STATES OF JERSEY

INDEPENDENT PLANNING APPEALS TRIBUNAL: ESTABLISHMENT (P.26/2013) – COMMENTS

Presented to the States on 19th March 2013
by H.M. Attorney General

STATES GREFFE

2013 Price code: A P.26 Com.(2)

COMMENTS

The present appeal process

1. The Royal Court hears planning appeals. At present, there are 2 procedures for appealing a planning decision to the Royal Court: the modified procedure and the ordinary procedure.

The modified procedure

2. This process is designed to resolve appeals that involve a dispute about a planning application that concerns an issue or issues that are capable of resolution by the Royal Court within a relatively short period of time. The issues will be comparatively straightforward. For example, the complaint is that the proposed development is too big for the area.

3. At the hearing, the appellant can be represented by an advocate, solicitor, architect or such other person as the Greffier or Bailiff deems appropriate. Costs will only be awarded in exceptional circumstances and therefore the fact of an unsuccessful appeal is not, in itself, a basis for awarding costs.

The ordinary procedure

4. This is the normal court process and is used in cases where the issues are complex or difficult. An unsuccessful party is likely to bear the costs of the litigation.

5. There are a number of elements which are common to both procedures –

   (a) The Royal Court considers whether the Minister's decision was unreasonable. In doing so, it must inevitably form a view on the decision. The Minister is afforded a margin of appreciation so that the Royal Court may uphold a decision even if it would not have reached the same view as the Minister, providing that the decision falls within a band of reasonable decisions. The Royal Court applies this test consistently and the limited nature of the court's power of review respects the fact that the Minister is democratically accountable for the planning decisions that he takes.

   (b) The Royal Court may reach the view that a decision is unreasonable if the procedure in the case is irregular. In such cases, the case will usually be sent back to the Minister to take the decision again so that the parties concerned will be treated fairly, whatever the merits of the application. In this way, there is accountability for the process adopted: see Ruette Pinel Farm -v- Minister for Planning [2012] JRC 008.

   (c) An appellant will be required to file a Notice of Appeal, an affidavit and a skeleton argument during the course of the litigation. The purpose of the skeleton argument is to focus the Court's attention on the important issues in the case, and therefore assists the appellant in the presentation of their case. One might add that any appeal process, regarding of the identity of the tribunal that will determine the case, will have these or similar requirements.

(d) There is nothing remarkable about the fact that the Royal Court considers affidavit evidence. It is standard procedure in judicial reviews or other administrative appeals such as a planning appeal. Live evidence is not the norm. The Royal Court has a discretion to hear live evidence, and a party can apply to cross-examine a witness if it is necessary to fairly resolve a case.

(e) The Royal Court carefully considers any evidence that is served in a case. The evidence of the planning official is not afforded any special status: see J.K. Ltd. -v- Minister for Planning [2012] JRC 090 for an example of the Court declining to follow the Planning Department's interpretation of the Island Plan.

(f) At a final hearing, the Royal Court expects the parties to focus on what is important and material to the outcome of the appeal. There are many courts that do not wish to be reminded of every document in the case and this is not limited to planning appeals. It is therefore not terribly surprising that only some documents are referred to during the course of the final hearing. In so far as the Royal Court fails to take into account a material document when reaching its decision, that may provide a ground of appeal.

(g) Jurats are perfectly capable of assessing a set of papers filed in a planning appeal and then considering the issues in the case having regard to the Island Plan. As a result of their judicial training, Jurats are also alive to other issues that arise during the legal process. For example, they are capable of recognising when a conflict arises and will recuse themselves in appropriate cases: see Le Boutillier -v- Minister for Planning [2012] JRC 095.

Resources

6. The Law Officers' Department represents the Minister in appeals before the Royal Court. It is not clear how there will be savings as such, if a new tribunal will be established to hear an increased number of appeals. The Proposition does not say who will represent the Minister (other than the Law Officers) and it is also notable that there may be appeals to the Royal Court on points of law, and presumably aspects of the new tribunal's process may be amenable to judicial review. It is accordingly possible that a new system will create more work for the Law Officers' Department. In any event, insofar as the Law Officers are concerned, the resources dedicated to planning appeals are parts of the workload of those involved. As far as the Law Officers can determine, a change in the system will not in effect give rise to any savings within that Department.

7. It is worth emphasizing that planning permission can have a dramatic effect on the value of land. As a result, there are those who make planning applications who are prepared to instruct lawyers at significant cost in order to fully litigate a decision that they consider unfavourable. It is accordingly likely that the Minister will continue to be faced with cases when the appellant is represented by a team of lawyers at every stage of the process.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

The Attorney General apologises for the lateness of the above comments. The adverse weather meant that the Attorney General was absent from the office for a portion of the week and that fact, coupled with other matters of urgency and the absence during the course of Friday of the Solicitor General from the office, meant that the Attorney General could not review the draft comment in sufficient time to present it prior to the noon deadline.