

STATES OF JERSEY



DRAFT PLANNING AND BUILDING (AMENDMENT No. 6) (JERSEY) LAW 201- (P.94/2014): THIRD AMENDMENT

Lodged au Greffe on 17th June 2014
by Deputy J.H. Young of St. Brelade

STATES GREFFE

1 PAGE 17, ARTICLE 2 –

In Article 2 for the inserted definition “Planning Applications Panel” substitute the following definition –

“ ‘Planning Applications Committee’ means the body exercising functions conferred under Article 9A;”.

2 PAGES 17–18, ARTICLE 3 –

In Article 3, in the substituted Article 9A –

- (a) for the words “Planning Applications Panel”, in each place that they appear, substitute the words “Planning Applications Committee”;
- (b) in paragraph (3)(b) for the words “3 days” substitute the words “5 days”;
- (c) for paragraph (4) substitute the following paragraphs –

“(4) Subject to paragraph (3), the Minister may by Order prescribe procedures to be followed by the Planning Applications Committee under this Law.

(5) Except as otherwise provided by or under this Article, the Planning Applications Committee shall determine its own procedure.

(6) The Planning Applications Committee shall, within the period of 3 months following the end of a year, report to the States –

- (a) the number of decisions made by the Committee under this Law during that year;
- (b) the number of appeals made during that year against decisions made by the Committee under this Law;
- (c) the Committee’s assessment of planning policy and any recommendations it has for its revision.

(7) Where, under paragraph (6)(c), the Planning Applications Committee makes recommendations about planning policy, the Minister shall present to the States his or her response to the recommendations.”.

3 PAGE 19, ARTICLE 6 –

In Article 6, in the inserted Article 22A –

- (a) for the words “Planning Applications Panel”, in each place that they appear, substitute the words “Planning Applications Committee”;
- (b) in paragraph (1) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs –

“(a) to grant planning permission without conditions (other than by virtue of a Development Order);

- (b) to refuse to grant planning permission; or
 - (c) to grant planning permission subject to conditions (other than by virtue of a Development Order).”;
- (c) for paragraph (2) substitute the following paragraph –
 - “(2) Where this Article applies, the following persons may request a review of the decision in question (the ‘initial decision’) by the Planning Applications Committee –
 - (a) in the case of a decision described in paragraph (1)(a), a third party;
 - (b) in the case of a decision described in paragraph (1)(b), the applicant;
 - (c) in the case of a decision described in paragraph (1)(c), the applicant or a third party.”;
- (d) in paragraph (3) –
 - (i) for sub-paragraph (a) substitute the following sub-paragraph –
 - “(a) the name and address for correspondence of the person requesting the review;”,
 - (ii) in sub-paragraph (c) for the words “the applicant” substitute the words “the person requesting the review”;
- (e) after paragraph (5) add the following paragraphs –
 - “(6) In this Article, ‘third party’, in relation to an initial decision to grant planning permission, shall be construed in accordance with Article 108(4).
 - (7) A request made by a third party under this Article must include a declaration, signed by the third party, as to the facts by virtue of which he or she satisfies the condition in Article 108(4)(a).”.

4 PAGES 21–30, ARTICLE 7 –

In Article 7 –

- (a) in the substituted Article 106(4) for the words “Planning Applications Panel” substitute the words “Planning Applications Committee”;
- (b) for the substituted Article 107 substitute the following Article –

“107 Appointment of Appeals Panel

- (1) There shall be an Appeals Panel, consisting of inspectors and assistant inspectors, appointed in accordance with this Article.
- (2) The States shall direct the number of persons to be appointed as inspectors.
- (3) The Minister shall decide the number of persons to be appointed as assistant inspectors.

- (4) The Minister shall, following recommendations made for the purpose by the Jersey Appointments Commission, appoint inspectors and assistant inspectors.
- (5) In recommending a person for appointment as an inspector or assistant inspector, the Jersey Appointments Commission must be satisfied that the person is capable and willing to act as such for the purposes of this Part.
- (6) In recommending a person for appointment as an assistant inspector, the Jersey Appointments Commission must also be satisfied that the person is ordinarily resident in one of the Channel Islands.
- (7) A person cannot be recommended for appointment, or appointed, as an assistant inspector if he or she is –
 - (a) a member of the States; or
 - (b) a States' employee.
- (8) Inspectors shall be appointed as States' employees.
- (9) An assistant inspector –
 - (a) shall be appointed for a term of 3 years;
 - (b) shall receive such remuneration as the Minister determines;
 - (c) may resign by giving notice, in writing, to the Minister.
 - (d) shall cease to hold office upon taking such office or employment as is described in paragraph (7); and
 - (e) may be dismissed by the Minister if the assistant inspector ceases to be ordinarily resident in one of the Channel Islands or is unfit, unwilling or unable to discharge, or is not discharging, his or her functions as an assistant inspector.”.
- (c) in the substituted Article 113 –
 - (i) for paragraph (2)(a) substitute the following sub-paragraph –

“(a) nominate a person or persons to conduct the appeal, in accordance with paragraph (3) or (4);”,
 - (ii) after paragraph (2) insert the following paragraphs and renumber the remaining paragraphs accordingly –

“(3) Where the appeal is made under Article 108(2)(a), (b), (c), (d) or (e), the Greffier shall nominate one inspector and 2 assistant inspectors, appointed under Article 107, to conduct the appeal.
 - (4) Notwithstanding paragraph (3), if –
 - (a) one of the interested parties in an appeal under Article 108(2)(a), (b), (c), (d) or (e) notifies the Greffier and the other interested parties in the appeal, within the period of 7 days beginning with the date of the invitation referred to in paragraph (1)(b), that he or she requests that the appeal is conducted by an inspector alone; and
 - (b) within the period of 14 days beginning with the date of that invitation, the other interested parties in the appeal notify the Greffier that they agree to the request,

the Greffier shall nominate one inspector, appointed under Article 107, to conduct the appeal.

(5) Where the appeal is made otherwise than under a provision mentioned in paragraph (3), the Greffier shall nominate one inspector, appointed under Article 107, to conduct the appeal.

(6) Notwithstanding paragraph (5), if –

(a) one of the interested parties in an appeal described in paragraph (5) notifies the Greffier and the other interested parties in the appeal, within the period of 7 days beginning with the date of the invitation referred to in paragraph (1)(b), that he or she requests that the appeal is conducted by an inspector and 2 assistant inspectors; and

(b) within the period of 14 days beginning with the date of that invitation, the other interested parties in the appeal notify the Greffier that they agree to the request,

the Greffier shall nominate one inspector and 2 assistant inspectors, appointed under Article 107, to conduct the appeal.

(7) In paragraphs (4) and (6) a reference to an interested party in an appeal does not include the person whose decision is being appealed against.”;

(d) in the substituted Article 114 –

(i) in paragraphs (3), (5) and (6) for the words “An inspector nominated” substitute the words “The person or persons nominated”,

(ii) in paragraph (3)(b) and (5)(b) after the words “his or her” insert the words “or their”,

(iii) in paragraph (6) for the words “if the inspector considers” substitute the words “if the person or persons so nominated consider”;

(e) in the heading to the inserted Article 115 delete the words “by inspector”;

(f) in the inserted Article 115 –

(i) for the words “the inspector” in each place that they appear, substitute the words “the person or persons nominated to conduct the appeal”,

(ii) in paragraph (5)(a) for the words “the inspector’s recommendation” substitute the words “subject to paragraph (6), the recommendation of the person or persons nominated to conduct the appeal”;

(iii) after paragraph (6) add the following paragraph –

“(6) If the appeal is conducted by persons nominated under Article 113(3) and those persons are not unanimous in their recommendation, the report must set out the alternative recommendation of any of those persons, and the reasons for it.”;

(g) in the substituted Article 116 –

- (i) for paragraph (1) substitute the following paragraphs and renumber the remaining paragraphs accordingly –
 - “(1) Having considered a report made under Article 115 the Minister shall determine the appeal and, subject to paragraph (2), in so doing shall give effect to the recommendation of the person or persons nominated to conduct the appeal, unless the Minister is satisfied that there are reasons not to do so.
 - (2) If, in accordance with Article 115(6), a report sets out an alternative recommendation, the Minister may decide to give effect to any of the recommendations in the report, or none of them.
 - (3) In making a decision under paragraph (2), the Minister must have particular regard to the recommendation of the inspector.”,
- (ii) in paragraph (2)(b) for the words “the inspector” substitute the words “the person or persons nominated to conduct the appeal”,
- (iii) in paragraph (4)(a) for the words “the inspector’s report” substitute the words “the report made under Article 115”,
- (iv) for paragraph (4)(b) substitute the following sub-paragraph –
 - “(b) if the report made under Article 115 did not make a unanimous recommendation, or if and to the extent that the Minister does not give effect to a unanimous recommendation in such a report, the full reasons for the Minister’s decision.”,
- (v) in paragraph (7) for the words beginning “Where the Minister” and ending “to the Minister,” substitute the words “Where, under paragraph (2)(b), the Minister refers an appeal back to the person or persons nominated to conduct an appeal, that person or those persons shall, as soon as practicable, produce a supplementary report to the Minister that complies with Article 115(5) and (6),”.

5 PAGE 30, ARTICLE 8 –

In Article 8(2) –

- (a) in the inserted paragraph (3A)(a) for the words “Planning Applications Panel” substitute the words “Planning Applications Committee”;
- (b) in the inserted paragraph (3A)(b) for the words “who is neither a Minister nor an Assistant Minister” substitute the words “who is not a Minister”;
- (c) in the inserted paragraph (3A)(c) delete the words “or Assistant Ministers”.

DEPUTY J.H. YOUNG OF ST. BRELADE

REPORT

1. Introduction

The proposed changes to the Planning Appeals system, to replace the Royal Court deciding appeals based on grounds of unreasonability, with an appeal considering the full planning merits, were approved by the States in [P.26/2013](#). Shortly afterwards, the Minister's Proposition which set out how those changes would be put into effect ([P.87/2013](#)) was approved.

- The Minister's role would be redefined to remove all responsibility for deciding planning applications which would in future fall on the Planning Applications Panel, leaving the Minister to decide on planning policy, provide supplementary guidance and other non-application responsibilities. *This change requires checks and balances to be incorporated in the role of the Planning Applications Panel.*
- Deputy R.G. Le Hérisier of St. Saviour's amendment enabled the longstanding informal arrangement, whereby Planning Officers' delegated decisions are reconsidered by the Planning Applications Panel, to be written into legislation, but this procedure was limited to first parties; third parties have no alternative but to meet the costs of the Royal Court. *This needs to be corrected.*
- All appeals would be considered by a single planning inspector and the Minister would decide on all appeals based solely on the inspector's recommendation. *I am concerned about over-dependence on a single inspector brought in from the UK Planning regime to make what will be the effective decision on individual applications, without a counter-balancing local influence.*

My amendment is intended to address the above shortcomings (shown in italics) and improve the Minister's changes to our Planning and Building Law. If they are all adopted, it will result in a robust, reliable, practical and effective planning appeals system, which will fully achieve the potential benefits of greater accessibility, improved public acceptance and increased confidence in the planning system on which our community and its economy depend, without significant cost.

2. Summary

Although my amendment runs to several pages and at first sight might seem complex, it really only affects the Minister's draft amending Law in 3 matters explained in more detail in paragraphs 3–5 of this report –

- The Planning Applications Panel becomes the Planning Applications Committee, with a requirement for enhanced procedures and other changes.
- The reconsideration of delegated decisions by the Planning Applications Committee (the Deputy Le Hérisier proposal) is extended to third parties.

- An Appeals Panel is created, comprising both UK planning inspectors and assistant inspectors who are residents of the Channel Islands, to hear the most significant appeals, and arrangements are proposed for the reporting of their recommendations and the powers and obligations of the Minister.

3. Planning Applications Committee

Paragraphs 1, 2 and 5 amend Articles 2, 3 and 8 of the Minister’s draft amending Law.

(This affects Article 9A of the Planning and Building Law and Article 48 of the States of Jersey Law, extending the scope of Standing Orders to establish and appoint a Planning Applications Panel.)

Taken together my amendments will, if adopted –

- Rename the “Planning Applications Panel” as the “Planning Applications Committee (PAC)” to reflect the increased importance of this role, as the Minister will no longer make any decisions on planning applications. Decision-making by Committee will bring us into line with general practice in planning authorities elsewhere, and will recognise that it is a committee making shared decisions.
- Provide a missing link between the Panel and the Minister which currently makes no connection between policy setting and in practice. It requires an annual report to the States of its assessment of Planning policy and the need for revision, and the Minister is required to respond to the States.
- Include power to the Minister to sets the procedures of the PAC by order. This will provide a mechanism for the future Minister to make a number of necessary procedural improvements.
- Require the agenda for the Planning Applications Committee meetings to be published 5 days in advance, as 3 days is too short for persons giving notice of attendance and is insufficient for the public.
- Enable Assistant Ministers (including the Assistant Minister for Planning and Environment if appointed) to be elected to the PAC either as a member or as Chairman, which I think in future should be separately elected by the States.

4. Review of decisions delegated to Planning Officers by the PAC

Paragraph 3 amends Article 6 of the Minister’s draft amending Law (which adds a new Article 22A to the Planning Law providing for reconsideration of planning officer decisions as proposed by Deputy Le Hérissier).

The majority of planning decisions are made by planning officers under delegated powers. For many years, an informal appeal system has operated successfully against officers’ decisions to refuse applications by enabling requests from applicants for reconsideration by the Planning Applications Panel It is this system that Deputy Le Hérissier, as a Panel member, successfully proposed be written into the Planning and Building Law as the Minister proposes.

A threshold of 4 third party objections to any application has been set for referrals to the Planning Applications Panel. This requires judgments by planning officers on how much weight to give to up to 3 objecting parties.

Where such objections were overridden and approval given to the application, the only appeal by third parties is to the Royal Court. There has been no option for third parties (objectors) to request reconsideration by the Planning Applications Panel.

The Minister's proposed amendment to Article 19 suspends all decisions to grant planning permission where representations have been made by third parties for 28 days, to allow time for an appeal to be lodged. In the case of delegated decisions by planning officers, this makes it possible to include third parties in the Minister's proposed new Article 22A, enabling reconsideration by the Planning Applications Committee; however, this has not been included.

- **It is unfair that the Minister's amendment provides applicants with 2 bites of the appeal cherry: a request for review of decisions by PAC in new Article 22A, and a right of appeal in Article 108, while third parties (objectors) are afforded no status in Article 22A and only have access to an Article 108 Appeal.**
- **My amendment seeks to correct that situation, and extends new Article 22A, reconsideration of delegated officer decisions by the Planning Applications Committee, to both first party (applicants) and third parties (objectors) to a planning application.**

5. The Appeals Panel

Paragraph 4 amends Article 7 of the Minister's Amendment (which substitutes a revised Part 7 of the Law (*Appeals*), replacing Articles 106 to 188). My amendment replaces the Minister's proposed Article 107.

I am very concerned about over-dependence on a single inspector brought in from the UK Planning regime, to make what will be the effective decision on individual applications, without a counter-balancing local influence. The situation where Planning decisions are being made by one person, even when it was our Minister, has been shown to be unsatisfactory as it is too prone to subjective opinion. This is especially so, as some of our Planning Policies which guide application decisions are vague and require interpretation. Planning decisions in Jersey are often not clear-cut, involve a balance of factors, and in my opinion always benefit from shared opinions.

My amendment seeks to provide that missing local element into appeal hearings and ensure balance. It makes consequent adjustments to the arrangement for recommendations to the Minister after the hearings, and the Minister's responsibilities in responding to the recommendations. The effect of my amendment, if adopted, which incorporates the Minister's proposal to appoint inspectors as States employees for appeals unchanged, would be –

- Less significant appeals, as defined in my amendment, would normally be heard by a single inspector.

- The most significant and complex appeals, i.e. appeals against decisions to approve or reject Planning Applications, would normally be considered at a hearing by a Panel of 3 persons.
- The panel of 3 persons will comprise the inspector with the addition of 2 assistant inspectors.
- Members of the Panel, in making their recommendations to the Minister, will be required to state their reasons individually, whether they are unanimous or otherwise.
- The Panel's report will provide the Minister with greater insight into the basis of the recommendation made to him by the Panel, compared with a report of a single inspector. It eliminates the significant risk, which is inherent in a single inspector, of the Minister simply substituting the inspector's decision for his own.
- The Minister will be required to have particular regard to the inspector's individual recommendation in making what will be a final binding decision on the appeal, effectively permitting the Minister to give greater weight to the inspector's opinion.
- It will provide the Minister with improved information and ensure a more robust method of reaching a final decision on appeals. It will be less likely to lead to applications for judicial review.
- One party to an appeal may request either a Panel or single inspector hear the appeal, irrespective of the default arrangement for that type of appeal, provided the other party to the appeal agrees.
- Both the inspectors and the assistant inspectors would be appointed by the Minister on the recommendation of the Jersey Appointments Commission, the assistant inspectors for a 3 year term. The Minister decides how many to appoint.
- Both the inspectors and the assistant inspectors would be professional people required to hold equivalent qualifications, drawn from a list which the Planning Officers have set out in detail for the Appointments Commission.
- The inspectors will have current or previous experience working in the UK Planning Inspectorate, where the Planning regime is more highly structured than ours.
- The assistant inspectors will be required to be ordinarily resident in the Channel Islands. They will provide the knowledge and experience of professional practice in a local (Chanel Islands) context, which will be missing in the inspectors. Professionals working in Jersey, Guernsey and Alderney will be familiar with similar planning regimes, which set and implement their own planning policies.
- States members and employees are ineligible for appointment as an assistant inspector. Assistant inspectors would not be appointed as an States employee.

- The Minister would decide the number of persons required as inspectors and assistant inspectors and their remuneration.

6. Financial and manpower implications

The appointment of assistant inspectors will have an additional cost, which will depend on the rate of payment set by the Minister and the number of hearings. Comparison with Guernsey suggests a rate of c. £200 per half-day for an inspector and c. £100 per half-day for an assistant inspector. Planning officers expect 200 appeals a year and an average hearing will require a half-day. If half of the appeals require hearings, the additional cost will be £20,000 per annum plus expenses, which may include travel of £7,000 to £10,000, a total additional annual cost of up to £30,000. There will be an initial training cost of up to £10,000.

The modest additional annual cost of £30,000 will be more than offset by savings which will be realised in the Law Officers' Department and Royal Court as a result of the new appeals system.