
STATES OF JERSEY



COMMITTEE OF INQUIRY TO EXAMINE THE OPERATION OF THIRD PARTY PLANNING APPEALS IN THE ROYAL COURT (UP TO 31ST MARCH 2008): FINAL REPORT (R.14/2009) – RESPONSE OF THE MINISTER FOR PLANNING AND ENVIRONMENT

**Presented to the States on 8th June 2009
by the Minister for Planning and Environment**

STATES GREFFE

REPORT

I read the Committee's report into the operation of third party appeals with great interest, and would like to thank the members for the considerable efforts in looking at all aspects of this area of Planning's work.

I still believe that it was too early for such a review to have taken place, as when it commenced, no third party appeals had run the full course of the appeal procedures. I think this has been borne out by the Committee's own recommendation that a further review be undertaken in 3 years' time. However, the Committee has come up with a number of interesting recommendations, on which I comment below.

Recommendations

1. **WE RECOMMEND** that, after a period of 3 years has elapsed from the date of this report, a further independent review should take place to reassess whether the system is fulfilling its intended aim.

Minister's reply

It is agreed that a further review is needed and that 3 years is an appropriate time delay. The Department would itself have reviewed third party appeals once there had been sufficient cases to make such a review worthwhile. It is unfortunate that the Committee of Inquiry had effectively completed its review before the first appeal to pass through the whole process had been decided.

2. **WE RECOMMEND** that, at the next review, the following areas should be reconsidered –
 - The 50 metre rule (see paragraphs 4.6.2(c)(ii) and 4.9.5).
 - The definition of 'interest in land' and 'resident on land' (see paragraphs 4.6.2(c)(i) and 4.9.5).
 - The extension of Third Party Appeals to including representation from general or specific environmental and heritage interest groups (see paragraphs 4.7, 4.9.4 and 4.9.5).
 - The introduction of a 'full-merits' based appeal in planning matters as opposed to the current test of 'reasonableness' (see paragraphs 5.4, 5.7.9 and 5.7.10).

Minister's reply

It is agreed that the "qualifications" for a third party appellant need to be reviewed. I should point out, however, that introducing a 'full merits' appeal system, whilst desirable and provided for before the Planning and Building (Jersey) Law 2002 was amended, may lead to considerably more cost to the public purse.

3. **WE RECOMMEND** that more appeals should be decided on written submissions, as this reduces the administrative burden on all parties, reduces the fear of going to Court, minimises the costs and assists with a speedy resolution of the appeal to the benefit of the applicant, appellant and Minister (see paragraphs 5.2 and 5.7.7).

Minister's reply

Agreed.

4. **WE RECOMMEND** that officers of the Planning Department and the Planning Applications Panel should continue to strive to make the planning application processes even more transparent and address issues, such as third party objections, at an early stage (see Section 3).

Minister's reply

Agreed, although it should be noted that case officers always address the representations on applications, invariably assessing the implications on site, before preparing their reports for the Planning Applications Panel.

5. **WE RECOMMEND** that the Planning Department and the Judicial Greffe continue to co-operate as now in relation to providing assistance to would-be appellants. The Committee also **RECOMMENDS** that any guidance is made available in hard copy in both departments (see paragraph 4.9.6). The Committee acknowledges the efforts of the Judicial Greffe in compiling, over the last few months, the comprehensive Guide to Third Party Planning Appeals. However, urgent consideration should be given to seeking to make the Guide more user-friendly for the ordinary citizen, unfamiliar with court proceedings (see paragraphs 4.3.10 and 4.9.7).

Minister's reply

Agreed.

6. It is to be expected that in Jersey conflicts of interest and personal friendships will arise. We do not accept for one moment that any system is perfect. The application of the 2 tests of actual bias and appearance of bias are essential to maintain public confidence. **WE RECOMMEND** that the Code of Conduct for the Planning Applications Panel should be updated to clarify what constitutes a conflict of interest and to outline clear procedures as to how this is communicated to those in attendance (see paragraphs 3.2.6 and 3.4.4).

Minister's reply

Agreed. The Code of Conduct needs to be more explicit on what constitutes an "interest", and what Members should do if they feel conflicted.

7. **WE RECOMMEND** (to the extent that it relates to Third Party objections but also on the basis of good government and common sense) that, whilst the law allows the Panel to regulate its own procedure, the Panel should always be composed of an uneven number so that the Chairman's casting vote is never used. In the event that such a situation does occur **WE RECOMMEND** that the planning application be remitted to the Minister (see paragraphs 3.3, 3.4.4 and 3.4.5).

Minister's reply

This is not agreed. The Law states that, unless the Minister directs otherwise, the Panel may determine its own procedures. Referring applications to the Minister is not satisfactory, as it invariably leads to unnecessary delays for the applicant. Also, it is not always possible to ensure that there are an odd number of members for hearing each application. The Chairman's casting vote is the most appropriate method for determining applications where the vote is split.

8. **WE RECOMMEND** that the Planning Applications Panel should introduce amplification for Panel Members and those addressing the meeting, so that the proceedings can be heard more effectively by all those present (see paragraphs 3.2.4 and 3.4.6).

Minister's reply

This will be given consideration. However, it is not always possible for the Panel to meet at the same venue, therefore a fixed system is impractical.

9. **WE RECOMMEND** that, whilst great strides have been made in improving the openness of Planning Applications Panel meetings, improvements should be made in the way in which the final decision is reached and communicated to those attending the public meeting, so that objectors can know that their concerns have been properly taken into account (see paragraphs 3.2.4 and 3.4.7).

Minister's reply

This will be given further consideration. It must be stated, however, that everyone who wishes to do so is already given the opportunity to address the Panel, so their views are clearly taken into account by the Panel when it makes its decision. Panel members will often seek clarification from those speaking to the Panel to be sure they fully understand the nature of the representation. The Chairman always announces the Panel's decision, and those persons who made written representations receive a copy of the decision notice including the reasons for the decision.

10. **WE RECOMMEND** that the Master of the Royal Court and officers of the Judicial Greffe should always give strong consideration to deciding Third Party Appeals under the modified rather than the ordinary procedure, where this is possible within legal constraints, in order to reduce the fear of and potential for costs being awarded against an appellant or applicant (see paragraphs 5.2, 5.3 and 5.7.4).

Minister's reply

Agreed.

11. **WE RECOMMEND** that the Planning Department should keep a record of the number of Third Party Planning Appeals' enquiries (even if a Notice of Appeal is subsequently not received) in order to provide valuable statistical data for the next review (see paragraph 4.9.8).

Minister's reply

It is difficult to see what value, statistical or otherwise, such information might have. In the early days of third party appeals, the Department had a number of enquiries, primarily relating to procedure. Since the Department introduced the system of advising applicants and objectors of their respective rights and how to go about making an appeal, the number of enquiries has become negligible.

12. **WE RECOMMEND** that the Chief Minister's Department pursue ratification by the Bailiwick of the Aarhus Convention in order to meet international standards in relation to the right of access to justice in environmental matters (see paragraph 4.9.9).

Minister's reply

Noted.