

STATES OF JERSEY



DRAFT ACT ANNULLING THE PLANNING AND ENVIRONMENT (2016 FEES) (JERSEY) ORDER 2015

**Lodged au Greffe on 19th January 2016
by Deputy S.M. Wickenden of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to adopt an Act, as set out in Appendix A, annulling the Planning and Environment (2016 Fees) (Jersey) Order 2015;
- (b) to request the Minister for the Environment to make a new Order to amend the fees charged for the submission of a notice of appeal under Article 112 of the Planning and Building (Jersey) Law 2002 against certain planning decisions taken under that Law, to the levels set out in Appendix B, and to include the other fee provisions previously set out in the Planning and Environment (2016 Fees) (Jersey) Order 2015; and
- (c) to request the Minister for the Environment to raise the planning appeal fees by no more than the annual percentage change in the Retail Price Index for 2017 and 2018, except by prior approval of the States.

DEPUTY S.M. WICKENDEN OF ST. HELIER

REPORT

Introduction

On 24th February 2015, the States Assembly adopted [P.3/2015: Planning Appeals: fees](#). Within this proposition, the fees system was created for planning appeals to replace the potentially costly system that was then in place where appeals had to go through the Royal Court.

P.3/2015 set the fees at one of the following rates: £100 or £300, depending on which type of appeal it was.

In the opening speech of P.3/2015 made by the Minister for Planning and Environment, he said –

“The most expensive fee I am currently proposing is £300 and that is half the cost of simply registering an appeal to the Royal Court and that does not include the cost of engaging advice to navigate the court itself.”;

and

“For an appeal against a minor development the fee would be £100 and I might explain minor developments are one building or less, major developments are one building or more. So for an appeal against a minor development the fee is £100, for an appeal against a major development the cost will be £300. For an appeal against the imposition of a condition or the refusal to vary or remove a condition, for both major and minor, it would be £100. For an appeal against the granting of a planning permission, a third party appeal, the cost would be £300. I might just stop at this point and say the reason for the £300 for the third party appeal is that we feel that there must be a significant enough amount of money that we do not have frivolous third party appeals coming to us on a regular basis, but at the same time we cannot make it that expensive an appeal so people feel that they do not want to make third party appeals.”.

There were no objections to P.3/2015 and it was adopted by the States unanimously. It is clear that the charges were designed to be affordable, and this was agreed by the States Assembly.

Ministerial Decision

On 23rd December 2015, just 10 months after P.3/2015 was adopted, the Minister for Planning and Environment signed a Ministerial Decision, MD-PE-2015-0083, which has increased the charges by an additional 300%.

This would mean that, depending on the type of appeal, it will cost the appellant either £400.00 or £1,200.00 to submit an appeal to a planning application.

Why I am bringing this Proposition

It has only been 10 months since the fees were introduced, and it was quite clear at the time that the Assembly wanted the fees to be low and affordable.

When the fees were set in P.3/2015 it was made clear that they were being charged at only 25% of the estimated cost of the service. If the Minister felt now that the full 100% of the service costs need to be covered by the appellant, I feel he should have come back to the Assembly with the full figures, not used subordinate legislation to increase the fees.

Even though it is within any Minister's powers to raise fees using subordinate legislation, I feel that if any Minister wishes to raise any fees significantly above inflation, it should be brought before the Assembly so that it can be debate and voted on.

At no point did the Minister inform the Assembly of his intention to raise the fees by any amount, nor was there any type of Report/Media Release to inform the Public of the changes to the fees.

I bring this proposition to you today so that the Assembly can have the opportunity to debate the fees and, if they feel it necessary, revoke the Ministerial Decision.

In my proposition I have returned the fees back to the prices agreed in P.3/2015, plus 1.6%, which is the R.P.I. as at June 2015, the same as the R.P.I. used in the 2016 Medium Term Financial Plan.

Normally any new service provided to the Public will be evaluated over a 3-year period, which enables the service provider to see any trends in the utilisation of the service.

This is why I am asking that the appeals system is only raised by the R.P.I. for the following 2 years in part (c) of this proposition.

I have laid out below some of the findings from the Green Paper [R.24/2013: Planning appeals – can we improve the process? Green Paper March 2013](#), and the description of fees from the report within P.3/2015 is set out in Appendix C.

Anti-Inflation Strategy

In the Anti-Inflation Strategy 2008 it sets out 9 key strategic points, one of which is –

- Retain the current inflation target of 2.5% for R.P.I.X.

This was also set out in Financial Directions.

By raising the fees by 400% this will only help raise the Island's inflation figure.

COM Tax Policy

Taxes should be Low, Broad, Simple and Fair.

Should fees not follow the same policy as taxes?

Minor and Major Development Appeals

Minor Developments are one building or less, and the fee has gone up from £100 to £400.

Major Developments are one building or more, and the fee has gone up from £300 to £1,200.

Appellants

Appeals have to be submitted within 28 days, and the fee has to be paid with the submission of the appeal paperwork.

Appellants have to meet one of the following criteria to qualify to appeal –

- (a) have interest in the land within 50 metres of the site;
- (b) be a resident within 50 metres of the site;
- (c) have made a written representation to the application.

Access to appeal system

It is our duty when we create or change any fee for a service, especially ones designed for access to justice/appeal, that we always make sure it is in the price range of all sections of society.

To expect all households to have £1,200.00 spare expendable cash available at any time is unrealistic.

I fear we have now priced out any low-income households from having access to the appeal system.

£1,200.00 is more than one month's wages for somebody on minimum wage; it is also more than one month's pension for some of the elderly.

It cannot be right that now only high-earners and the wealthy are able to make appeals to major or minor developments.

Green Paper

In 2013, the then Minister for Planning and Environment issued [R.24/2013: Planning appeals – can we improve the process? Green Paper March 2013](#).

In the report it stated (on page 14) –

“4.2 In 2001, in the report accompanying the first version of what was to become the *Planning and Building (Jersey) Law 2002 (P.50/2001)* the then Planning and Environment Committee stated:

“Articles 106 to 117: Appeals

The provisions in the proposed Law for appeals are a significant departure from those contained in the existing Laws. The Committee has found that the system of appeal against a planning decision to the Royal Court is invariably a slow and expensive process which effectively denies a right of appeal to those of limited means, or makes an appeal unworthwhile where the cost of the works to be undertaken are significantly less than the exposure to costs in an appeal to the Royal Court.”;

and (on page 22) –

“7.2.1. Jersey allows appeals against the granting of planning permission by a person who has an interest in land or lives within 50 metres of the application site, provided that person made a representation on the original application.”.

Financial and manpower implications

There would be financial implications arising from the adoption of this proposition.

I am advised that there is, at present, no core funding for the appeals system, either within the Environment Department or the Judicial Greffe.

In 2015, the remaining 75% of the cost was covered by using some of the corporate contingency. From 2016 onwards, the cost was going to be met from a growth bid within the MTFP2 process. However, due to tightening of finances, this growth bid was removed as it was not seen as a high enough priority. It was removed with the explicit understanding that full cost recovery would need to occur by increasing fees.

The Department have said that it could not absorb this within the Department of the Environment budgets, as a 22% net reduction in budget is already proposed due to the MTFP2 process.

I do not believe that this should result in the cost being passed onto the appellant. This goes against the principles of the introduction of the new system, which was intended to make the appeals process more accessible. I therefore believe that the Treasury should be required to review the decision not to allow the growth bid as this should be a high priority.

**DRAFT ACT ANNULING THE PLANNING AND ENVIRONMENT
(2016 FEES) (JERSEY) ORDER 2015**

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of the Subordinate Legislation (Jersey) Law 1960¹, annulled the Planning and Environment (2016 Fees) (Jersey) Order 2015².

¹ [chapter 15.720](#)

² [R&O.164/2015](#)

APPENDIX B

To amend the fees charged for the submission of an appeal against a decision or action taken under Article 112³ of the [Planning and Building \(Jersey\) Law 2002](#) to the levels set out below –

1. For an appeal against the refusal (or deemed refusal after non-determination of the application) for planning permission, including for a development which has already taken place, for a minor development (as defined by the Department)

£101.60

2. For an appeal against the refusal (or deemed refusal after non-determination of the application) for planning permission, including for a development which has already taken place, for a major development (as defined by the Department)

£304.80

3. For an appeal against the imposition of a condition or the refusal to vary or remove a condition (both major and minor applications)

£101.60

4. For an appeal against the granting of a planning permission (both major and minor)

£304.80

5. For an appeal against –

- (a) the listing of a building or place,
- (b) the listing of a tree,
- (c) the service of a notice requiring action (including an enforcement notice),
or
- (d) the refusal to grant building bye-laws permission,
- (e) the refusal to grant a certificate of completion,
- (f) the refusal to grant permission to undertake particular activities on/in/under a Site of Special Interest;
- (g) the imposition of a condition on any permission previously granted,
- (h) the refusal to grant permission for the importation or use of a caravan in Jersey,
- (i) the revocation or modification of any planning Permission

£101.60

³ Article 112 was inserted in the Planning and Building (Jersey) Law 2002 by the Planning and Building (Amendment No. 6) (Jersey) Law 2014 ([L.34/2014](#)).

Extract regarding fees, as set out in the P.3/2015 Report

“Fees

As indicated above, there is an intention to recover some of the costs for the process by charging appropriate fees, as outlined in P.94/2014. The Green Paper consultation responses overwhelmingly identified the current cost of bringing an appeal as a major barrier to challenging a decision.

Currently, for all appeals, except those connected with an application for planning permission, unless the appellant is a litigant in person, they have to engage an advocate to present their case in the Royal Court. For applications for planning permission the Royal Court introduced a modified procedure that allowed other relevant professionals – such as Chartered Town Planners – to represent the appellant. Engaging a professional obviously involves cost, and anecdotal evidence of what these costs could be indicated how large a barrier to bringing an appeal they were.

Notwithstanding any professional fees, the cost of registering an appeal in the Royal Court in all circumstances is around £600. This may not seem much in relation to commercial developments that could generate profits, but for householders, and for minor issues, the benefits of a potential development and the risk of an unsuccessful appeal certainly discourage any challenge.

In order to address shortcomings of the existing arrangements, the new process has to be affordable and accessible, and there has not been any intention to seek full cost recovery, at least during the establishment of the process. (P.87/2013 indicated the appropriate level of cost recovery to be around 25% of the costs of the system during establishment.)

All of the fees proposed are significantly less than £600.00, and the fact that legal representation does not have to be engaged – unless the appellant chooses to do so – will make the process much less expensive. Making an appeal more affordable and more accessible will create a system that is more transparent and more accountable to anyone who relies on the regulation provided by the Planning and Building Law. As well as applicants for planning permission, property-owners, owners of trees and buildings with potential heritage value, developers, people who may be in breach of planning and building controls, and neighbours of a site which has been granted planning approval, can have their concerns considered independently.

With no accurate way of predicting how many appeals will be received, it is difficult to forecast what the total fee income might be. Costs and income prediction becomes more difficult, because different cases will have different levels of complexity, and in turn different levels of resources will be required to consider the case. However, the proposed fees try to reflect this variation in a broad approach to the types of situations from which appeals will arise.

Using the principles of ensuring an affordable and accessible process and the issues likely to be considered within an appeal – the relative complexity, the number of material considerations to be assessed, the level of the original fee – the following appeal fee categories have been devised –

1. For an appeal against the refusal (or deemed refusal after non-determination of the application) for planning permission, including for a development which has already taken place, for a minor development (as defined by the Department) – £100.00

Minor applications are defined by the Department as –

- All domestic extensions and alterations, outbuildings, loft and (integral) garage conversions, swimming pools, fuel tanks and the like
- Commercial extensions and ancillary structures <250 sqm. (gross external) including air conditioning units and plant
- Shop Front alterations
- Material alterations to a building
- New or altered vehicular access
- New (or replacement) windows, doors, dormers, roof lights, solar or photovoltaic panels, heat pumps and the like (excluding wind turbines)
- Satellite dishes, flag-poles, street furniture or similar
- Signs and adverts
- Walls, fences or similar
- Moveable structures
- Applications for any development which would normally be permitted development by virtue of the General Development Order, but where those rights have been removed by a planning condition or Ministerial Order.

2. For an appeal against the refusal (or deemed refusal after non-determination of the application) for planning permission, including for a development which has already taken place, for a major development (as defined by the Department) – £300.00

Major applications are defined by the Department as –

- Residential development of 1 unit and above
- New commercial development
- Commercial extensions and ancillary structures of >250 sqm. (gross external)
- Any mixed residential or commercial development
- Any change of use of land or buildings including domestic curtilage and al fresco areas

- Wind turbines, telecom masts or similar
- Miscellaneous developments (outdoor recreation areas, mineral extraction, etc.).

The level of fee between the 2 classifications of applications can be considerable, but then so can the level of assessment needed to consider the applications. The different level of consideration will by and large be reflected in the appeal process.

3. For an appeal against the refusal to vary a previously approved application for planning permission or the refusal to vary or remove a condition (both major and minor applications) – £100.00

Conditions are attached to regulate a development to make it acceptable and rarely strike at the heart of any permission. Whilst a fee is appropriate, it should be set at the lowest level for all circumstances.

4. For an appeal against the granting of a planning permission (both major and minor) – £300.00

Appeals against the granting of planning permission can be brought by someone who made a representation on the application prior to its determination and who lives or has an interest in land within 50m. of the application site. Unlike an applicant for permission, someone making an appeal against an approval will not previously have paid any fee.

Whilst the purpose of the new system is to make appeals more accessible, the level of fee for an appeal against a decision should, to a certain extent, act as a deterrent for mischievous or malicious appeals. A figure of £300.00 is affordable if feelings over a decision are so strong as to be moved to action, but high enough to discourage frivolous actions.

5. For an appeal against –

- (a) the listing of a building or place,
- (b) the listing of a tree,
- (c) the service of a notice requiring action (including an enforcement notice),
- (d) the refusal to grant Building Bye-Laws permission
- (e) the refusal to grant a certificate of completion
- (f) the refusal to grant permission to undertake particular activities on/in/under a site of special interest
- (g) the imposition of a condition on any permission previously granted
- (h) the refusal to grant permission for the importation or use of a caravan in Jersey
- (i) the revocation or modification of any planning permission,

£100.00

The default position of the Law as proposed to be amended indicates that, in the first instance, most of these appeals will be by way of written representations, and the processes around them will be the least onerous for the Judicial Greffe and the inspector.

The exception to this might be appeals against an enforcement notice, which can sometimes involve significant amounts of evidence and issues of a complex nature. However, the issues surrounding the service of an enforcement notice are likely to be uncontentious, and an appeal against the notice should not be hindered by an excessive fee.

If there is an appeal against an enforcement notice and one of the grounds of appeal is that planning permission should be granted for the alleged breach in the notice, then an appellant will have to pay a separate fee for what is an application for planning permission. Such applications attract a fee of double what would be paid if the application was not retrospective.”