

Planning Appeals



**Annual Report
2016**

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Introduction to the Tribunal Service

The Tribunal Service within the Judicial Greffe is responsible for the administration of the following Tribunals:

- Jersey Employment and Discrimination Tribunal
- Social Security Income Support Tribunal
- Social Medical Tribunal,
- Long Term Incapacity Tribunal
- Mental Health Review Tribunal
- Health and Safety Tribunal
- Planning appeals

The Planning Appeals System

The Judicial Greffe administers appeals against planning and building decisions so that your case is considered independently of the Department of the Environment.

The system makes sure that everyone involved in an appeal has the chance to make their case. The Department of the Environment will be treated the same as any other party involved, and it must follow the same rules.

This system was implemented in 2015 and has proved to be a successful and also cheaper alternative than the previous system where appeals needed to be made to the Royal Court.

Independent Planning Inspectors have been recruited from the UK (8) to take on cases in which they ultimately write a report with a recommendation to the Minister for his consideration before a final decision is made.

The Minister won't be involved in any initial decision. The first time the Minister will be asked to consider any details of the case is when the inspector submits the report.

Planning appeals are normally conducted once a month with on average 4 cases processed in any one week of a month. The Planning Inspectors travel over from the UK and during their stay conducts site visits and in some cases an oral hearing.

Planning Inspectors Biography



PHILIP STADDON

B.Sc. (Hons), Diploma (Hons), M.B.A. (Distinction), M.R.T.P.I.



Philip Staddon studied Town and Country Planning at the University of Wales in Cardiff. He holds a B.Sc. (Honours) degree, graduating in 1985, and a postgraduate Diploma in 1987. He also has a Masters in Business Administration (MBA), achieving a Distinction in 2005.

Philip is a Member of Royal Town Planning Institute (MRTPI), a trained Prince2 Project Manager, and has achieved the Institute of Leadership and Management (ILM) Level 7.

Philip has worked at a range of local authorities including Swansea (1985 - 86), Derby (1987 – 1999) and Gloucester (1999 – 2013), prior to establishing his own company, PJS Development Solutions Ltd.

In Derby, he led the successful delivery of strategic housing schemes, a major city centre shopping redevelopment, and large scale business and industrial development.

At Gloucester, Philip Staddon occupied a range of senior roles, including over five years as Corporate Director of Regeneration. He successfully managed several hundred staff in planning and development related services, including urban regeneration, development control, planning policy, housing strategy, economic development, highways and transportation, conservation, landscape, sustainability, archaeology and engineering.

He was also responsible for the Council's land and property, managing a mixed £270million portfolio, producing asset strategies and leading on major transactions, disposals and development agreements for housing, retail, office and mixed-use developments.

Philip's track record at Gloucester is an impressive one. He played a leading and pivotal role in securing major regeneration schemes, including those at Gloucester Docks, Gloucester Quays and St Oswald's Park.

Philip Staddon left the public sector in February 2013 to fulfil an ambition to establish his own specialist company. PJS Development Solutions provides a wide range of expert advice, support and project management on complex planning, development and regeneration schemes.

The company is thriving, with a range of private and public sector clients all drawing on the company's significant expertise and delivery focus. Current projects include strategic housing sites, strategic employment development, urban regeneration projects, purpose built student housing and sensitive heritage projects.

His experience of Planning, property and politics has given him a rich and deep understanding of development economics and scheme viability. His name is recognised nationally as the country's most experienced independent Examiner of Community Infrastructure Levy (CIL) proposals. Philip has undertaken independent CIL examinations for over twenty local authorities including some of the most complex and contentious in the country.

Philip is also a Director of Llanthony Secunda Priory Trust, a charitable organisation, which is pursuing a major heritage regeneration project on a historic site that includes six Grade 1 Listed Buildings.



JONATHAN KING

*BA (Hons) DipTP
MRTPI*

Jonathan King has been a Jersey Planning Inspector since 2015. He was educated at Manchester University and the City of Birmingham Polytechnic, obtaining a degree in Geography and a postgraduate Diploma in Town Planning; and was elected as a member of the Royal Town Planning Institute in 1980. His early planning career (1975 - 1996) was spent working in UK local government, lastly as a development management team leader responsible mainly for minerals and waste. He joined the Planning Inspectorate in 1996, rising to Principal Planning Inspector. Since 2012, he has worked part-time and is due to retire from PINS work in March 2017. He also sits as a Professional Member of the Guernsey Planning Appeals Panel and provides training in planning for a UK training organisation.



GRAHAM SELF

MA Msc(Eng) FRTPI

A Chartered Town Planner with a degree in geography and additional qualifications in traffic and transport engineering. A former Principal Inspector based in England, he has some 35 years' experience of assessing and deciding planning appeals of all types in various different jurisdictions including Ireland, the Isle of Man, Wales and Jersey. He is an independent examiner for neighbourhood plans, undertakes consultancy projects, and runs training courses specialising in planning law and enforcement.

His initial experience was in local government in Cambridge and Norfolk, followed by 11 years as a consultant with Halcrow Fox & Associates working mainly on transport planning projects in different parts of the UK and abroad in Kuwait, Dubai, Fiji and France.



ROY FOSTER

MA Oxon MRTPI

Roy Foster was a Planning Inspector in England for over 30 years, dealing with over 1000 planning appeals, holding over 20 Local Plan examinations and conducting inquiries into objections to National Park Designation and Variation Orders, a number of Compulsory Purchase Orders and many proposals under the Housing Acts. He was also a member of the examining panel for two Regional Spatial Strategies. In the earlier years of his career he worked in local government for a County Council, a District Council and a London Borough.



NIGEL MCGURK

*BSc (Hons) MBA MCD
MRTPI*

Nigel runs Erimax - Land, Planning and Communities, from offices in the Lake District and Cheshire, providing advice on land and planning across the UK since 2011.

He is Head of Planning for the Blenheim Estate, which includes Blenheim Palace World Heritage Site; and is a Non-Executive Director of Trafford Housing Trust.

Nigel is one of the country's most experienced Neighbourhood Plan Independent Examiners and is a Planning Inspector with England's Planning Inspectorate.

He sits on the Wesleyan Assurance MSS Monitoring Committee, the Oxford Design Review Panel and Design Review Panels for the North West and Yorkshire, as well as the Commission for Architecture & the Built Environment.

Nigel has held previous executive and non-executive board roles, including Managing Director & Director of national public and private housebuilding and strategic land companies.

He has worked in the public, private and community sectors, since commencing his career as a labourer for Blackburn Council.



**DAVID
HAINSWORTH**

*LL.B(Hons) FRSA
Solicitor*

David has extensive experience in the public and private sectors as a manager, a business proprietor, a lawyer specialising in town planning and project development and a tribunal chair and member. He has a wide knowledge of multi-disciplinary bodies and of managing change within organisations. His work has required the exercise of practical professional judgment in situations demanding political and social awareness, tact and sensitivity and a constructive response to problems. His professional roles have focussed on sensitive high-profile areas combining policy, legal, management and financial issues.

LINDA WRIDE

DipTP MRTPI

Linda Wride is a chartered town planner with over 40 years professional experience across private practice, local government and the civil service in the UK. A former Head of Planning Control and Conservation at Oxford City Council, she has also been a Senior Inspector with the UK's Planning Inspectorate and currently serves as a professional member of the Guernsey Planning Panel. Her specialisms include design and historic heritage.

SUE BELL

*MSc, CEcol., C. Env., FCIEEM, C.WEM,
MCIWEM*

Sue Bell is a Chartered Ecologist, Chartered Environmentalist and Chartered Water & Environmental Manager. In addition to her role as a Planning Inspector in Jersey, she is a self-employed Reporter with the Planning and Environmental Appeals Division in Scotland and is also a freelance consultant.

She has previously worked for the statutory and voluntary sectors. In her early career she led a survey of hundreds of freshwater lochs in Scotland and contributed to the development of national guidelines for selection of freshwater sites of special scientific interest. Working for the Marine Conservation Society, she assisted in developing the Society's Scottish policies related to coastal zone management (including marine planning), marine environmental impact assessment, marine protected areas, and fish farming.

Sue has worked in consultancy for over twenty years, providing technical advice to numerous infrastructure and development projects (including providing expert witness at public inquiry). She also provided technical assistance to the Advisory Committee on Sites of Special Scientific Interest, which considered scientific objections from land owners to the designation of sites. Sue is a past President of the Chartered Institute of Ecology & Environmental Management.

Planning Appeal Fees

In December 2015 the Minister for the Environment agreed to increase the Planning and Building Appeal fees from 1 Jan 2016. The increase to the Appeal fees was made following the decision earlier in 2015 not to put forward an MTFP funding bid and the proposal that the planning appeals system become fully self-funded.

Following intervention by Deputy Scott Wickenden, the Minister for the Environment deciding to re-instate the 2015 fees from 1 Mar 2016, until such time as more information on the operation and associated costs of the planning and building appeals system was available. It was agreed to look at the appeal fees again during 2016 with the Judicial Greffe, and base any changes on the first year actual costs associated to operating the new appeals system.

As background, reference to the appeals system becoming fully self-funded was included in the P.72/2015 MTFP Annex (page 75) adopted as amended by the States Assembly on the 8th Oct 2015, as follows:

Following States approval in 2015 of the new planning appeals system, 2016 will see the first full year of operation of the new planning application system. The Planning Applications Committee now review all major planning applications on behalf of the Minister and applicants now have access to a lower cost and independent appeals system. While the new appeals system was due to be part funded from a growth bid in the new MTFP, it is now proposed that the planning appeals system be fully self-funding. Options to recover the costs to operate the new appeals system via existing or new fees will be explored during 2016.

Based on actual appeal application numbers received and associated costs during 2016, the Department and Judicial Greffe estimate a shortfall of funding in 2017 of approximately £87k. This shortfall excludes the £44k the department has already agreed to transfer from its 2017 cash limits to the Judicial Greffe.

In order to reduce the estimated shortfall by approximately £37k, the Minister for the Environment will change the existing fee structure and introduce planning appeal fee categories and charges as set out in Appendix 1, from 1 Jan 2017. The remaining £50k shortfall will be funded from Department of the Environment 2017 cash limits and expected reductions in the costs of administering the appeals system within the Judicial Greffe.

The new categories are explained below:

Category 1 (£100): Appeals against government actions which are impositions directly affecting an individuals' private property rights.

They include actions taken by the government to either list, revoke, modify, or instruct an individual or restrict rights to the enjoyment of their property. In these cases, a person a person

is able to defend their position, if they are aggrieved at the action, for a minimal charge. The £100 fee is the lowest charge with the highest shortfall to the actual costs of the appeal.

Category 2 (£500): Appeals against minor application refusals and third party appeals.

Third party appeals are appeals against planning permission brought by an aggrieved neighbour. Although the action of another may impact on the enjoyment of the individual's property, the impact is an indirect one. This is different to the direct action of the government as described in Category 1, which might absolutely affect the rights of the owner. Another factor is that third party appeals on average cost more to administer, as they are generally heard at a hearing and involve more parties. It is considered reasonable to increase the cost of this type of appeal to an amount which is still within reasonable affordability and which maintains the objective of an accessible appeal system, but that moves closer to the actual cost of the appeal.

Category 2 also includes appeals by an applicant against the refusal of a minor application. This type of appeal is where the grant of planning permission would financially benefit the appellant in some way. This is a different situation than Category 1 appeals, in that the appellant is trying to gain some benefit from the planning permission, rather than defend the enjoyment of their property. This too should have a higher charge than the minimum but the charge must be proportionate to the size of the development. It would be unreasonable for the cost to appeal and application to be significantly higher than the original application fee itself.

Category 3 (£1600): Appeal against the refusal of major applications.

This reflects the fact that major applications have a much larger financial benefit to the applicant and thus the appeal cost should be proportionate to the value of that benefit. Major applications also tend to be complex in the issues they raise and therefore more expensive to consider at appeal. Applicants also have the options of re-submitting a revised scheme within 6 months of the refusal for free, or re-applying if the cost of an application is less than the cost of an appeal.

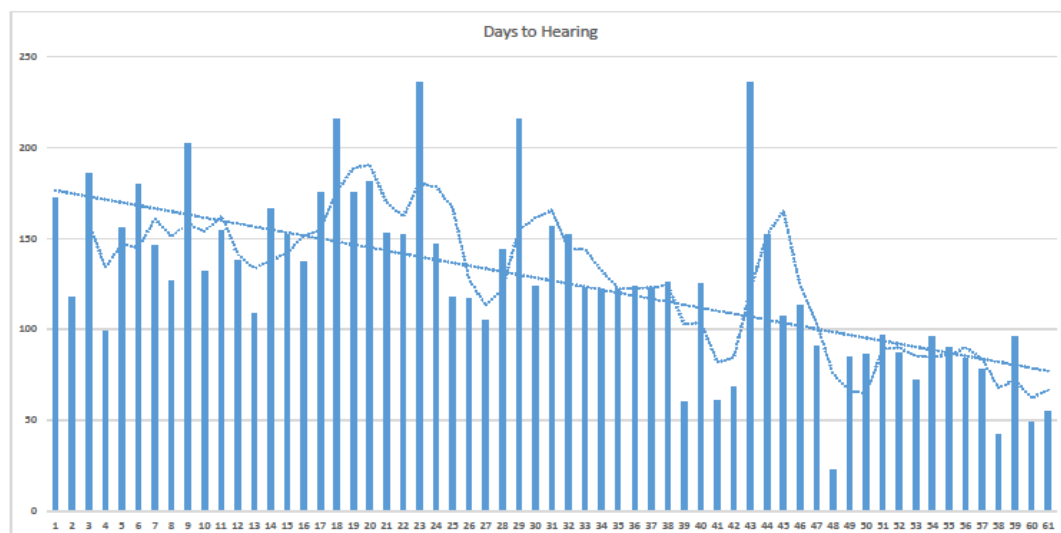
Summary: It is considered the new Categories and fees are a reasonable response to the funding gap for the planning appeals system. It must be remembered that the previous system of lodging appeals with the Royal Court was many times more expensive than the current proposed fees. In addition, the Royal Court system could award costs against the losing party. The current system avoids those disincentives and has resulted in a five-fold increase in appeals, year on year. It remains a robust and healthy check-and-balance to planning decisions in the Island.

Statistics grouped together for 2015 & 2016

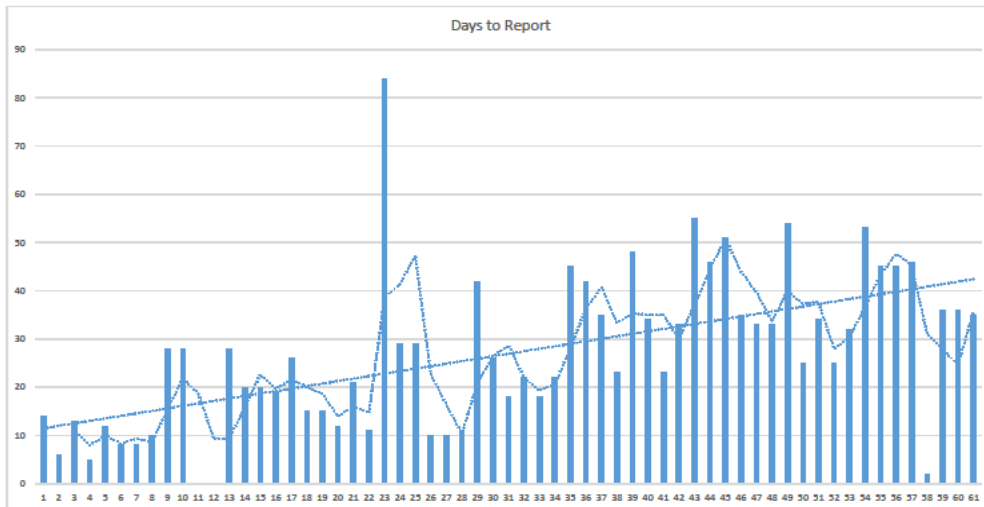
Progress has been made in reducing the time it takes for an appeal to be heard. At the start of the new planning appeal process there was a backlog of cases to process which took longer than anticipated. However, now the system and process has bedded in the Judicial Greffe has targeted 12-14 weeks to process an appeal from start to finish, this is significantly quicker than the UK average of up to 30 weeks.

Length of time from application to hearing

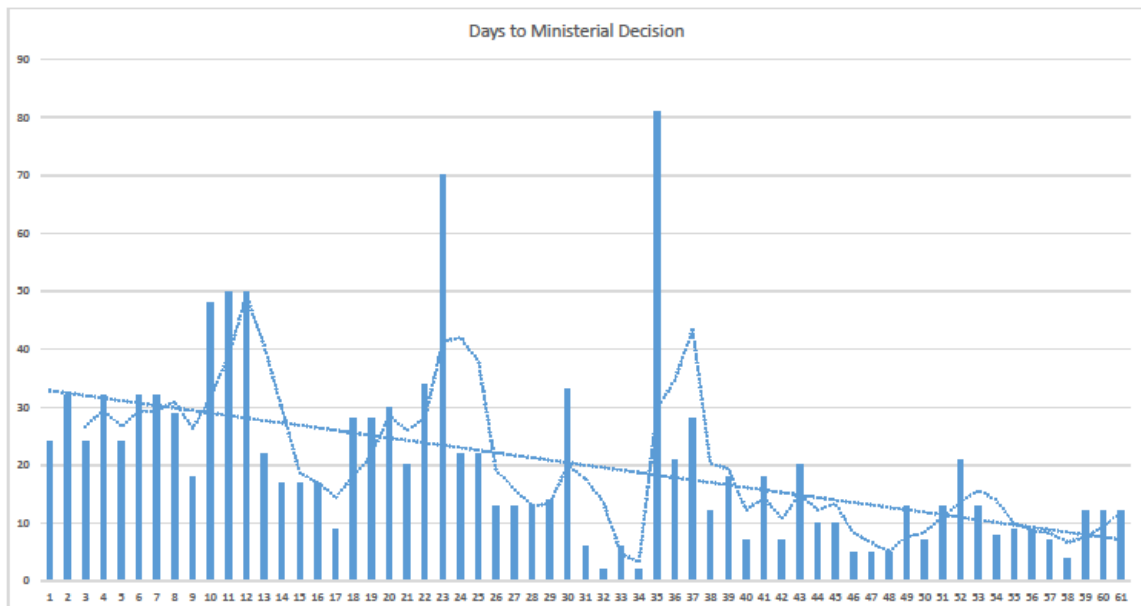
(From inception of planning Tribunal to December 2016)



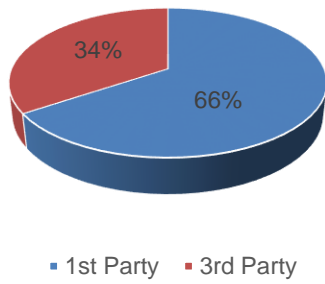
Length of time taken to receive reports from the Inspectors



Length of time taken to receive a Ministerial Decision

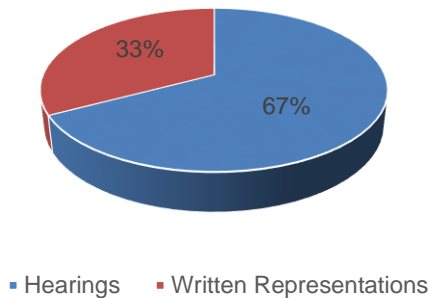


1st Party vs 3rd Party



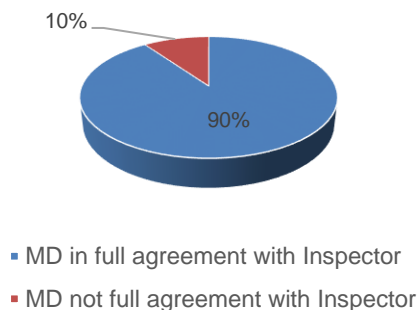
1st party appeals are appeals from those who had made the original planning application (for example someone who had planning permission for a development refused)

Hearings vs Written



The Inspector will determine if the appeal will be dealt with via Written Representations or by way of a Hearing.

Ministerial Decisions agreement with Inspector

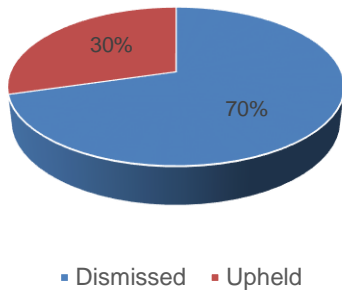


After the Planning Inspector has written the report with their findings, this is then passed to the Minister, who will then make a decision based on the information available.

The Minister has the final say on whether a planning appeal succeeds or fails.

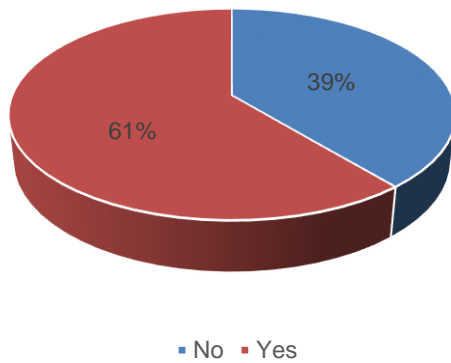
In 90% of the cases, the Minister has agreed fully.

Dismissed vs Upheld



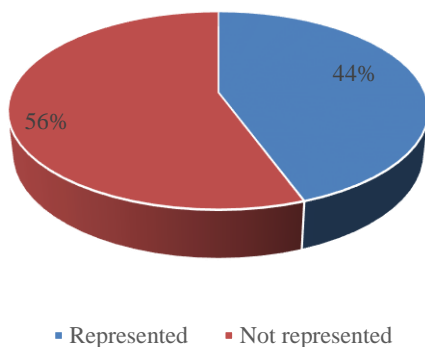
3 in 10 appeals were upheld by the Minister which resulted in the original decision being reversed

Appellant Represented



In most cases the Appellant is represented by a legal firm or Architect. The Inspectors are used to Appellants not being represented and will give guidance throughout the hearing to individuals.

Upheld Appeals - Representation of Parties



In most cases Appellants were most successful when not represented

Appeals - Planning and Building (Jersey) Law 2002

A Brief Guide

Appeals are decided by the Minister for the Environment. The Minister will make a decision after receiving a recommendation from an independent Inspector who has been appointed to consider the case. The Minister does not have to follow the recommendation made by the Inspector but a reasoned explanation must be provided where the Inspector's advice is not followed.

The Inspector's recommendation will take into account:

- the material submitted to the Department of the Environment;
- all the appeal documents;
- any relevant legislation and policies,
- any other matters that are material to the appeal.

If a prospective appellant thinks that amending their application proposals or attaching a condition to a permission will overcome the reasons for refusal they should make a fresh application. These are not valid reasons for lodging an appeal.

When the appeal decision has been made we will contact everyone who has been involved to let them know the outcome. Where appropriate the decision will also be made public.

Who can make an appeal?

- A person who has been refused planning permission or building bye-laws
- A person who does not agree that a condition attached to a permission is appropriate
- A person who has been refused to have a condition on an approval varied or removed
- A person who has been refused permission to carry out work to/on/under a site of special interest (a Listed Building or place)
- A person who has been refused permission to carry out works to a protected tree
- A person who has had their property made a Listed Building or has had an application to de-List the building refused
- A person who has been refused permission to import a caravan
- A 3rd party who is unhappy with a particular grant of planning permission and who has made a written representation in connection with that application for permission and who has an interest in the affected land or lives within 50m of the application site.

If more than one decision is to be appealed separate appeals for each decision must be lodged.

Forms to make an appeal can be found at

<http://gov.je/PlanningBuilding/AppealsComplaints/Pages/index.aspx>

Appeals must be accompanied by the relevant fee as follows:

Refusal to grant or refusal to vary Planning Permission for a: <ul style="list-style-type: none"> • major development* (see below for definition) • minor development 	£1600 £500
Approval of Planning Permission	£500
Refusal of Building Permission (Bye Laws)	£500
Refusal to issue Certificate of Completion	£500
Refusal to allow work to or activities on Sites of Special Interest	£500
Refusal of Caravan Permission	£500
Imposition of a condition on any Permission	£500
Revocation or modification of Planning Permission	£100
The Listing of or refusal to De-List a building, place or tree	£100
Immediate Action	£100
Serving of a Notice	£100

*Major development is

- Residential development of 1 unit or above
- New non-residential development
- Non-residential extensions or structures of more than 250 sq. m floor space
- Any development of mixed residential and non-residential use
- Any change of use of land or buildings
- Any installation of wind turbines or telecom masts
- Any application requiring an Environmental Impact Assessment
- Demolition
- Creation of reservoirs or outdoor recreation areas
- Works of mineral extraction, earthworks and similar infrastructure projects.

Any development which is not major development is minor development.

Everyone involved in an appeal including anyone wishing to make comments on an appeal must meet the statutory and procedural timetables set out in the Law to ensure that no-one is disadvantaged and the appeal can be processed efficiently.

How does an appeal start?

Any appeal starts with the submission of a relevant appeal form.

Appeals must be made within 28 days of

- The date of the decision – this is the date on the decision notice
- The date of the issue of a notice requiring action – this is the date on the notice
- The date of the decision which contains a condition which is the subject of an appeal – this is the date on the decision notice
- The date of entry into a building to undertake any work to remove or reduce any danger.

The appeal form must identify all the relevant issues. There is no need to fully explain the appeal case but if an issue is not identified at this stage it will not be able to be included at a later date without the express leave of the Inspector.

What happens when we receive an appeal?

Once an appeal is received and registered we will notify the appellant, the Department of the Environment and all other parties who have made representations in connection with the case

The date of this notification will be the start date for the appeal process.

From the start date of the appeal process all parties involved will have 28 days to submit their full arguments (statement of case) in connection with the appeal. This statement of case should fully disclose the respective arguments of the parties involved and must include all supporting evidence and documentation.

Anyone who has been notified of the appeal or who has previously expressed an interest in the case can submit a statement of case as long as it is within the deadline. Representations which were received in connection with the original decision – for example representations in connection with an application for planning permission – will be automatically made available to the Inspector. Further comments can be submitted if desired.

Statements of case will be made available to all interested parties involved in the appeal and there will be a 14 day period to allow any responses to be made in relation to other party's arguments.

An appeal will proceed in one of two ways,

1. Written representations where an inspector assesses an appeal on the basis of the written submissions or:
2. An oral hearing, a structured discussion led by the Inspector and involving all the interested parties.

Once an appeal has been registered an Inspector will be appointed to consider the appeal. The date when the Inspector will consider the appeal will be set; this may involve scheduling a site visit.

If someone who wants to make an appeal does not have access to the internet they should contact us and an relevant appeal form will be sent to them; alternatively forms can be collected from the reception at the Judicial Greffe in the Royal Court Building, Royal Square, The Tribunal Service in West Centre, the Department of the Environment at South Hill or from Howard Davies Farm.

Contact details of the Tribunal Service

Address:

1st Floor, Trinity House, Bath Street, St Helier, Jersey, JE2 4ST

Manager:

Nathan Wilczynski
(Responsible for planning appeals)

Registrars:

Maggie Turner
Steph de la Cour
Tayla Le Mottee
Tracey Pearce

Opening hours

Monday – Friday
9:30am – 4pm

Telephone

(01534) 441380

Email

registrartribunalservice@gov.je

Planning Information Website

<https://www.gov.je/PlanningBuilding/Pages/default.aspx>

Planning Register

www.mygov.je/planning/