



Judicial Greffe

Procedural Guide

Appeals under the Planning and Building (Jersey) Law 2002

This Guide applies to everyone who might be involved in an appeal against a decision or action taken under the Planning and Building (Jersey) Law 2002.

The guide has been endorsed by the Inspectors who will consider an appeal, the Judicial Greffe and the Minister for the Environment.

Whilst all appeals vary in their circumstances this guide will provide a framework that the Inspectors and the Judicial Greffe will use to administer and run the appeals and it will provide information to other people involved in the appeal process as to what to expect.

Forms to make an appeal can be found here

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

1. INTRODUCTION

Background

The content of this document provides guidance in submitting and considering an appeal. All parties involved in the appeal should follow the general principles indicated. An Inspector considering an appeal has wide ranging statutory powers in how an appeal can be progressed and the Inspectors have been involved in the formulation of this guidance as an aid for everyone concerned. Inspectors may adapt the guidance as necessary for an individual appeal but will ensure that no party is prejudiced.

Who decides an appeal?

Having considered the Inspectors report under Article 115, the Minister for the Environment shall determine the appeal, and in so doing shall give effect to the Inspector's recommendation unless the Minister is satisfied that there are reasons not to do so.

The Minister may –

- (a) allow the appeal in full or in part
- (b) refer the appeal back to the Inspector for further consideration of such issues as the Minister shall specify;
- (c) dismiss the appeal; and
- (d) reverse or vary any part of the decision-maker's decision

What is the purpose of an appeal?

Making an appeal should not be used as a bargaining tactic but only as the last resort. Appellants should be confident at the time they make their appeal that they are able to make their full case.

The ability to deliver timely and high-quality decisions on appeals relies on all parties following good practice and behaving reasonably. Everyone involved in an appeal (including anyone wishing to make comments on an appeal) must meet the statutory and procedural timetables to ensure that no-one is disadvantaged and the appeal can be processed efficiently. Keeping to the timetables is fundamental to an efficient and fair appeals service and we expect everyone to comply with them.

What happens when we receive an appeal?

Once we have received an appeal and ensured that it is valid we will notify the appellant, the applicant (in the case of an appeal against the grant of planning permission), the Department of the Environment and anyone else who has made representations in connection with the case, of the **appeal start date** (from which the date for receipt of documents and representations will be calculated). The notification will outline the process of the appeal, the deadlines by which statements can be submitted, a contact address and where to find out more information about the appeal.

All appeal documentation will be publicly available on the planning register www.gov.je/planningregister

Notice of appeal must be received by the Judicial Greffe no later than the end of the period of 28 days beginning with the date of the decision. In another way, Day 1 of the period of 28 days begins with the date of the decision, for example;

Decision notice date: 1st January

Day 28 and the deadline for submitting an appeal would be: 28th January

Extensions to this timeframe can only be granted in exceptional circumstances and only if the appeal involves a determination of a civil right.

For more information and examples of when an extension of time may or may not be granted, please refer to the following cases which were brought against the Minister for Planning and Environment;

[Minister for Planning and Environment v Herold](#) [2014] JRC 020

[Guest-v-Minister for Planning and Environment](#) [2017] JRC 069

A request for an extension to lodge an appeal must be made prior to the expiry of the 28 day period, in writing to the Judicial Greffe or the Master [of the Court]. You must clearly explain the circumstances in which you are applying for an extension of time and when you will be able to lodge your appeal. The Judicial Greffier [or Master of the Court] will determine whether to grant an extension of time. They will provide their response in writing and explain the reasons of their decision.

What happens if we receive documents after the deadline?

All available evidence should be contained within a statement of case, which should be sent to us by the appellant, the applicant, the Department of the Environment and anyone else who wants to submit more information in relation to the appeal.

If we receive documents after the deadline for submission the Inspector may decide to accept or reject the documents. The Inspector will not normally accept any documents at any hearing (if that is part of the appeal) or at any site visit.

What will the Inspector take into account?

The Inspector has to make a recommendation to the Minister in light of the information available when the recommendation is made. The Inspector will take account of:

- the material submitted to the Department of the Environment for the original application or case;
- all information on the planning register pertaining to the application or case;
- all the appeal documents;
- any relevant legislation and policies; and
- any other matters that are material to the appeal.

2. PREPARING AN APPEAL

Who can make an appeal?

The following people can make an appeal:

- Someone who has been refused planning permission or building bye-laws
- Someone who does not agree that a condition attached to a permission is appropriate
- Someone who has been refused to have a condition on an approval varied or removed
- Someone who has been refused permission to carry out work to/on/under a site of special interest (a Listed Building or place)
- Someone who has been refused permission to carry out works to a protected tree
- Someone who has had their property made a Listed Building or has had an application to de-List the building refused
- Someone who has been refused permission to import a caravan
- Someone who is unhappy with the grant of planning permission and who made a written representation in connection with the application for permission and who has an interest in land or lives within 50m of the application site
- Someone on whom a notice has been served, such as an enforcement notice
- Someone who has had their property or building entered for works to be carried out. This only applies where their property has been entered in accordance with Article 111

What are the time limits to make an appeal?

Appeals must be made no later than the end of the period of 28 days beginning with

- The date of the decision (day 1) – 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

How does an appeal start?

Any appeal starts with the submission of a relevant appeal form to us within the time limits set above. The form must contain enough information to be able to identify the case which is the subject of the appeal along with a brief summary of the grounds of appeal. At this stage all the relevant issues should be identified. Although there is no need to fully explain the appellant's case if an issue is not identified at this stage it will not be able to be raised as part of the main submission of evidence – known as the statement of case - in support of the appeal.

We will then check that an appeal can progress in relation to the submission. This will involve checking the appellant's details and verifying that the appeal has been made in time.

If insufficient information or fee has been submitted, we may contact the appellant and request that they rectify the deficiencies in the submission. If we do this, we will also inform the applicant (in the case of the grant of planning permission) and the Department of the Environment.

Once the appeal has been validated, we will confirm to the appellant, the applicant (if applicable), the Department of the Environment and anyone else who has been involved in the decision that the appeal has been received and will be considered. The date of this notification will be the start date for the appeal.

After an appeal has been accepted all the parties involved will have 28 days to submit their full arguments in connection with the appeal. This submission is known as the statement of case.

Who tells interested people about the appeal?

The Judicial Greffe will contact everyone who has written to the Department of the Environment during the consideration of any case that has led to the appeal. This contact will inform them of the receipt of the appeal and the start date for the submission of any further material.

People who wrote to the Department in connection with an application for planning permission or similar application will be informed that their representations will be passed to the Inspector and they do not necessarily need to make a further submission but are welcome to do so if they wish. They will also be told they can withdraw their representations if they wish to do so and that they will be informed of appeal decision when it is made.

Interested parties will be told where to find more information and when a decision will be likely. We will not contact interested parties again after this point.

What are grounds of appeal and what should they include?

The appellant must include grounds of appeal when they submit their appeal form. The grounds should fully identify the issues in support of an appeal and explain the basis on which they consider a decision should not have been made.

The grounds of appeal must be brief, concise, clear and comprehensive. If an issue is not identified in the grounds of appeal it cannot be then raised as part of the main submission of evidence –the statement of case - in support of the appeal. Grounds of appeal must be relevant planning matters. Reasons outside of planning matters will not be considered by the Inspector.

When appealing against a ***Notice requiring actions*** an appellant has a number of defined grounds on which an appeal can be made. An appeal can be brought on any of the grounds or any combination of the grounds of appeal. The choice of grounds of appeal will not prejudice the appeal on any other ground. For example an appeal on the basis that the Law does not control the alleged breach will in no way prejudice an appeal that permission should be granted for the alleged breach.

If the appeal is against the serving of a notice and the grounds of appeal include 5(h) – ‘that in all the circumstances planning or building permission should be granted in respect of the development in question’ - the application must be accompanied with the relevant planning application form, a retrospective application fee (contact DOETSO@gov.je to calculate the required fee; cheques made payable to the Treasurer of the States) as well as plans and drawings usually required as part of a planning application.

What are statements of case and what should they include?

The statement of case should fully disclose the respective arguments of parties involved with the appeal through full representation and supporting evidence. The appellant should respond to the reasons for any decision set out in the relevant decision notice and if relevant, any issues raised in the relevant officer’s report and/or the Committee minutes. The statement of case should fully explain the basis on which they consider the appealed decision should not have been made. The appellant may also wish to respond to representations which may have been received from interested people during the application stage. It is not necessary for the appellant to provide full copies of published policies or document published to the planning register in their statements of case. If the information is published, a reference to where to find such information is adequate.

The Department of the Environment must provide a justification for the decision which has been appealed. Similarly, it is not necessary for the Department to provide full copies of published policies or documents published to the planning register.

Anyone else who has been notified of the appeal or who has an interest in the case can submit documents, information and evidence as long as it is within the deadline. Representations which may have been received in connection with the original decision – for example representations in connection with an application for planning permission – will have been published to the planning register and will be made available to the Inspector. Further comments can be submitted if desired.

All statements of case will be published on the planning register. There will be a further **14 day period** to allow any comments to be made in relation to other parties’ statements of case.

In the case of a planning application, The Department of the Environment’s or, where relevant the Planning Committee’s, reasons for their decision or actions will be explained in any relevant decision notice.

After the start date for the appeal everyone involved will have the same time scales as all other parties to submit the relevant documents, including any supplementary statement to us for the Inspector.

Can the proposed scheme be amended?

If an applicant thinks that amending the proposal will overcome the reasons for refusal or the attachment of a condition on a permission, they should make a

fresh application. The Department of the Environment should be open to discussions on whether it is likely to view an amended scheme favourably.

If an appeal is made the process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered at the time of the initial decision and on which interested people's views were sought.

Whilst amendments to a scheme might be thought to be of little significance, in some cases even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested people.

New evidence will only be exceptionally accepted where it is clear that it would not have been possible for the party to have provided the evidence when the initial decision was made.

How is an appeal considered?

There are two procedures that an appeal can follow, written representations or a hearing. These are explained in more detail elsewhere in this document but there are certain types of appeal that will be considered in each of the particular ways. We will inform all parties which of the processes will be followed after all the information is received. If an appellant wishes to have the alternate process to consider their appeal this will be determined by the Inspector and as such a decision on whether the request for the alternate process will be made at some later point.

After sending out the notification letter we will appoint an Inspector. We will also schedule when the Inspector will consider the appeal either at a hearing or by written representations. This may involve scheduling a site visit. We will notify all parties of this information as soon as it is determined.

We encourage and support appellants, the Department of the Environment and interested people to work electronically. All submission can be made to ***registrartribunalservice@gov.je***

Appeal forms are available to download at:

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

If someone who wants to make an appeal does not have access to the internet they should contact us and we will send them the relevant appeal form(s) or they can be collected from the reception at the Judicial Greffe in the States Chambers or from the Department of the Environment at South Hill or Howard Davis Farm.

Is the appeal site visited?

Visits to the appeal site and any relevant neighbouring land or properties are normally carried out where it is necessary to assess the impact of a development on its surroundings. The purpose of the visit is solely to enable the site and its surroundings to be viewed by the Inspector

Where the site is sufficiently visible from the road or public viewpoint the visit will usually be carried out unaccompanied.

Where a site visit is *accompanied* it is normally expected that the DOE, the Applicant and Appellant will attend as it may for example be necessary to go onto private land.

Exceptionally, on an *unaccompanied* visit the Inspector may find it necessary having seen the site to enter private land and may therefore approach the occupants, solely to gain access.

A site visit is not an opportunity for anyone present to discuss the merits of the appeal or the written evidence they may have previously provided. The Inspector will therefore not allow any discussion about the case with anyone at a site visit, except that if it is an accompanied site visit the Inspector may ask the invited parties to point out physical features that they have referred to in their written evidence

I'm going away – can I delay my appeal?

Postponements and adjournments cause delay and disruption to everyone concerned. We will not put cases into abeyance unless there are exceptional reasons.

We may decide to link appeals that relate to the same site in order to minimize the use of resources for all parties. We will make decisions to link on a case by case basis.

3. HEARING THE APPEAL

There are two procedures that an appeal can follow, written representations or a hearing.

Article 114 of the Planning and Building (Jersey) Law 2002 sets out appeals which should normally be dealt with by written representations. This involves the Inspector considering the arguments only on the basis of the information in the documents and if appropriate a site visit.

Appeals normally considered by written representations are

- Refusal of planning permission where there have not been any representations (except by statutory bodies)
- Against the attachment of a condition to a grant of planning permission
- Against the refusal to grant a certificate of completion
- Against the refusal to grant a building permission (Building Bye-Laws) or a condition on a grant of a building permission
- Against a decision to List a Building, Place or Tree
- Refusal to allow the importation of a caravan or a condition attached to a permission to allow the importation of a caravan

An Inspector may allow any of the above appeals to be considered at a hearing (see below) if any of the parties make a case for a hearing. The Inspector may unilaterally decide that the appeal may be better considered at a hearing. A

decision to follow the hearing procedure will only be made after all parties involved have been consulted.

All other appeals will normally be considered by way of a hearing. This still involves the submission of written statements by each of the parties within the deadline. Following submission of the written statements, a hearing will be held. This is an investigative process led by the Inspector who identifies the issues for discussion based on the evidence previously submitted and may include any representations that have been made.

The Inspector will open a hearing at the appointed time, even if one or more of the parties is not by then present. The Inspector will start by introducing themselves and describing the nature of the subject appeal. After resolving any residual doubts about the application or plans, the Inspector conducting the hearing will explain that it will take the form of a discussion which the Inspector will lead.

The Inspector will summarise their understanding of the case from reading the papers and any pre-hearing site visit. At that stage, the Inspector will outline what they consider to be the main issues and indicate those matters for which further explanation or clarification is required. This will not preclude the parties from referring to other aspects which they consider to be relevant.

Appellants may present their case through an agent or adviser but such representation is not essential. Legal representation should not normally be necessary and the Inspector will not allow discussions based on legal matters alone to become part of the hearing. The appellant will usually be asked to start the discussion. In some cases it may be appropriate for the Department of the Environment to start if, for example, it is necessary to clarify Island Plan policy matters in order to guide the debate. Written material should have been circulated and exchanged well beforehand and will not need to be read out at the hearing.

In some exceptional cases it may be appropriate to allow cross-examination in order to best explore the issues involved. This is most likely to occur in cases involving expert witnesses where there are complex technical issues to be considered. Cross-examination can be intimidating and should only be used where it can assist the Inspector understand the case properly. Cross examination is only allowed at the discretion of the Inspector.

When considering an appeal an Inspector can recommend to the Minister that the matter would be better considered at a public inquiry. This is governed by separate legislation.

What is expert evidence?

Expert evidence is given by a person who is qualified, by training and experience in a particular subject or subjects, to express an opinion. Whilst they may be involved by one or other party to demonstrate a particular issue with the appeal they might also have been requested to attend by the Inspector to offer advice and clarity.

Can I attend a hearing?

It is expected that the main parties and their representatives would attend the hearing. It is not necessary to have a legal or professional representative at these proceedings, but you can do so if you wish.

Hearings are open to journalists and the wider public, as well as interested people. Normally, only the main parties will be allowed to speak. However it is at the discretion of the Inspector if other parties present at the hearing will be allowed to speak.

The recording, photographing or filming of proceedings is not allowed.

What is the process for challenging a decision made during the processing of an appeal?

If the appellant, the applicant (if applicable), the Department of the Environment or any other person interested person thinks that there has been an administrative decision during the processing of an appeal that is wrong, they should write to the Judicial Greffe giving clear reasons why they think that administrative decision should be reviewed.

4. THE DECISION

The Inspector will make a recommendation to the Minister in the form of a summary of the appeal proceedings, an analysis of the issues and a clear and reasoned recommendation. The report will summarize the issues raised during consideration of the appeal and reflect the information the Inspector was presented with in order to reach a recommendation.

The report and recommendation will then be passed to the Minister by the Judicial Greffe in confidence. The Minister will consider the recommendation and make a decision in light of the Inspector's report.

The Minister may wish to visit the site, review the documents submitted or ask questions about the case. The Minister will do this in the presence of the Judicial Greffe. In some cases, the Minister may wish for a clarification from the Inspector and he will ask this via the Judicial Greffe.

The Minister may decide to:

- allow the appeal in full or part;
- refer the appeal back to the Inspector for clarification;
- dismiss the appeal; and
- reverse or vary any part of the decision.

The Minister will make his decision in the form of a signed Ministerial Decision. The Judicial Greffe will issue the Minister's decision along with the report and recommendation made to the Minister by the Inspector. Where the Inspector's recommendation has not been followed the Minister will explain the reasons.

When the appeal decision has been made, the Judicial Greffe will contact the appellant, the applicant (if applicable) and the Department of the Environment to let them know the outcome.

Once the involved parties are notified of the decision, the Ministerial Decision document and Inspector's report will be published online at:

<http://www.gov.je/government/planningperformance/pages/ministerialdecisions.aspx>

As soon as practicable after the publication of the decision, we will ensure that the Ministerial Decision and the Inspector's report are available on the planning register and we will send out letters to notify parties of the decision formally.

Where the Minister varies a permission granted, grants permission or refuses to grant permission, the signed Ministerial Decision Document is the formal decision notice and the previous decision notice will be removed from the planning register.

5. AFTER THE DECISION

Can an appeal decision be challenged?

An appeal decision can only be challenged on a point of law. The Royal Court is the only authority that can formally identify a legal error in the Minister's decision.

An appeal to the Royal Court must be made within 28 days from the date of the Minister's determination. This must be made in writing to the Judicial Greffier;

Judicial Greffe
Royal Court House
Royal Square
St Helier JE1 1JG

What is the decision from the Royal Court?

On hearing the appeal, the Royal Court may decide to

- confirm the decision of the Minister in full or part;
- quash the decision of the Minister in full or part;
- ask the Minister to retake the decision on full or part.

6. CONTACTING US

For general enquiries our contact details are:

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41 The Parade
St Helier, JE2 4ST

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