protection of employment land

## About supplementary guidance

The Minister for Planning and Environment may publish guidelines and policies (supplementary planning guidance) in respect of; development generally; any class of development; the development of any area of land; or the development of a specified site .

Supplementary planning guidance may cover a range of issues, both thematic and site specific, and provides further detail about either, policies and proposals in the Island Plan, or other issues relevant to the planning process. It can also be used to provide information about how the planning system operates.

Where relevant, supplementary planning guidance will be taken into account, as a material consideration, in making decisions.

Supplementary planning guidance is issued in a number of different forms including:

- **Advice notes**, which offer more detailed information and guidance about the ways in which Island Plan policies are likely to be operated, interpreted and applied in decision making;
- **Policy notes**, which can be issued by the Minister, following consultation with key stakeholders, in-between reviews of the Island Plan, to supplement and complement the existing planning policy framework;
- **Masterplans, development frameworks and planning briefs** provide more detailed information and guidance about the development of specific sites and areas of the Island; and
- **Practice notes**, which aim to provide information about how the planning system's protocols and procedures operate.

The current supplementary planning guidance is listed and can be viewed on the States of Jersey website at [www.gov.je/planningguidance](http://www.gov.je/planningguidance).

Hard copies of all supplementary planning guidance can be obtained from Planning and Building Services, Department of the Environment, South Hill, St Helier, JE2 4US, telephone: 01534 445 508 email: [planning@gov.je](mailto:planning@gov.je)

# Protection of employment land

## 1 Introduction

**1.1** The States of Jersey has set out a clear objective to maintain a strong, sustainable and diverse economy. The planning system can contribute to this objective, in particular, by protecting and facilitating the use of land and buildings for economic activity. The availability of employment land is vital to the sustainability of the Island's economy and it is important that land and buildings that have been developed for economic activity, are protected for this use.

**1.2** The supply and availability of land and buildings for economic activity in Jersey is constrained and it is important that when any such land and buildings are to be released from their original or other economic purpose, that they are made available to other employment-related uses.

**1.3** The Minister for Planning and Environment is committed to ensuring that land and buildings remain available for employment and economic activity, in accordance with policies SP5: Economic growth and diversification and E1: Protection of employment land of the Island Plan 2011. To this end, development proposals which seek to change the use of employment land will be required to demonstrate that the site is no longer viable for the existing use or any other employment-related use; and that it has been the subject of full and proper marketing.

**1.4** This advice note has been prepared to explain what is required, as part of a planning application, to:

- test the viability of the continued use of employment land and buildings in employment use and;
- demonstrate and evidence the full and proper marketing of a site.

## 2 Status of this guidance

**2.1** This supplementary planning guidance is currently draft guidance that has been produced for consultation purposes. The guidance will be reviewed and where appropriate, amended in response to the findings of the consultation, prior to formal adoption by the Minister for Planning and Environment.

## 3 Policy context

**3.1** The policy regime that seeks to support economic regeneration by encouraging the recycling of existing employment sites for use by new employment activities is provided by policies SP5: Economic growth and diversification and E1: Protection of employment land of the Island Plan 2011.

**3.2** These policies recognise that there is a benefit to the Island in seeking to maximise the economic contribution of employment sites which cumulatively provide significant levels of employment. The development of a wide range of business

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activities on these sites, taking account of their character and potential, including uses such as warehousing, storage and light industry, can provide employment without compromising the quality of the surrounding environment.

**3.3** There is particular pressure for residential development on employment land, whilst at the same time there is a shortage of sites available for new business development. The loss of any size of site in employment use can be significant, especially since 77% of the 5,700 businesses in Jersey employ five or fewer people<sup>(1)</sup>.

**3.4** It is important to note that the principle of seeking to protect employment-related land and buildings applies generally to all economic activity, with the exception of office use and tourist accommodation: this is considered in further detail in 4 'Defining employment land/uses'.

### Policy SP 5

#### **Economic growth and diversification**

A high priority will be given to the maintenance and diversification of the economy and support for new and existing businesses, particularly where development can attract small footprint/high value business from elsewhere and foster innovation, in the following ways:

1. the protection and maintenance of existing employment land and floorspace for employment-related use;
2. the redevelopment of vacant and under-used existing employment land and floorspace for new employment uses;
3. the provision of sufficient land and development opportunities for new and existing employment use.

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## Policy E 1

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There will be a presumption against development which results in the loss of land for employment use as supported by the Strategic Economic Development and Diversification, unless;

1. it is demonstrated that the site is inappropriate for any employment use to continue, having regard to market demand. Applications will need to be accompanied by documentary evidence that the size, configuration, access arrangements or other characteristics of the site make it unsuitable and financially unviable for any employment use and confirmation by full and proper marketing of the site on terms that reflect the lawful use and condition of the premises, or;
2. the existing development is predominantly office or tourist accommodation, or;
3. the overall benefit to the community of the proposal outweighs any adverse effect on employment opportunities and the range of available employment land and premises; or,
4. the existing use is generating environmental problems such as noise, pollution, or unacceptable levels of traffic and any alternative employment use would continue to generate similar environmental problems.

**3.5** Policy E 1 makes it clear that proposals to redevelop or convert employment sites will need to demonstrate that they are no longer viable for the existing use before they are considered for alternative uses by the Minister.

**3.6** Proposals to redevelop or convert employment sites for housing will normally be unacceptable because they are likely to raise the price of such sites beyond the means of businesses and also because the Plan makes adequate provision of land for residential development elsewhere (Proposal 20 'Provision of Homes').

**3.7** There will be careful monitoring of this policy to ensure that it contributes positively to economic growth and that the employment implications of developments have been properly taken into account in the planning process. The Minister will continue to review this guidance as appropriate to ensure that it meets these objectives.

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## 4 Defining employment land/uses

**4.1** The protection of employment land will be generally applied to all land and buildings in employment use, with the exception of tourism and office accommodation, which is considered further below. Land and buildings in use for employment-related activities are considered to include the following: this is not considered to be a comprehensive list, and is to be used for guidance only.

- agriculture, horticulture and fishing;
- generation, treatment and transmission of energy and water;
- light industry, including the repair of plant and machinery;
- construction and the winning, processing and recycling of minerals and aggregates;
- wholesale, storage and distribution;
- retail, including the sale, display or provision of a service to visiting members of the public
- transport and communications, including telecommunications and media services;
- ancillary financial and business services that are non-office based, such as cleaning contractors and disaster-recovery;
- public administration that is not office based;
- medical, welfare and education including schools, hospitals, surgeries, nursing homes, convalescent homes and care homes;
- food, drink, leisure and entertainment, including restaurants, bars, cafés, public houses, night-clubs, arts studios, galleries, museums, libraries, cinemas, theatres and sports facilities.

**4.2** There will clearly be circumstances, for example in mixed-use developments, where the application of policies SP5 and E1, which seek to protect employment land, will need to be considered relative to the merits of the particular development proposals.

### Exemptions

**4.3** The Minister has made two clear exceptions in the use and application of policies SP5 and E1 and has accordingly excluded the following land uses from these policies:



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- tourism accommodation including hotels, guest houses, self catering accommodation and camp sites; and
- office accommodation (non-ancillary).

**4.4** In making these exceptions, the Minister has responded to concerns expressed by the Island's tourism industry as well as seeking to ensure that other objectives set out in the Plan, related to the provision of new homes and the provision of a new stock of high quality, modern office space, could be delivered.

**4.5** The tourism industry has been through significant change and is of a different scale and form to that which has existed in the Island in the past. As a consequence, it is likely that the stock of tourism buildings in the Island will need to continue to adapt to the changing tourism market and that there may continue to be a trend towards the loss of older, more traditional and basic forms of accommodation to new investment in higher quality bed stock. Much tourism accommodation is already akin to residential use and, in most instances, offers little scope for change to some other form of business activity.

**4.6** Whilst the conversion or redevelopment of tourism accommodation into residential accommodation may be acceptable in principle in the Island's built-up areas, any such proposals in the Green Zone or the Coastal National Park will need to be considered on their merits relative to the very restrictive policy regime for these areas, where there is a clear presumption against new forms of development, for whatever purpose, and where exceptions may only be considered, where significant demonstrable environmental gains can be delivered: in the case of an hotel, this would require its scale and mass to be considerably reduced to dramatically lessen its current visual impact of existing buildings in the landscape.

**4.7** The case for exempting office use is that the Island Plan makes provision for the supply of much new, high quality office space in and around the Esplanade and the Jersey International Finance Centre in response to the need for modern premises that enable consolidation of operations through the provision of large, open footplates where the building fabric can accommodate the requirements of modern communications. Older office accommodation still has a valuable role to play in the economic life of the town in particular, but may also offer scope for conversion or redevelopment to residential use, and help to generate new investment and activity in St. Helier.

## 5 Assessing planning applications

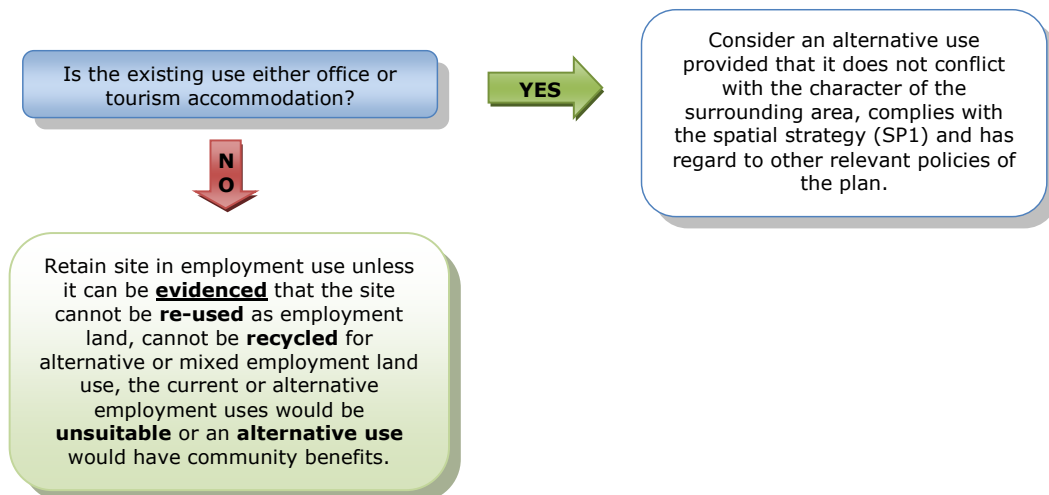
**5.1** All applications affecting employment land will be assessed on their individual merits. In accordance with policies SP5 and E1, however, there will be a presumption in favour of the retention of employment land in employment use.

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**5.2** It may be that land or buildings developed for a particular economic activity are no longer suitable for their original purpose, but may be suitable for use by other forms of economic activity or for redevelopment to other forms of employment use.

**5.3** Figure 1 sets out the initial assessment that will be applied to proposals affecting employment land.

**5.4** Consideration will only be given to alternative uses where an applicant can clearly demonstrate there is no demand for the site and that it is not viable to retain in employment use. This includes taking into account the potential to refurbish existing premises or the re-development of the site for new employment uses. Consideration for alternative uses will also be given to sites that are not suitable for either the current or any alternative employment uses or where a community benefit from an alternative use would outweigh the retention of the existing employment use. These considerations are outlined in the following sections.



**Figure 1 Existing landuse flow chart**

### **Reuse: alternative employment use**

**5.5** All possible alternative employment uses must be assessed before development proposals for non-employment uses will be considered by the Minister. Where a business is coming to the end of its economic life or has ceased trading, the Minister will expect the site to have been marketed as available for both its authorised use and other suitable employment uses given the characteristics of the site. In order to justify the release of an employment site for another use, evidence that comparable, alternative sites are available is not sufficient.

**5.6** Simply because an employment site is vacant, does not mean that the site is redundant. Prior to submitting a planning application applicants are required to have undertaken a vigorous marketing campaign alerting the availability of the site to the

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business community. Only after this has been undertaken will a change in the use of the land be considered. Applicants are required to demonstrate that two marketing strategies have been developed and applied for a period of time appropriate to the market for the building and type of use sought, or otherwise, as agreed by the Minister, as follows:

- marketing the reuse of the existing site; and
- marketing the redevelopment of the site for employment purposes.

**5.7** It is important that a site has been properly marketed as vacant and available, for a full range of alternative employment uses in addition to its authorised employment use. Furthermore, the site should also be advertised as available as a redevelopment opportunity for employment use. A lesser financial return, relative to other development or reuse options outside of employment uses, is not sufficient to justify the loss of employment land.

**5.8** It is the responsibility of the applicant to provide evidence of a lack of demand for any site before an application for redevelopment or a change to an alternative use can be considered. As such, applicants will need to demonstrate that a site has been activity marketed, at a realistic price which reflects the employment status of the site, for a period of time appropriate to the market for the building and type of use sought. Evidence must include a record of all offers and expressions of interest received. In addition, evidence demonstrating that the site has also been marketed as a refurbishment and/or redevelopment opportunity, for all and part of the site for alternative employment uses is required.

**5.9** Simply proclaiming that a site has been marketed and no interest has been expressed, does not provide sufficient evidence to demonstrate genuine redundancy. In considering development proposals which result in the loss of employment land, applications will need to be accompanied with a marketing strategy method statement, outlining how the marketing process was undertaken and contacted by a suitability qualified professional with experience of the property market within the Island.

**5.10** The marketing strategy method statement will set out how the availability of the site was presented to the local business community and include the following details, having regard to the further guidance at appendix A:

- a. the price at which the site/premises has been marketed as available at and a comparison of the price relative to that for comparable premises in the area and across the Island. This should also include details of an independent valuation of the site;
- b. any amendments to market price made during the course of marketing;
- c. the use and uses of the site marketed (The Minister expects sites to be marketed in a way that expresses all the relevant options available for retaining the site for employment purposes. This include, where appropriate, the potential for

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refurbishment, redevelopment for new employment uses, sub-division, amalgamation or selective demolition (in order to improve the format, layout and access arrangements));

d. details of the site particulars, which should include the following information as a minimum:

- good quality internal and external photographs
- a description of the site/premises
- the current, authorised use and potential employment uses, subject to planning permission
- dimensions of the land and buildings (including where relevant room sizes, eaves and ceiling heights, door widths, etc)
- services provision e.g. electricity, gas, water – any other relevant information
- asking price (see 'Price' section of Appendix A)
- any restrictions, conditions and covenants
- known costs, such as service charges, rateable value
- any other known items included in sale (note – the price expected for these should be disclosed to the Minister).
- terms/conditions associated with the sale & the sites tenure – leasehold, freehold etc (see also 'Tenure' section of Appendix A)
- contact details for viewing and more information
- any residential element to the property should be removed or subordinate to the commercial particulars
- parking availability and access/distances to public transport

e. a breakdown detailing dates and contact details of parties expressing an interest in the property. All expressions of interest/offers received including rental interest, progress and negotiations undertaken including any offers made and reasons for these being rejected. If possible the applicant should obtain from interested parties reasons/explanations as to why they were not able/ willing to proceed. It is not sufficient evidence to just quote number of viewings and generalise on the feedback.

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- f. the marketing methods adopted including the frequency and marketing medium used together with any variations in the methods adopted;
- g. copies of advertisements together with dates and title of publication(s).
- h. types of client advised of its availability with contact details for them;
- i. any variations in terms/conditions on which the site is made available;
- j. whether the site availability was referred to relevant support agencies such as the Economic Development Department and/or Jersey Enterprise.

**5.11** The Minister reserves the right to contact any party who has expressed an interest and to send details of the land / property to any party which the Minister feels may be interested in purchasing / occupying the premises for occupation, investment or redevelopment purposes.

**5.12** In instances where the Minister considers that the marketing strategy adopted to have been inadequate, planning applications will be refused. In some cases the Minister may however offer applicants the opportunity to withdraw an application and amend a marketing strategy so that it conforms to this guidance and addresses any concerns about the strategy expressed by the Minister.

### **Recycle: redevelop for employment use**

**5.13** In cases where an applicant is be able to demonstrate that there is no demand for a site or that the site is unsuitable for continued employment use due to site specific factors such as the physical configuration of building, or its current state of repair, the primary consideration must be given to options that enable the site to remain in employment use.

**5.14** In these instances, applicants will need to provide evidence demonstrating that they have carefully considered how the site could be redeveloped for employment purposes and how the site has been marketed accordingly. A statement appraising redevelopment options must therefore be submitted with a planning application. This should include a development appraisal or residual valuation for each option, prepared by a suitably qualified professional such as a character surveyor. Options could range from limited refurbishment to partial or full demolition and rebuild depending on the nature of the site. Any justification must also include the results of marketing of the options.

**5.15** Where consideration is being given to alternative uses of employment land or premises, development proposals must ensure that the proposed use will not be harmful to the character and amenity of the surrounding area and accords with all policies of the Island Plan, and does not conflict with any other material planning considerations.

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**5.16** In determining the viability of redevelopment options, the prevailing market rates for the type of employment land / accommodation concerned should be taken into account. These rates should be based on robust evidence from recent comparable transactions. Nevertheless, to reiterate, the release of an employment site for alternative, non employment uses cannot be justified on the grounds that an alternative use offers a higher financial return.

**5.17** If, after proper assessment, it is determined that the site or premises are not commercially viable for continued employment use, consideration should be given to whether there are other approaches that could influence development viability. For example, developers could consider linking or trading sites to ensure that a continue employment uses remains.

**5.18** Evidence that employment development is not viable given the prevailing market conditions will not necessarily be accepted as justifying release of a site for non-employment uses. The economics of development may change over time and refurbishment/redevelopment for employment uses could potentially become a viable proposition in the future. In this respect, such sites are still considered to have value as an employment resource.

**5.19** In order to establish whether or not a site is in such poor condition that the repair/refurbishment of the site is uneconomical, applicants will need to provide evidence that;

- following the marketing of a site, prospective occupants are not proceeding with the purchase because of the condition of the premises, and secondly that;
- the costs of refurbishing or redeveloping the site for employment use is greater than the return that is reasonably to anticipate.

**5.20** Where applicants seek to justify the release of an employment site based on poor condition, the Minister will give particular regard to the price at which the site has been offered, which should reflect the condition of the site, relative to the wider market conditions.

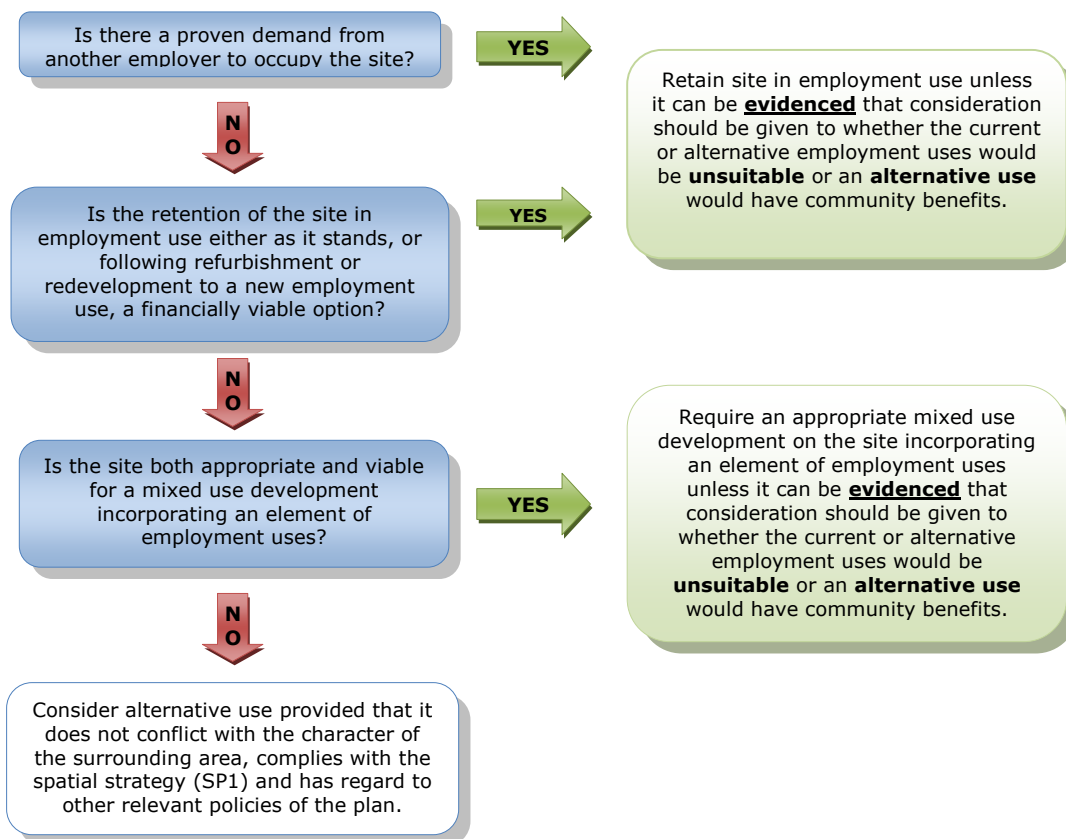
**5.21** In order to demonstrate that the costs of refurbishment/redevelopment exceed the likely returns from the site, the following evidence should be provided with a planning application:

- a. a full site/structural survey, prepared by a suitably qualified professional, highlighting the matters that require or are incapable of refurbishment.
- b. a survey of the site from an operational point of view indicating any exceptional or site specific costs, prepared by a suitably qualified professional;
- c. a breakdown of the cost of works required to refurbish/redevelop the site, which shall be prepared by a suitably qualified professional;

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- d. evidence from at least three recognised separate financial institutions of the likely cost of borrowing over a suitable period given the status of the site and level of refurbishment needed.
- e. an indication that the anticipated rate of return, or income generated from the premises would not cover the costs of refurbishment/redevelopment over a reasonable period;

**5.22** The Minister may seek to verify any such information submitted under these criteria; it is recognised however that some of this information is of a confidential nature. Measures will therefore be taken to ensure that information is not made publicly available or used for any purpose other than those set out in this guidance.



**Figure 2 Reuse and recycle flow chart**

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## **Review: unsuitable use**

## **Review: unsuitable use**

**5.23** Where an applicant considers that an existing employment site is unsuitable for continued employment use the Minister will expect a planning application to be accompanied with a detailed supporting statement that demonstrates why this is the case.

**5.24** The evidence provided will be need to demonstrate that the existing use is generating environmental problems such as noise, pollution, or unacceptable levels of traffic and any alternative employment use would continue to generate similar environmental problems. This will be in the form of an independent environmental and/or traffic assessment that can be fully tested and validated by the Minister.

**5.25** In assessing the sensitivity of neighbouring uses to an employment site, the Minister will give consideration to all types of commercial activity, in addition to a site's authorised use. Applicants should note that whilst the existing occupier of a site may be regarded as a 'bad neighbour', this does not in itself justify releasing the site from employment use. It is likely that a site can be reused or redeveloped for an alternative, less disturbing commercial activity.

**5.26** Furthermore, the proximity of an employment use to housing is not a justifiable reason to deem a site unsuitable for employment use. Many modern commercial uses can operate in residential, rural and other sensitive areas without causing disturbance by means of increased traffic, noise, vibration, pollution or other any adverse impact. Indeed, separating employment uses from housing, especially small scale commercial uses deprives communities of local sources of employment and services.

**5.27** Applicants may still be required to demonstrate that there is no demand for the site and that it is unviable to retain it in employment use, based on the full and proper marketing of the site.



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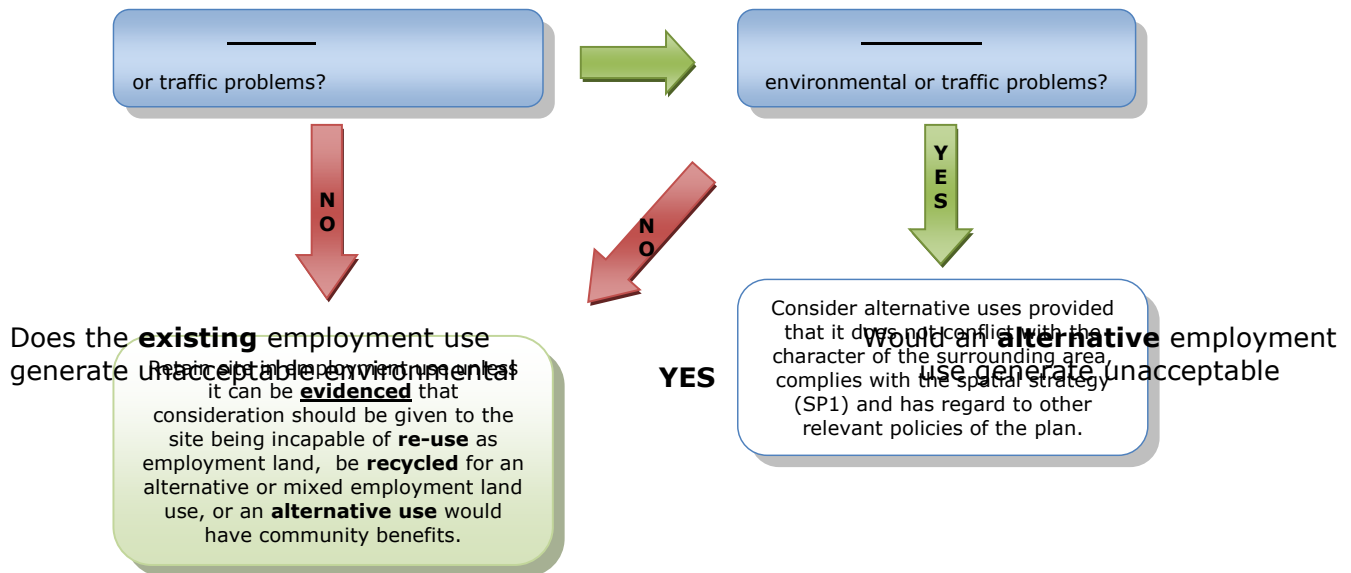


Figure 3 Unsuitable uses flow chart

### Alternative use

**5.28** Where it can be demonstrated, to the satisfaction of the Minister for Planning and Environment, that redevelopment of a site for employment purposes alone cannot be achieved on financial grounds, applicants should consider alternative mixed-use schemes which retain the maximum possible employment floorspace on the site.

**5.29** The total loss of an employment site can only be justified where it is robustly demonstrated that the provision of an employment element is not viable. Applicants must provide evidence which shows that all possibilities of providing an employment element have been exhausted and demonstrated to be unviable. Furthermore, development proposals will need to demonstrate that the resulting development would have no unreasonable impact upon the operating conditions of any existing or potential businesses that are located in the vicinity.

**5.30** In the case of the loss of employment uses, the Minister will seek to ensure that any new development contributes towards the delivery of other key planning objectives and will seek to ensure the delivery of other community benefits, where possible.

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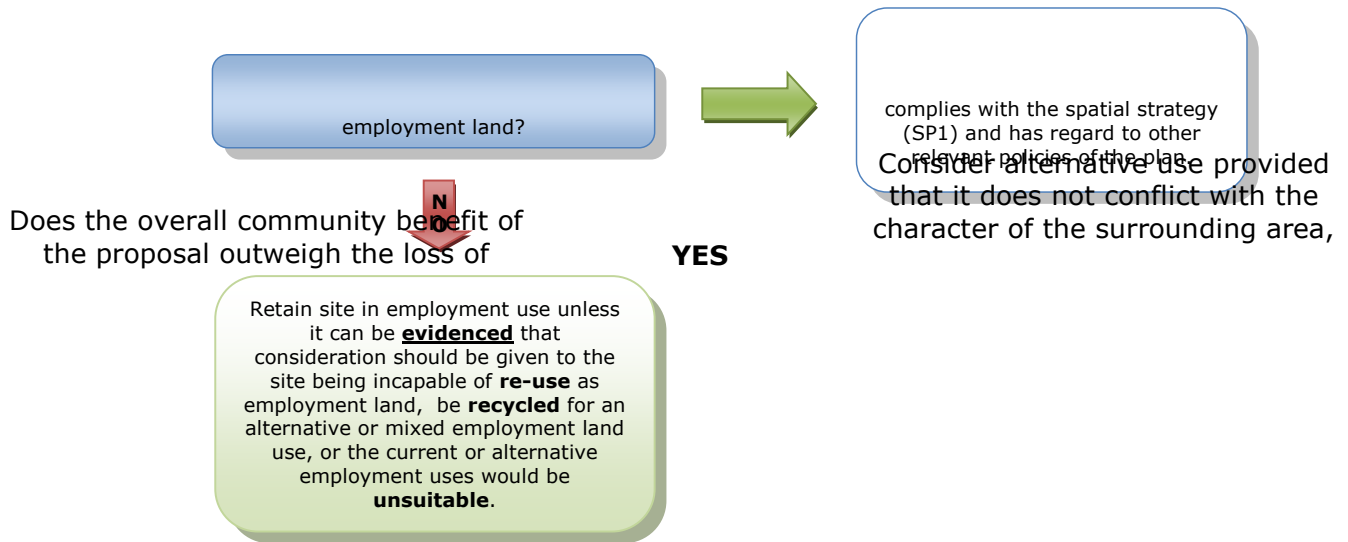


Figure 4 Alternative uses flow chart

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## Appendix A: site marketing

### Price

It is important the price of the property reflects the current market value of such a property based on its current condition and use status. If a site requires extensive conversion/repairs then the price should be based on the unconverted state unless the works are to be undertaken prior to completion of the sale of a site.

The price should not include any potential residential or other non-employment use value. You should seek a minimum of one independent valuation obtaining both freehold and leasehold prices for the building in its current condition/state. The basis of the lease should be appropriate to the nature of the use of the building.

Applicants are recommended to obtain an independent valuation of the property, from an established source familiar with both type of property and Jersey market. Estate agents usually provide such a valuation service, although other sources may be considered if their credentials can be established. The cost of the independent valuation(s) will be borne by the applicant and will also be backed by evidence. On the basis of the information submitted, the Minister may ask applicants to justify the price of marketed site.

### Tenure

Property owners should be prepared to offer a site on both a leasehold and freehold basis, broadening the appeal and level of interest in a property. Flexible terms, such as short leases, monthly licences and regular break clauses are encouraged whilst any lease price should reflect the current condition and use of the property.

### Advertisements

Advertisements for the marketing campaign should include:

- a. an advertisement should be featured at least once a month within the Commercial Section of appropriate publications. There may be some publications which are inappropriate for the advertisement of commercial sites/premises, in all instances it is advised that you seek advice regarding your advertisement intentions from Jersey Enterprise . In cases where the property is part commercial/part residential, it is not appropriate for an advert to be placed solely in the residential section of a publication.
- b. trade magazines specific to commercial property or to specific industries may be used if more relevant to the industry. The intervals of advertisement will depend on the regularity and circulation of publications.
- c. continuous inclusion on the agent's website, own papers and lists of commercial/business premises;

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- d. the continuous display of a 'for sale/lease' board must be displayed onsite on each site frontage to the highway throughout the marketing campaign, unless otherwise agreed.
- e. referral to the local business community, including the Jersey Chamber of Commerce for consideration of the site's/premises potential for reuse or redevelopment for employment use.

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## **Appendix B: useful links**

### **Planning and Building Services**

Department of the Environment  
South Hill  
St Helier  
Jersey  
JE2 4US

t. +44 (0)1534 445508 f. +44 (0)1534 445528

e: [planning@gov.je](mailto:planning@gov.je) w: [www.gov.je/planningbuilding](http://www.gov.je/planningbuilding)

### **Economic Development Department**

Jubilee House  
Esplanade  
St Helier  
Jersey  
JE1 1BB

t: +44 (0)1534 448100 f: +44 (0)1534 448170

e: [planning@gov.je](mailto:planning@gov.je) w: [www.gov.je/planningbuilding](http://www.gov.je/planningbuilding)

### **Jersey Enterprise**

Economic Development Department  
Jubilee Wharf  
St Helier  
Jersey  
JE1 1BB

t: +44 (0)1534 448140 f: +44 (0)1534 448176

e: [enterprise@gov.je](mailto:enterprise@gov.je) w: <http://enterprise.jersey.com>

### **Jersey Chamber of Commerce**

Chamber House  
25 Pier Road  
St Helier  
Jersey  
Channel Islands  
JE1 4HF

t: +44 (0)1534 724536 f: +44 (0)1534 734942

e: [admin@jerseychamber.com](mailto:admin@jerseychamber.com) w: [www.jerseychamber.com/](http://www.jerseychamber.com/)

**Planning and Building Services  
Department of the Environment  
South Hill  
St Helier  
Jersey  
JE2 4US**

**t. 01534 445508**

**w. [www.gov.je/planningbuilding](http://www.gov.je/planningbuilding)**