

STATES OF JERSEY

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DRAFT PLANNING AND BUILDING (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 23rd November 2004
by the Environment and Public Services Committee**

STATES GREFFE



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

The President of the Environment and Public Services Committee has made the following statement –
In the view of the Environment and Public Services Committee the provisions of the Draft Planning and Building (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

1. The Environment and Public Services Committee considers that the Planning and Building (Jersey) Law 2002 is long overdue for implementation.
2. The Law received Royal Assent in October 2002 and was registered in the Royal Court the following month. Its introduction has been delayed primarily because of the costs of establishing the Planning and Building Appeals Commission, an independent appeals tribunal with full jurisdiction to determine appeals against decisions of the Environment and Public Services Committee. The inclusion in the Law of a provision enabling appeals to be made by third parties substantially increases the number of appeals and thus the costs of the Commission, and the Committee is considering how these costs may be reduced.
3. Since the Law was approved by the States, concerns have been expressed about the proliferation of different appeal tribunals in such a small Island. Equally, concerns have been expressed about creating a “Planning Court for Planners”.
4. In the interest of bringing in the Law at the earliest opportunity, the Committee has given further consideration to the matter. It believes that there is merit in establishing a more accessible appeals system. However, it understands that the chances of bringing in a new system with the attendant costs to the States, is unlikely in the short-term. It accepts that the current appeal to the Royal Court under Article 21 of the Island Planning (Jersey) Law 1964, as amended, is a disincentive to prospective appellants, primarily on the basis of costs. They are deterred by the costs of appointing advocates (very few have the confidence to litigate in person in an adversarial process) with no guarantee of success. Equally, they are deterred by the risk of having the Committee’s costs awarded against them should they lose the appeal. The costs of appeal can easily exceed the costs of the proposed development in many cases.
5. The Committee believes that it does not make good sense to forego the wider benefits of the new Law by waiting for resources to be made available to introduce the new Appeals Commission. These benefits include –
 - better publicity for applications;
 - Committee/Sub-Committee consideration of applications in public;
 - simpler and more effective procedures for the designation of Sites of Special Interest and the protection of trees;
 - more effective enforcement procedures;
 - a legal requirement to maintain an up-to-date Island Plan;
 - new provisions to deal with demolitions and dangerous structures.

Accordingly, the main purpose of this amendment is to reinstate the Royal Court as the appellate body – that is, to maintain the current appeals system. This will enable the new Law to be introduced with a human rights compliant appeal process.

6. The Committee has entered discussions with the Bailiff and Court Officers with a view to achieving the benefits of the Appeals Commission but under the aegis of the Royal Court. First, the Committee is investigating the possibilities for mediation to filter-out those appeals which are capable of resolution by negotiation. Second, it has requested the Royal Court to introduce a system which would enable appeals based solely on planning merits and which do not raise legal issues to be dealt with more informally. The Bailiff has agreed that rules of court could be made which would allow such appeals to be progressed with more simplicity and less formality. There would be a measure of flexibility and, in general, lawyers would not be involved. Cases raising legal points, and more complex issues, would be dealt with under the current rules for administrative appeals. It is to be noted that, since the introduction of the Royal Court (Amendment No. 19) Rules 2002, appeals even in complex cases are now usually resolved within 4 months from the service of the notice of appeal.
7. The Committee welcomes this flexible approach, which would enable some appeals to be resolved in a non-adversarial manner and which would not involve awards of costs against the parties. These amended provisions would not be implemented immediately as they will increase the numbers of appeals. They

would be introduced when additional resources are available.

8. The Amendment also clarifies the compensation provisions in respect of revocation or modification of permission (Article 27) and amends the penalty provisions of the Law.

Initial resource implications of introducing Law as amended*

<i>Item</i>	<i>Posts</i>	<i>Costs £</i>
Maintain up-to-date Island Plan and open application meetings	1 (Planner)	55,000
Dangerous structures and demolitions	1 (Building Control Surveyor)	55,000
Simplified SSI designation process	1 (Conservation Officer)	45,000
		<hr/> 155,000

(All recurring annually)

These additional costs will be met from application fees in the case of the planner post and the others from within the Committee's budget.

* The subsequent introduction of the amended Royal Court procedures, and third party appeals, will increase the number of appeals. Thus, both the Royal Court and the Department will incur additional costs. Funding for both will be sought by the Committee through growth bids in the resource allocation process, and the introduction of these measures will be contingent on that funding being in place.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 18th November 2004 the Environment and Public Services Committee made the following statement before Second Reading of this projet in the States Assembly –

In the view of the Environment and Public Services Committee the provisions of the Draft Planning and Building (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The main purpose of this Law is to amend the Planning and Building (Jersey) Law 200 to provide that appeals under the Law will be determined by the Royal Court rather than by a dedicated Planning and Building Appeals Commission.

Article 1 defines “the principal Law” for the purposes of the amending Law.

Article 2 amends Article 1 of the principal Law to omit the definition “Commission”, which will no longer be necessary if the appeal amendments are agreed.

Article 3 amends Article 27 of the principal Law to make it clear that on the revocation or modification of planning permission compensation is not payable in respect of any profit a person could have gained had the permission not been revoked or modified.

Article 4 repeals Chapter 1 of Part 7 of the principal Law, which establishes the Planning and Building Appeals Commission, and replaces it with provisions that ensure that on an appeal to the Royal Court certain interested person may be heard and do not have to be represented by a lawyer.

Article 5 amends the appeal provisions of the principal Law to provide that appeals under the Law will be determined by the Royal Court rather than by a Planning and Building Appeals Commission.

Article 6 amends the penalty provisions of the principal Law that provide for imprisonment to exclude imprisonment except where a person makes a fraudulent application for planning permission.

Article 7 provides for the citation and commencement of the amending Law.



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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 27 amended</u>
<u>4</u>	<u>Chapter 1 of Part 7 repealed and replaced</u>
<u>5</u>	<u>Amendment of appeal provisions</u>
<u>6</u>	<u>Amendment of penalty provisions</u>
<u>7</u>	<u>Citation and commencement</u>



Jersey

DRAFT PLANNING AND BUILDING (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend the Planning and Building (Jersey) Law 2002.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “the principal Law” means the Planning and Building (Jersey) Law 2002^[1]

2 Article 1 amended

Article 1(1) of the principal Law is amended by omitting the definition “Commission”.^[2]

3 Article 27 amended

Article 27 of the principal Law^[3] is amended by inserting after paragraph (6) the following paragraph –

“(6A) The loss or damage mentioned in paragraph (6)(a) does not include the loss of any profit a person might have made by virtue of the planning permission had it not been revoked or modified.”.

4 Chapter 1 of Part 7 repealed and replaced

Chapter 1 of Part 7 of the principal Law^[4] is repealed and the following Chapter is substituted –

“Chapter 1 – Hearings

106 Interpretation – “persons interested in the appeal” defined

- (1) In this Part “persons interested in the appeal”, in respect of an appeal under this Part, means –
- (a) the Committee;

- (b) the appellant; and
 - (c) any other person who made a submission to the Committee in respect of the matter the subject of the appeal prior to the Committee making its decision in respect of that matter.
- (2) For the purpose of paragraph (1)(c) a person who has made a submission to the Committee includes any highway authority, Committee, or a body or person created by statute that has commented on an application as a result of the Committee's compliance with Article 14, 15, 16 or 17.
 - (3) If a person appeals to the Royal Court in accordance with Article 114 the expression "persons interested in the appeal" shall be taken for the purposes of this Part to include the person who would, but for Article 114(3), have the benefit of the planning permission for the time being.

107 Hearings

At the hearing by the Royal Court of an appeal under this Part each person interested in the appeal may appear and be heard, either in person or by a representative, who shall be an advocate of the Royal Court or such other person as the Royal Court may by rules prescribe.

108 Rules of Court

The power to make rules of court under Article 11 of the Royal Court (Jersey) Law 1948^[5] shall include the power to make rules regulating practice and procedure in applications and appeals under this Part".

5 Amendment of appeal provisions

- (1) In the Articles of the principal Law mentioned in paragraph (2) for "Commission" there is substituted "Royal Court".
- (2) Those Articles are Articles 113(2) and (3) (twice appearing), 115(3) and (4) (twice appearing), 11(2), (3) (twice appearing) and (5), 117(4), (5), (7), (8) and (9) (twice appearing) and 118(2), (3) and (5).^[6]

6 Amendment of penalty provisions

- (1) Articles 7(1), 33(1), 46(1), 54(2), 55(4), 61(1) and 70(1) of the principal Law^[7] are amended by omitting from each of them "or imprisonment, or both".
- (2) Article 10(1) of the principal Law^[8] is amended by omitting "to a fine or imprisonment, or both" and substituting "to imprisonment for a term of 2 years and a fine".

7 Citation and commencement

- (1) This Law may be cited as the Planning and Building (Amendment) (Jersey) Law 200.
- (2) It shall come into force on the same day or days as the principal Law.

[1] *Volume 2002, page 511.*

[2] *Volume 2002, page 520.*

[3] *Volume 2002, page 551.*

[4] *Volume 2002, page 607.*

[5] *Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.*

[6] *Volume 2002, pages 613, 615, 616 and 618 to 620.*

[7] *Volume 2002, pages 531, 555, 565, 573, 576, 582 and 587.*

[8] *Volume 2002, page 533.*