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

Presented to the States on 24th February 2009
by the Committee of Inquiry to examine the operation of third party planning appeals in the Royal Court (up to 31st March 2008)

STATES GREFFE

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States of Jersey
States Assembly

États de Jersey
Assemblée des États

Committee of Inquiry – Third Party Planning Appeals

20 February, 2008.

To the President and Members of the States of Jersey

This Committee of Inquiry was appointed following a proposition adopted by the States on 13th May 2008.

The report analyses the first year of operation of the Third Party Appeals process. In addition, it lists the Appeals so far and considers the issue of why this provision remained in limbo for so long.

We have, within the constraints of both our Terms of Reference and the procedures set out in the Law, made recommendations. We do not exclude and, in fact, recommend a more fundamental review after a further period of time. We have proceeded though on the evidence before us, given clearly and honestly, which leads to recommendations for the present and a way forward to strengthen the system in the future.

The body of the Report is divided into 5 Sections:

Section 1 Introduction
Section 2 Planning and Building (Jersey) Law 2002
Section 3 Planning Application Process
Section 4 Third Party Appeal Process
Section 5 Royal Court.

On behalf of the Committee, we wish to express our thanks to the Deputy Greffier of the States, our temporary Clerk, Nat Guillou, and other staff at the States Greffe; also to the witnesses and officers of the Planning Department for the way in which they assisted us with our work.

We record our special thanks to our Clerk, Jane Aubin.

CHAIRMAN

REPORT

Executive Summary

In 2001, Deputy C.J. Scott Warren of St. Saviour's amendments to include a Third Party Appeals provision in the then Draft Planning and Building (Jersey) Law 2002 were adopted. It was anticipated, by the Deputy, that this provision would give an aggrieved third party an accessible and affordable means of appeal against a planning permission. However, the later removal of the Planning Appeals Commission from the Planning and Building (Jersey) Law 2002 and the introduction of more informal Royal Court proceedings marked a significant change in the way that the Third Party Planning Appeals system could operate. Witnesses testified to the problems and pressures that this created.

The Deputy also brought amendments that limited the right of appeal, as the full-scale provision was seen as being too expensive to introduce. As will be seen from the following report, the actual operation of the system, since 31st March 2007, has not proved to have been as accessible or affordable as was intended; further, the number of Third Party Appeals has been much fewer than was anticipated.

Deputy Scott Warren, prompted by expressions of public concern about the effectiveness of the Third Party Planning Appeals process, sought approval from the States to urgently review its operation; hence the establishment of this Committee of Inquiry.

The Committee received a wide variety of submissions. The comments came from individuals with personal experience of the process from the point of view of potential or actual appellants, as well as from officers of the Judicial Greffe and the Planning Department, together with senior government officials.

These comments confirmed the belief that would-be appellants found the process to be complicated and potentially prohibitively expensive, contrary to what they had been lead to believe was the intention of the compromise process that eventually had been reached.

There was criticism of the restricted eligibility to appeal and of the grounds on which the decision could be contested. Initially it was intended that appeals would be reviewed on the full merits of the case, but this was replaced by the 'test of reasonableness' in the Royal Court.

The Association of Jersey Architects, on the other hand, shared the view of the Bailiff and the Attorney General that a system of Third Party Appeals was not desirable.

Although officers of the Planning Department gave personal opinions that were sympathetic to the position of potential appellants and saw areas where the process could be improved or clarified, several witnesses considered that it was too early to form an opinion as to whether or not the process was working.

The Committee concludes that, whilst there are understandable grounds for amending the Third Party Planning Appeals system, as currently structured, the unexpectedly small numbers of cases that have come forward to date means that any fundamental recommendations for immediate change would be premature.

It therefore makes the following interim recommendations to mitigate the current situation, recognising that a further examination of the situation should take place once adequate experience of the process has been gained.

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.

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).

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).

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).

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 acknowledge 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).

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).

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).

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).

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).

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).

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).

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).

SECTION 1 – Introduction

1.1 The decision to establish a Committee of Inquiry

1.1.1 On 26th February 2008, a proposition was lodged in the States by Deputy C.J. Scott Warren of St. Saviour–

- To establish a Committee of Inquiry into the operation of Third Party Planning Appeals in the Royal Court for the first 12 months since its introduction and, if necessary, make recommendations for the future.
- To present its report to the States Assembly by the autumn of 2008.

1.1.2 A full copy of the proposition P.35/2008 can be found at **Appendix 1.** The proposition was adopted by the States on 13th May 2008.

1.1.3 The States voted a budget of £15,000 to meet any staff, administration and other costs incurred, which is to be provided from the Planning and Environment Department's budget. To date, the Committee has spent about £7,200, for the taping and transcription of evidence given at oral hearings, the salary of the Clerk to support the work of the Inquiry and miscellaneous items.

1.2 Membership

1.2.1 The States appointed the following persons as members of the Committee of Inquiry ("the Committee") –

Mr. Rowland Anthony
Advocate Christopher Gerard Pellow Lakeman
Deputy Roy George Le Hérissier of St. Saviour
Deputy Sean Seamus Patrick Augustine Dooley Power of St. Brelade
Deputy Celia Joyce Scott Warren of St. Saviour

Clerk to the Committee – Mrs. Jane Aubin.

1.2.2 Advocate Lakeman was elected Chairman at the meeting of the Committee on 11th June 2008 and Deputy Le Hérissier was elected Vice-Chairman.

1.2.3 The Chairman declared at the first meeting that he – amongst other lawyers – had been approached for advice by numerous residents of St. Lawrence in relation to Fields 848, 851 and 853, Bel Royal ("Goose Green development"), who had wished to invoke the Third Party Planning Appeals process. This advice was given on an informal basis, without remuneration. The Committee noted the position.

1.3 Procedure Note

1.3.1 At the beginning of the Inquiry, the Committee formulated a procedure note which informed all parties involved as to how the Inquiry would be conducted. A copy of this, as amended on 26th November 2008, can be found at **Appendix 2.**

1.4 Methodology

1.4.1 The Committee requested files and papers from various parties involved in the history and setting up of the Third Party Planning Appeals system. Departmental files relating to specific Planning Applications were also researched. The Committee received full co-operation from all concerned, for which it is grateful.

1.4.2 The Committee held regular meetings to review progress and decide on future actions. The first meeting

was held on 11th June 2008.

1.4.3 Call for Evidence advertisements were placed in the Jersey Evening Post on 3 occasions between June and September. A call for Evidence was also placed on the main page of the States Assembly website. The Committee asked to hear from anyone who had initiated or considered a Third Party Appeal. It also sought written or oral submissions from applicants who may have been affected by any potential appeal.

1.5 Hearings

1.5.1 The following hearings, open to the public, were held, at which oral submissions were received from the Law Officers' Department, members of the public, officers and States Members –

5th September – First Hearing
Mrs. I. Haydon
Mrs. R. Mesch
Mr. R. Crick
Mrs. G. Le Maistre

15th September – Second Hearing
Mr. P. Thorne (Director of Planning)
Mr. R. Webster (Principal Planner, Appeals)
Mr. D. Mills (Legal Adviser – Planning, Law Officers' Department)

9th October – Third Hearing
Advocate P. Matthews (Deputy Judicial Greffier)
Mr. W. Bailhache Q.C. (Attorney General)
Deputy A.E. Pryke of Trinity (Assistant Minister for Planning and Environment)
Mr. A. Scate (CEO, Planning and Environment Department)
Deputy I. Gorst of St. Clement and Mr. D. Morris

21st October – Fourth Hearing
Senator F.E. Cohen (Minister for Planning and Environment) and Mr. P. Thorne

3rd November – Fifth Hearing
Mr. M. Waddington (President – Association of Jersey Architects)
Mr. J. Gladwin (Senior Planner – Appeals)
Senator P.F.C. Ozouf (Minister for Economic Development)

13th November – Sixth Hearing
Sir Philip Bailhache (Bailiff)

1.5.2 Transcriptions were made of the evidence provided by witnesses.

1.5.3 We received correspondence from Ms J. Riggall, who was the respondent to a Third Party Appeal, which commenced on 27th May 2008. The Committee did not ask either party to give evidence, as the matter was then under consideration by the Royal Court. The decision of the Royal Court was delivered on 27th November 2008 and is attached, as it is not generally available to the public, at **Appendix 3**

SECTION 2 – Planning and Building (Jersey) Law 2002

2.1 Introduction

2.1.1 The Committee felt it was important to establish the process by which Third Party Planning Appeals were introduced through the Planning and Building (Jersey) Law 2002 ("the Law").

2.2 Background

2.2.1 For ease of reference, a full chronology of the debate and coming into force of the Law is attached at **Appendix 4** and a discursive account at **Appendix 5**

2.2.2 The key areas of interest, from the Committee's point of view were –

(a) 6th June 2001 – Deputy Scott Warren's successful amendments to the Law gave a right of appeal against grant of a planning permission to any person or body who had been party to consideration of the planning application. At that time it was intended that such appeals – together with first party appeals – would be heard by a Planning Appeals Commission, providing aggrieved third parties with an accessible and affordable means of appeal (**P.50/2001**, reproduced at **Appendix 6**).

(b) 5th November 2002 – The Planning and Environment Committee's proposition was lodged, **P.206/2002** (**Appendix 7**), to repeal Third Party Appeals. It stated that the Committee at that time was –

> "philosophically opposed to a system of Third Party Appeals. It is also genuinely concerned about the additional costs of supporting Third Party Appeals. It believes that these considerable costs, and additional staff, both for the Planning and Building Services Department and for the Planning and Building Appeals Commission … are not justified by the questionable benefits that a third party system would bring."

It identified the number of potential appeals to a Commission, both first and third party, at 450 p.a and the estimated additional cost of Third Party Appeals (that is not including first party appeals) as £539,000, offset, to some extent by charging fees to appellants. The detailed costings are shown in **Appendix 5**.

The proposition noted that the more open and transparent applications process set out in the Draft Law would –

> "give applicants and third parties far greater confidence in our planning system, and reduce the likelihood of appeals being made."

The proposition was eventually withdrawn under the 12 month rule and discussions subsequently took place between the Planning Department, the former Solicitor General and Deputies Scott Warren and Dorey.

(c) 15th December 2004 – The Environment and Public Services Committee's amendment to the Law, **P.210/2004** (**Appendix 8**) The proposition noted that, although the Law had received Royal Assent in October 2002, it had yet to be brought into force. It explained this delay as follows –

> "Its introduction has been delayed, primarily because of the costs of establishing the Planning and Building Appeals Commission. 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."

The proposition also mentions concerns being expressed about the "proliferation of different tribunals in such a small Island" (see paragraph 2.3 below) and equal concerns about creating a "Planning Court for Planners".

However, an important change brought about by the adoption of this proposition was the removal of the Planning Appeals Commission as the appellate body and the "reinstatement" of the Royal Court. This was seen as the quickest and most efficient way to bring in the Law at the earliest opportunity as –

"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".

Senator Ozouf commented on this in his testimony to the Committee –

"we had a new law which was incapable of being brought into force because of financial considerations."

Later in his submission he added –

"What I will remind the Committee is that if there would not have been an amendment to bring in an alternative, cheaper version of the Commission, we would not have the new Island Plan (sic) … a compromise had to be reached."

The proposition goes on to mention discussions that were being held with the Bailiff and Court Officers regarding the possibility of introducing more informal court procedures for planning appeal cases to make it easier for appellants to access the court process. This ultimately led to the two-tier system of 'ordinary' and 'modified' (more informal) procedures that are now set out in the Royal Court Rules (see paragraph 5.2).

(d) 20th April 2005 – The Committee brought in an amendment to the Law, lodged on 15th March, **P.47/2005 (Appendix 9),** from reviewing cases *de novo* under the Planning and Building Appeals Commission (a full merits appeal) to use of the 'reasonableness' test in the Royal Court (see paragraph 5.4). Deputy Scott Warren lodged further amendments to **P.47/2005** on 5th April **(Appendix 10)** to limit the right to appeal to those who lived, or had an interest in land, that was within 50 metres of the site. The 50 metre limit was introduced to restrict the number of appeal and thus reduce the potential cost of bringing in the Law (see paragraph 4.6). The amendments were adopted by the States on 20th April.

Ultimately, it was not until 31st March 2007, seven years after Deputy Scott Warren had first gained approval for her amendments to introduce Third Party Appeals, that this provision was finally brought into force under the Law.

2.3 Tribunals Working Party

2.3.1 In 2003, concerns were expressed politically as to how tribunals in the Island were to be supported in their work. Part of the catalyst for this tribunal inquiry was the proposal to establish an Employment Tribunal and the discussions which took place relating to the proposed Appeals Commission for the Planning and Building Law.

2.3.2 A Tribunals Working Party was established on which, at various times, two members of this Committee served. The main recommendation of the Working Party was that there should be a detailed investigation into the feasibility of establishing a Centralised Tribunals' Service.

2.3.3 When the initial Report was released on 23rd April 2003, the Privileges and Procedures Committee (as then established) expressed some concern that the research behind the Working Parties' report had not been as complete as necessary.

2.3.4 Further concerns were expressed on behalf of the Bailiff and Court service that there was a danger that a perfectly adequate system (the Royal Court and the Judicial Greffe) was going to be unnecessarily replicated, creating some form of centralised tribunals' secretariat.

2.3.5 A feasibility study was undertaken by the then Policy and Resources Department on 16th October 2003 and sent to the Tribunals Working Party, as reconstituted, for their consideration. Due to political constraints on members' time, the Working Group was unable to finalise its study until December 2004,

when it decided, mainly due to changing political circumstances, the move to ministerial government and tighter financial constraints, that a Centralised Tribunals' Service should not be established. At the same time Proposition P.210/2004, to reinstate the Royal Court in place of the Planning Appeals Commission, was approved in the States, the Environment and Public Services Committee having decided not to delay the introduction of the Law any further.

2.3.6 In any event, the Employment Tribunal was established and was provided with a separate resource in a building alongside JACS. No other tribunals were provided with a centralised resource. There thus continues to exist a system whereby departments provide support for individual tribunals.

2.4 Conclusions

2.4.1 The Committee notes, with concern, the length of time that it took to bring in the Third Party Planning Appeals process over some 7 years. There were clearly some philosophical objections to the idea of bringing in a Third Party Appeals system, as well as resistance, in some quarters, to taking power away from the Courts.

2.4.2 The removal of the Planning Appeals Commission from the Law (P.210/2004) was given approval by the States, in part, because they were persuaded by the proposed introduction of more informal Royal Court proceedings (modified procedures) that would, theoretically, make the process more accessible to appellants. As will be discussed later in this report (see Section 5 Royal Court), this approach has not achieved the results that were initially envisaged.

2.4.3 The number of potential appeals estimated by the Planning Department in 2002 (450 p.a.) clearly increased the concerns of politicians and officers as to the potential costs. This contributed to the delay in bringing forward the Third Party Planning Appeals process and to the resulting limited appeal process that is currently in place.

SECTION 3– Planning Application Process

In order to explain the background to Third Party Planning Appeals, the Committee felt it was necessary to examine how planning applications are made and the different levels at which members of the public and interested bodies can object during the early stages of the process. The Committee recognised that, following the introduction of the Planning and Building (Jersey) Law 2002, the requirement for greater openness and transparency means that applicants and objectors can experience first-hand how their representations are being taken into account.

3.1 Planning Applications and Planning Permission

3.1.1 Applicants wishing to develop their land in accordance with the Law have to make a planning application to the Planning and Environment Department for consideration by the Minister for Planning and Environment ("the Minister"). Dependent on the size and complexity of the application, the Minister will often delegate this responsibility to departmental officers or the Planning Applications Panel. Article 19 of the Law **(Appendix 15)** states that the Minister, in determining an application for planning permission, –

- Shall take into account all material considerations.
- In general will grant planning permission if the proposed development is in accordance with the Island Plan.

3.1.2 Since the introduction of the Law, the manner in which an application for permission to develop land is publicised has been enhanced, particularly by the placement of site notices, which should be located in a prominent place on the site. Prior to the implementation of the Law, there was no legal requirement to publicise applications at all.

3.1.3 Any objections to the plans from neighbours or other interested parties must normally arrive at the Planning Department offices within 21 days of the planning application being publicised in the Jersey Evening Post and on www.gov.je/Planning. Comments submitted outside this 21 day period are, however taken into account, provided that the officer dealing with the application has not yet made his recommendation. Objections are normally in writing or posted on the Register of Planning applications on the Planning Department website.

3.1.4 The majority of planning applications are examined and approved by a Planning Officer. For disputed, more complex and larger-scale developments, the planning application may go through some or all of the following stages –

- The Planning Applications Panel
- Ministerial Meetings
- Public Hearings.

3.1.5 At each of these stages objectors are able to express their views and have them taken into account by the Planning Department before a decision is made.

3.1.6 Planning permission granted by the Minister does not take effect until 28 days after the date that permission is granted. If during that 28 day period a Third Party Planning Appeal is lodged, in accordance with the Law, the 28 day period is extended until the appeal is withdrawn by the third party appellant or determined by the Royal Court.

3.2 Planning Applications Panel

3.2.1 The Planning Applications Panel was set up as a consequence of the move to Ministerial government in 2005 and the need for an operational, decision-making body that was transparent and objective in taking into account all relevant considerations.

3.2.2 The Planning Applications Panel has a wide range of powers in deciding a planning application. It reviews all the relevant documentation, listens to representations on behalf of the applicant and objectors in open forum, can make site visits, request further information, defer decisions to allow further consideration and impose conditions on a development. It cannot, however, refuse an application if it is supported by a Planning Officer's recommendation. In this case it must refer the application back to the Minister for reconsideration.

3.2.3 Members of the Committee were invited by the Chairman of the Planning Applications Panel, Deputy Pryke of Trinity, to attend a meeting on 20th November 2008. Advocate Lakeman, Deputy Le Hérissier and Mr. Anthony attended. Deputy Scott Warren was unable to attend, but had previously attended a Panel meeting. Deputy Power was already in attendance as one of the Panel Members.

3.2.4 Through attendance at the Panel Meeting, the Committee Members present noted that they had considerable difficulty in hearing all the proceedings and that the acoustics were generally poor in the Members' Room at The Société Jersiaise. Deputy Scott Warren has also noticed similar problems at St. Paul's Centre. It was also noted, by Deputy Le Hérissier, that when one objector raised a range of issues regarding a planning application, the Panel appeared not to directly address the objector's concerns at all, but just approved the application without further explanation.

3.2.5 Mr. Waddington, in his testimony, also raised some concern about the transparency of the decision-making and that the –

> "Planning Panel [is] not given (sic) the forum to articulate exactly what it is they have a problem with or are positive about. I sympathise with them because … I think we are into quite a subtle area and you have to have a fairly high degree of understanding of planning issues."

3.2.6 It was also noted by the Committee Members that, during the meeting, the Chairman of the Panel withdrew saying "she was conflicted", but there was no explanation given as to why the Member was conflicted to those attending the meeting. A conflict should be stated and should be for a sustainable reason.

3.2.7 The Committee is aware that during the time that it was undertaking its review that a Code of Conduct was issued for Panel Members which should, in due course, take into account the issues raised and the Recommendations made in this Report.

3.3 Casting Vote of Chairman

3.3.1 During the Committee's hearing, the issue of the use of the Planning Applications Panel Chairman's casting vote was raised. Deputy Gorst attended in support of his constituent, Mr. Morris, who was an objector to the planning application for Niaroo, La Grande Route de la Côte, St. Clement (Property No. 2842). While Mr. Morris's case might have been suitable to take as a Third Party Appeal, he did not choose to do so due to the fear of the costs of such a case. However, he made detailed objections (as did his neighbours) and he did take his objections to the Planning Applications Panel on 29th November 2007. Deputy Gorst, in evidence before the Committee, stated that at that meeting –

> "The vote was split and it was approved on a casting vote of the Chairman of the Panel".

3.3.2 This is supported by the minutes of the Planning Applications Panel as follows –

> "Having noted that the Panel was divided the Assistant Director, Development Control advised that the Chairman held a casting vote. Having exercised the same, the Chairman declared that permission was to be granted …Deputies S. Power of St Brelade and C.H. Egré of St Peter requested that their dissent from the Panel's decision be recorded."

3.3.3 The Chairman of this Committee requested advice on this issue from the Attorney General who advised, in his letter of 18th November 2008, that –

> "The Minister is entitled," by Article 9A(7) of the Law (Appendix 11), to direct the Panel as to the procedures which it should follow, and where he does not do so, the Panel may determine its own procedures.' "

3.3.4 The Attorney General continues in his letter to explain that, as the Law is "silent on the question" and in the absence of a direction under the Article mentioned immediately above, it lies with the Panel to determine its own procedures. The Committee is not aware of the existence of any written procedures on this aspect of its work; although we are aware the Department has issued a Code of Conduct for the Panel and has it under review.

3.3.5 The Committee also asked the Attorney General for his advice on any presumption (whether arising by law or parliamentary procedure) that in the case of a tied vote the Chairman and/or the Panel should adopt a policy that the "status quo prevails". The Attorney General advised that this was –

> "not applicable…..The reason for this is that a landowner's right to do what he pleases with his land has been heavily curtailed by Planning legislation, but nonetheless Article 19 [of the Law] sets out that an applicant for planning permission is generally entitled to a planning permission if the proposed development is in accordance with the Island Plan." (see paragraph 3.1.1).

3.4 Conclusions

3.4.1 The Committee recognises that the Planning and Environment Department, through the operation of the new legislation, has made significant advances in achieving greater openness, transparency and levels of public consultation in all kinds of planning applications.

3.4.2 The Committee notes that since the Law's introduction, the ability for those objecting to a proposed development to have their concerns heard, acknowledged and addressed in public forum is a major improvement from the situation under the former Law.

3.4.3 With the experience of further years of operating under the Law, we have no doubt that the Planning Officers and Panel Members will continue to strive to make the processes even more transparent and address issues, such as third party objections, at an early stage.

3.4.4 Enhanced written procedures for the Planning Applications Panel will be of benefit to clarify processes in relation to –
(i) Panel Members' conflicts of interest;
(ii) Use of the casting vote.

3.4.5 The Committee recommends that the Panel should always be composed of an uneven number to avoid the difficulties of a casting vote. However, in the unusual circumstances where it does apply, the planning application should be remitted to the Minister.

3.4.6 The Planning Applications Panel should improve the acoustics of their meeting rooms and introduce amplification for Panel Members and those addressing the meeting.

3.4.7 Whilst the Planning Applications Panel has made great strides in improving the openness of their public meetings, the Committee invites them to consider whether improvements can be made to 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 truly been taken into account.

SECTION 4– Third Party Appeal Process

4.1 Introduction

4.1.1 The statistics for people sending in a Notice of Appeal during the first 12 months since the introduction of Third Party Planning Appeals on 31st March 2007 (period under consideration by this Committee) are as follows –

Number of Appellants	Resolution of Appeal
2	Withdrawn because appellants fearful of costs
3	Withdrawn by appellants without giving reasons
1	Resolved as the appellant modified their position
1	Withdrawn as not within 50 metres of site
Total 7	

4.1.2 From 31st March to 31st October 2008 a further 5 Notices of Appeal were received by the Planning Department as follows –

Number of Appellants	Resolution of Appeal
1	Dismissed as judged 'out of time'
3	Pending
1	Kerley -v- Minister – judgement delivered on 27th November 2008 (**Decision attached at Appendix 3)**
Total 5	

4.1.3 In addition to the above, the Senior Planner – Appeals is aware that the Department has dealt with a

significant number of enquiries from members of the public keen to enter the appeals process, who have subsequently failed to complete a Notice of Appeal. The Department does not keep records of these enquiries.

4.2 Why have there been so few Third Party Planning Appeals?

4.2.1 From the statistics provided above, it can be seen that the predicted number of third party appellants has been far fewer than was expected. On the positive side, the reason for this could be due to –

(a) The greater consultation, transparency and openness following the introduction of the Law.

(b) Improvements to the way in which the Minister, Planning Applications Panel and Department take into account the impact of developments on neighbours.

4.2.2 On the negative side, a number of issues have come to light during the course of the Committee's investigations and hearings that may be deterring third party appellants from benefiting from the introduction of the Third Party Planning Appeals process as follows –

(a) the process, for the lay person, is, on the evidence received –
- complex,
- labour-intensive (witnesses testified to Court bundles becoming quite substantial),
- time-consuming, and
- generally viewed as intimidating, as in any litigation;

(b) the timescales and deadlines for Third Party Appeals are tight;

(c) the criteria for being eligible to take an appeal are highly constrained;

(d) the chance of success is perceived to be low (Since 2000 the Planning Department have had 50 **first** party appeals of which 14 have gone to the Royal Court and they have only lost 3 of those appeals);

(e) there is a significant fear of the possibility of substantial costs.

4.2.3 The remainder of this section will consider the whole process of Third Party Planning Appeals and discuss, in further detail, the difficulties, identified above, that appellants have had to face. The issue of costs and fear of costs will be dealt with later in Section 5 of the report.

4.3 Information and Support Available

4.3.1 During the first 12 months under consideration, appellants had to access guidance and information from a variety of sources –

From www.gov.je or the Planning and Environment Department
Guidance Notes – Planning Appeals Procedure (Judicial Greffe) (**Appendix 12)**
Third Party Rights of Appeal (Planning and Environment) (**Appendix 13)**

From www.jerseylaw.je or the States Greffe Bookshop
Royal Court Rules 2004 (**Appendix 14 [extract])**
Planning and Building (Jersey) Law 2002 (**Appendix 15 [extracts])**
Practice Direction RC 06/03 (Master of the Royal Court) (**Appendix 16)**

4.3.2 The Committee notes that decisions of the Royal Court which have been delivered but not yet reported, are unavailable without a subscription to a website. Whilst we are sure that the Judicial Greffe would assist in this regard, it does mean that the ordinary citizen is disadvantaged in comparison to the Minister and the legal advisers to any potential developer.

4.3.3 Guidance was also available to appellants by telephone, e-mail or in person from officers at the Judicial Greffe or Planning Department. The Judicial Greffe staff made every effort to support appellants to most effectively navigate the system, but the process can still be daunting. For example, in the course of completing and serving a Notice of Appeal, an appellant would contact the –

Judicial Greffe	To obtain guidance on procedures, lodge the Notice of Appeal and be informed how the appeal will be heard
Viscount's Department	To arrange service of the Notice of Appeal
Bailiff's Chambers	To fix date for appeal hearing
States' Treasury	To obtain Court Stamps
Planning and Environment Department	To obtain guidance on procedures and information regarding the planning application

4.3.4 At the same time, the appellant will also normally receive communications directly from the applicant and their lawyers (if they wish to be party to the appeal) and the Committee received evidence that these communications could be of an intimidating and aggressive nature.

4.3.5 Timescales are necessarily tight to prevent undue delay for the planning applicant (most notably the date that is fixed for the hearing of the appeal must not be more than 4 months from the date that the Notice of Appeal is served). However, this causes additional pressure on an appellant trying to meet the numerous deadlines for submission of documents and other related matters. An interesting contrast can also be drawn between a Third Party Appellant, who has only 14 days to appeal, and a First Party Appellant who has 28 days to appeal, **i.e. a Third Party Appellant has half the time of the First Party Appellant in which to make an appeal**

4.3.6 The Judicial Greffe can only provide procedural advice in relation to an appeal and cannot give any advice in relation to the merits of the case.

4.3.7 The Planning Department staff also sought to be as helpful as they could to appellants requesting advice and guidance. However, they were often in a conflicted position, given that a Third Party Planning Appeal is against the decision of the Minister – any affidavits produced, defending the Minister's decision, are drafted by Planning Officers.

4.3.8 It should also be noted that it is only once a Third Party appellant has decided to challenge a planning application that they begin to realise the enormity of the task ahead. Mrs. G. Le Maistre stated

> "We got no timescale, no written timetable, so we were constantly up against what the timescale was, as far as the law was concerned and complying with that. I feel, to do this without the help of advocates is virtually impossible because the normal person in the street has not got a clue about how the court's work … and the sort of timescales that you have got to comply with."

4.3.9 Mr. R. Crick similarly said –

> "I do not think the average citizen, without legal and professional help, could get anywhere in these third-party appeals."

4.3.10 The Deputy Judicial Greffier, in his testimony, confirmed that appellants were often quite unprepared to deal with the complexities of the process or the deadlines that have to be met. For that reason he indicated that he was in the process of producing a Guide for third party appellants. The Committee are pleased that this Guide, which brings together information from a number of sources and seeks to explain the process in layman's language, is shortly to be accessible on the Judicial Greffe section of the States' website

(www.gov.je/JudicialGreffe). However, whilst the document is comprehensive in its coverage of the process, the Committee feel further consideration should be given to making the document more user-friendly for an ordinary member of the public, unfamiliar with court processes. As an adjunct to the Guide, the Committee have produced a Flowchart of the same process, which should provide additional assistance to appellants **(Appendix 17)** This Flowchart clearly demonstrates the complexities of the Third Party Appeal process.

4.3.11 The Committee recognised that the tight timescales involved in the third party process might make appellants feel they are being quickly drawn into a process with little time to consider or fully reflect. There could be an argument for a 'cooling-off' period to be introduced which would extend the appeal process, but this needs to be weighed against the disadvantages of further delaying a development application.

4.4 How Third Party Planning Appeals are seen from the points of view of developers and architects

4.4.1 At this point in the report, the Committee felt it would be of value to analyse evidence that reflects the points of view of developers and architects.

4.4.2 Mr. Waddington attended a hearing on 3rd November as President of the Association of Jersey Architects (AJA). The Committee were interested in ascertaining the views of a body so intimately involved in planning and building issues in the Island.

4.4.3 Mr. Waddington was asked whether the consensus view of local architects was that Third Party Appeals should be dropped, to which he replied –

> "Yes, I think …. It is one of those rare occasions where as far as we could tell we did email all the members. There was a universal common view that Third Party Appeals were not going ultimately to be helpful."

He continued –

> "…it is difficult being an architect in Jersey because clearly we are passionate about getting buildings built for people that need them and any view that supports that sort of passion and pro-building kind of viewpoint is bound to be seen as having a degree of self-interest attached to it. However, I think with Third Party Appeals there was a feeling that there is an increasing burden of red tape and legislation associated with development in the Island. Some of that is good; some of it is to do with public accountability. We understand that and, of course, we live with it day-to-day. But ultimately I think we do feel concerned that very often ... we are not necessarily talking about large scale projects. We are not talking about… wealthy developers necessarily. We are quite often talking about very ordinary members of the public that I think, and I think our members feel, could be severely disadvantaged by a rather unwieldy bit of legislation. So, I think from that point of view, yes, arguably you can say that we are bound to sort of support most things that are pro-development."

4.4.4 When asked if he felt it was right that people should not only be able to object up to and including the decision but beyond the decision as well, he replied –

> "I would agree with the first part, I am not sure I agree with the second…..I think we are in an unprecedented period of public accessibility to architectural plans. I think now we have computer graphics, we have photomontages, we have physical models, we erect profiles on site, the Panel go to site, they are advised by professional Planning Officers; where does it stop? At what point do you have to say to someone: 'Sorry, guys, this is actually reasonable?' "

4.4.5 The Principal Planner – Appeals concurred with the view that the planning process can be a lengthy process for developers and that the Third Party Planning Appeals system does seem to go against States' policy of reducing bureaucracy and red tape.

4.4.6 Mr. Waddington explained that he felt that the Third Party Planning Appeals process gave neighbours "undue hope" and "a lifeline that is unreasonable".

4.4.7 The lack of support for Third Party Appeals by Mr. Waddington and the AJA was supported by evidence given by the Bailiff and the Attorney General. The Attorney General declared –

"I am afraid I am against the Third Party Appeals as a matter of principle…I do not really see that the third party ought to have any form of appeal against th[e] Minister's decision. But, as I say, I am quite happy to work with what the States have decided."

4.4.8 Similarly, the Bailiff said –

"I am of the view that a Third Party Appeal procedure as a whole is not a positive innovation. It is the job of the Planning Minister to balance the different elements of the equation and to reach a decision that is correct and just and one of the elements of that equation is the interests of neighbours."

4.4.9 The Committee note that prior to the Island's planning laws coming into being, owners of land or property were able, more or less, to do as they wish with their property. The underlying principal is that the planning law exists to constrain the activities of property owners where they are not in the best interests of the community. The Attorney General expressed concern about allowing neighbours too much influence over how owners of land want to develop their land and that a careful balance has to be struck between the private interest and the public interest.

4.5 Planning Department budget for Third Party Appeals

4.5.1 The Committee sought to clarify the budget attached to the Third Party Planning Appeals process. The Director of Planning confirmed that the Department has a budget for 2 Planning Appeals Officers – one at Grade 12, the other probably between Grade 9 and 12 depending on requirements (a budget of up to £102,000). The volume of appeals has only justified recruiting one officer; the other post remains vacant.

4.5.2 The Law Officers act for the Department or the Minister at no charge to the Department. All other administrative and management work is absorbed within the Planning Department budget.

4.6 Who can appeal under the Third Party Planning Appeals process?

4.6.1 Article 114 of the Law gives a right for certain persons ("third parties") to appeal against planning permission granted by the Minister. It does not extend to every person who has made a submission on an application, and only applies in the following circumstances –

(a) if the Third Party has made a **prior submission** to the Minister on the planning application;

(b) when the appeal is made **within the period prescribed in the Law**;

(c) if the Third Party is **resident on land**, or has an **interest in land**, any part of which is **within 50 metres of any part of the site to which the planning permission relates**

4.6.2 Each of the above criteria requires further consideration –

(a) Prior Submission

The Planning Department normally expect submissions to be written but they can also be verbal only if there is a formal public meeting such as a Planning Applications Panel meeting. This matter was clarified by the former Solicitor General, Miss S.C. Nicolle Q.C., in a memorandum dated 16th May 2007 to the Principal Planner – Appeals, in connection with Mrs. Le Maistre's appeal. In it the Solicitor General

states that qualifying submissions are not “limited to written submissions” under the Law and that the Planning Department should consider notifying the objector that any oral submissions should, as a matter of good practice, be reduced into writing.

(b) Within the period prescribed in the Law

If objectors wish to make a Third Party Planning Appeal, then they have to serve a copy of a completed Notice of Appeal on the Minister through the Viscount’s Department within 14 days of being notified of the decision to grant planning permission. It is at this point that the clock starts ticking for the appellant and a strict timetable has to be adhered to according to the Flowchart of Third Party Planning Appeals (**Appendix 17**).

(c)(i) Definition of an ‘interest in land’ and ‘resident on land’

The Committee has sought to clarify and investigate how the term ‘interest in land’ and “resident on land” should be interpreted, as they are not defined in the Law. The Judicial Greffe, in its Guide to Third Party Planning Appeals notes –

> “Whilst the interpretation of the expression is ultimately a matter for the Royal Court, it is likely to mean that the person is either the owner of land or the holder of a contract lease in excess of 9 years which has been registered in the Public Registry. ‘Resident on land’ is likely to be interpreted to mean any person (which includes a company), who need not be either an owner of or a holder of a contract lease in relation to the land, occupies a building situate on the land whether as tenant, licensee or even a “squatter”.

Further discussion of this issue can be found under paragraph 4.7.

(c)(ii) 50 metre rule

It has already been noted in Section 2 above that the 50 metre rule was introduced to remove what was believed to be one of the main obstacles to the Third Party Planning Appeals system coming into force. This restricted the number of possible appeals with the aim of reducing the cost of bringing in this provision.

A number of witnesses were questioned about the 50 metre rule and the restrictions it imposed on third party appellants.

It was noted that 50 metres was an arbitrary figure and could just as easily have been 100 or 150 metres. The Principal Planner – Appeals noted that some developments, e.g. Plémont Holiday Village, has no neighbours within 50 metres. In another instance some potential third party appellants were particularly aggrieved because they were 80 metres away and could not appeal.

The Senior Planner – Appeals also noted that developments could have a detrimental impact on a wider area, particularly in the countryside. The impact could be in terms of traffic, the scale of the development or the fact that the development is creating a precedent.

Two of the appellants questioned became the named third party by virtue of their proximity to planning developments. Mrs. Le Maistre, who lives near 42-50 La Colomberie and 1-5 Little Green Street (Property No. 12968) (‘Colomberie development”) stated –

> “Of course it had to go in my name, although there were other people who were backing me over the listed building issue. It had to go into my name because you have got to live within 50 metres of the development.”

She saw the Third Party Appeal as –

"a public interest issue."

Mr. Crick, when talking about the protest against the size of the development on the Goose Green development indicated that –

"There was a small caucus of us that were involved in this."

Deputy Le Hérissier asked –

"Did you not find it rather odd … that in a way you were dealing with almost general public interest issues rather than issues that derived from the fact that you were going to have this worst of over-bearing development in your backyard?"

To which Mr. Crick replied –

"Yes, that was the feeling at public meetings that we had. It really was not a "not in my backyard"; it was: "Let us do something that is good for everybody here". Putting that number of people on that site was not – we believed; increasing the traffic by that amount, increasing the number of children that would require schooling on that site, the social problems that might occur later with many teenagers on a small site like that."

The C.E.O. of Planning and Environment felt it was "unfair" for people –

"to piggy back on people within 50 metres… It puts undue pressure on those people within those 50 metres to feel that they have to act because of the geographic rule."

It was put to Committee by Mr. Waddington that in other jurisdictions lobby groups and political parties put pressure on those people within a geographical radius, behind the scenes, to drive an appeal for their own reasons. The Committee was unable to reach any conclusions about this type of lobbying in Jersey, although it noted the evidence of Mrs. Le Maistre and Mr. Crick.

This leads on to consideration of whether the Third Party Planning Appeals process should be open to wider interest groups and not restricted to close neighbours.

4.7 Environment and Heritage Groups

4.7.1 The Committee did not hear evidence or receive any submissions from the Island's environment or heritage groups.

The Committee noted that such interest groups already had considerable access to make their objections known during the planning process, namely writing letters of objection, speaking at Planning Applications Panel Meetings, Ministerial Meetings and Public Hearings.

4.7.2 During the hearings, the Committee sought views on what constituted "an interest in land", but according to the definition it does not include groups that might have a public interest in the site concerned, only those who own or lease land. Interest groups are also prohibited from taking a Third Party Appeal by the 50 metre rule.

4.7.3 Mrs. Le Maistre was very concerned that interested groups–

"should have the opportunity to bring these appeals, only where listed, obviously, or registered buildings are concerned, or sites of interest because … those people would have the financial backing and be able to draw on the expertise to help them through the process.".

4.7.4 The Senior Planner – Appeals did note that where a Site of Special Interest (S.S.I.) was involved, specialist advice would be sought from Historic Buildings, who would normally view the matter in great

detail. Were there to be a failure or error in the planning process, however, he conceded that the "odds would be stacked" against a third party appellant in terms of prohibitive costs.

4.7.5 The Attorney General held strong views on the issue of private individuals advancing the views of public interest groups –

> "But at the end of the day it is the decision-taker as to whether planning permission should be given who has got to look at the public interest and it seems to me to be slightly odd to rely upon the private landowner, whose personal interests may be affected, to advance views about the public interest, because it is not his job."

4.7.6 The Bailiff was asked if he felt Third Party Appeals should be expanded to allow other interested parties to appeal against a decision –

> "my answer to that is definitely no because one must recognise that the wider you make it, the wider the possibilities of allowing third parties to appeal, the more difficult you make it for the average citizen to get a planning permission …".

He recognised that –

> "there might be an argument for allowing heritage groups to bring an appeal."

but that there are practical problems in defining which groups should and should not have a right to appeal –

> "…you will find individuals forming themselves into a so-called heritage group simply because they want to make difficulties."

The Committee feel this is a conclusion which, in their view is, at best, only speculative.

4.8 Aarhus Convention

4.8.1 As a point of interest, Mrs. Mesch, in her written submission to the Committee, raised the issue of the Aarhus Convention. In 2005 the United Nations Economic Commissions for Europe enshrined the right of access to justice in environmental matters, to which the UK is a signatory. The Committee ascertained that Jersey is not included in the UK ratification, because we do not have in place all the necessary legislative and practical requirements. However, efforts are being made to meet these obligations and it is the States' intention to seek ratification at a later date.

4.8.2 Mrs. Mesch felt that the States' introduction of a third party system went some way to satisfy Jersey's obligation to access to justice on environmental matters under Aarhus and referred the Committee to Aarhus Article 9: Access to Justice which states that there be–

> "fair, equitable, timely and not prohibitively expensive procedures for the public to challenge public authorities in environmental matters.".

4.9 Conclusions

4.9.1 The Committee notes that the process originally envisaged of a simple, flexible and accessible system of Third Party Planning Appeals has not come up to expectations and that the ordinary citizen, in appealing against a decision of the Minister, is faced, in a Court of Law, with challenging the might of the State, with all the resources that can be brought to bear. The combination of Ministerial power, tight timescales and fear of costs combine to act as considerable disincentives to the ordinary citizen and we consider that no one would enter lightly into such litigation.

4.9.2 The Committee understands why Ministers and their Departments use the Law Officers' expertise and

the reasons why there is no internal recharge for any advice given. However, this creates a serious imbalance in that a Minister, sometimes rightly, has advice and an indemnity from costs that is not available to a private individual.

4.9.3 The Committee accepts that there is a difficult balance to be maintained between the rights of an individual to enjoy peaceably the possession of their property (within the constraints of the Law) and the rights of those living nearby and the community who are impacted by any development of that property. There is an argument that Third Party Appeals create extra work and increase bureaucracy. For small developments, the delays created by the system adversely affect homeowners, trying to build their extension or improving their properties, who have already spent many months planning and gaining approval for their building works. For larger scale developments, the work involved in undertaking planning consultations, producing models, erecting profiles on site and attending hearings may have taken place over months or even years; they gain their approval and then have the prospect of facing an appeal at a very late stage in the process.

4.9.4 Whether general or specific environmental and heritage interest groups should have access to the Third Party Planning Appeals process has proved a difficult matter for the Committee. Such groups now have considerably more access to the planning system under the new Law than previously and can make their views known to much greater effect before a planning decision is made. However, no planning system is completely immune from error and, in those circumstances, it may be argued that an interest group would have a legitimate case for having access to the third party process. Some assistance, when considering this matter in the future, may be gleaned from other small jurisdictions.

4.9.5 The Committee considers that, while the Third Party Planning Appeals system is bedding in, it would not be appropriate to consider reducing the current constraints on those who have a right of appeal. Nevertheless, it recommends that the following issues should be reconsidered at the next review –

- The 50 metre rule.
- The extension of Third Party appeals to include representation from general or specific environmental and heritage interest groups. (Including the definition of what constitutes an interest group.)
- The definition of ‘Interest in land’ and ‘Resident on land’.

4.9.6 We recommend that the Planning Department and Judicial Greffe continue to co-operate closely and, where possible, improve coordination of their provision of information and support (including reviewing the guidance and information already provided on departmental websites and hard copy).

4.9.7 The Committee commends the production, by the Judicial Greffe, of a Guide to Third Party Planning Appeals, as this enables an appellant to access most of the relevant information in one document, written in a more accessible form than was previously available. However, urgent consideration should be given to further revising the document in order to make it more user-friendly for the ordinary citizen. The Committee also hopes that the Flowchart for Third Party Appeals produced by the Committee will be of assistance to appellants.

4.9.8 The Committee considers 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 at the next review.

4.9.9 The Committee urges the Chief Minister’s Department to 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.

4.9.10 The Committee notes the limited time during which a third party appellant has to appeal, i.e. 14 days (half the time available to a first party appellant). It concludes that this is a very short period for a layperson to organise and submit their objections to a planning permission.

SECTION 5– Royal Court

5.1 Introduction

5.1.1 As discussed in Section 2, the Planning and Building (Jersey) Law 2002 had originally established a Planning and Building Appeals Commission. Ultimately, however, the States agreed to maintain the existing appeals system by 'reinstating' the Royal Court as the appellate body.

5.1.2 This had a number of consequences for the Third Party Planning Appeals system as will be discussed below.

5.2 'On the Papers', Modified and Ordinary Procedures

5.2.1 The Committee notes that in Proposition P.210/2004 (**Appendix 8**) which 'reinstates' the Royal Court, the following statement was made in the accompanying report –

> "[The Environment and Public Services Committee] 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."

5.2.2 In this way, the two-tier system of how appeals can be heard in Court was introduced, i.e. 'ordinary' and 'modified' procedures. These can be defined further as –

Modified Procedure	This permits appeals to be dealt with in a more efficient and less costly manner than the ordinary procedure. The modified procedure can be used for most Third Party Appeals since these do not generally raise points of law and are not overly complex. Although the hearing takes place in the Royal Court, the Court sitting is informal and the Court does not robe. Costs can be kept to a minimum as parties can chose to represent themselves or be represented by a non-legally qualified professional approved by the Court. In the modified procedure the normal expectation is that there will be no award of costs.
Ordinary Procedure	This is a formal hearing before the Royal Court and is used when an appeal by an applicant or third party involves complex factual matters, important issues of law or matters of general public importance. There is a much greater likelihood that parties to the appeal will be represented by an advocate and therefore the costs will be higher than in the modified procedure.

5.2.3 As can be seen from the Flowchart of Third Party Planning Appeals **(Appendix 17)** the decision as to which procedure should be followed is that of the Master of the Court, having received various papers and affidavits from the interested parties. It is also possible, at this juncture, for the Judicial Greffier to decide to hear the case 'on the papers', but only if the parties are in agreement. This has obvious benefits in a Third Party Planning Appeals process as it considerably reduces an appellant or applicant's exposure to costs and also avoids the need for parties to go to Court.

5.2.4 Indeed, the Committee received testimony from members of the public and Planning staff that not only did appellants fear the potential costs of taking an appeal case, but they were also fearful of the whole process and particularly having to challenge the decision of the Minister in a Court of Law.

5.2.5 It should be noted that various expenses for judicial fees will have to be incurred during the stages before a hearing actually takes place –

- £50 Court Stamps to go on the Record of Notice of Appeal to the Minister
- £100 for fixing a date for the Court hearing.
- £200 for a hearing ‘on the papers’ or £300 per half day to the Royal Court (the normal duration).
- Cost of photocopying – 5 copies per paper produced. Paper produced can be considerable.

5.3 How the issue of costs and damages was viewed by witnesses

5.3.1 During the Hearings it was notable how the issue of costs was viewed very differently, depending on whether you were an appellant or a member of the judiciary.

5.3.2 In the case of Mr. Crick and the Goose Green development, issues arose that required a preliminary hearing to be held before the actual Third Party Appeal could go ahead (modified procedures only appertain in Third Party Appeal cases, not preliminary hearings, and thus Mr. Crick was not protected against costs). Any delay to the development had potentially serious financial consequences for the developer, and thus Mr. Crick feared that he might become liable for any such costs. In addition, he recognised that, even if he won his Third Party Appeal, the developer might then wish to take the case to a higher Court, further increasing Mr. Crick's financial exposure. Thus Mr. Crick decided that he could not take the case further and had to withdraw.

5.3.3 In the case of Mrs. Le Maistre and the Colomberie development, the decision as to whether her case was to be heard under the ordinary or modified procedure also became of great significance in terms of costs. From written testimony provided by Mrs Le Maistre, the Committee noted that the Master of the Court was minded (on 2.7.2007) to hear her case under the modified procedure. However, following representations from the then Solicitor General (letter of 9.7.2007) on behalf of the Minister of Planning and Environment Department, this was changed to being heard under the ordinary procedure. Although Mrs. Le Maistre sought to have this decision overturned, not all parties to the appeal were in agreement and therefore the Master of the Court was unable to change his decision.

5.3.4 Mrs. Le Maistre testified that initially –

> “we did not realise the implications of that situation”

but conferring with her *pro bono* legal support they told her –

> “ ‘Get out now, quick, immediately, overnight, you have got to get out’….It was pointed out to me that all my assets were on the line…”.

5.3.5 Mrs. Le Maistre withdrew her appeal within days, having had “sleepless nights about the risk of costs”.

5.3.6 The view, from witnesses such as the Attorney General and the Bailiff, was quite different from that of the appellants. The Attorney General felt it unlikely that people would be worried about the exposure to costs, once they were aware of the Rules of Court.

5.3.7 However, because the process of making a planning application often involves expenditure, which can be considerable for larger developments, the Attorney General conceded that appellants and applicants may well want to involve lawyers. For this reason, he stated, the modified procedure may not always be appropriate. Indeed, as far back as 2004, during the debate on P.210/2004 the Attorney General delivered a speech in which he expressed his concern about trying to adopt a user-friendly approach in Royal Court procedures. He stated –

> “The fact is that most planning appeals are valuable… The more value they carry the more likely it is that lawyers are going to be involved… any system that is developed with the Royal Court to make it more user-friendly is, I think, honestly going to have to recognise the practicalities of lawyers being likely to be involved, particularly if they are any major sort of development application.”.

5.3.8 The Bailiff, however, stressed that under the modified procedures (and even if a case were to go to the Court of Appeal), in accordance with the Royal Court Practice Direction 06/03 **(Appendix 16)**, the Royal Court will only make an award of costs in exceptional circumstances and that –

> "appellants are not to be worried about risks of costs before the Royal Court. The likelihood of the Court of Appeal, even if it does overturn the judgment of the Royal Court, awarding costs against the third party appellant seems to me to be extremely remote. I say that as President of the Court of Appeal."

5.3.9 Up to this point in Section 5.3, consideration has largely been given to the issue of costs as they relate to an appellant and seeing the appellant as the 'little person' up against the well-resourced developer. There should, on the other hand, also be consideration given to members of the public wishing to develop their property, who come up against a neighbour who may be intent on preventing a property owner from developing their land as they wish. Mr. Waddington, in his testimony, disagreed with the principle of Third Party Planning Appeals process in part because he felt that a wealthy neighbour (not overly concerned with the fear of costs) is given the opportunity to delay unreasonably the legitimate rights of members of the public seeking planning permission.

5.4 Full Merits Appeal versus Reasonableness test

5.4.1 The Law currently states that under Article 109 an appeal may only be made to the Royal Court on the grounds that the action taken by or on behalf of the Minister was unreasonable having regard to all the circumstances of the case. The Bailiff confirmed that the Court cannot substitute its own decision –

> "The Court must form its own view of the merits but it must reach the conclusion that the Committee's decision is not only mistaken but also unreasonable before it can intervene."
> (see Token Limited -v- Planning and Environment Committee [2001] JLR 698)

5.4.2 In the judgement Kerley -v- the Minister and Riggall **(Appendix 3)**, the Court stated that –

> "There is a margin of appreciation before a decision which the Court thinks to be mistaken becomes so wrong that it is, in the view of the Court, unreasonable (Sunier -v- Planning and Environment Committee [2003] JLR Note 49)."

5.4.3 The Committee questioned witnesses on whether they felt the legal test for an appeal was too narrowly drawn. The Director of Planning said that the fact that the appeal system was not a full merits appeal was a shortcoming of the process and that it "raise[d] the bar" in terms of appeals being successful. The Principal Planner – Appeals pointed out the difficulties of making planning decisions –

> "because planning decisions involve the exercise of a discretion and a judgment, it is quite common for 2 entirely different conclusions which can be reached, neither of which might be unreasonable."

5.4.4 However the Bailiff did not agree that the likelihood of a Third Party Appellant being successful was slim. He felt that when an appeal was brought it required all those involved in the process to reconsider their position and that this could sometimes result in a change of decision even before the case came to Court.

5.5 Protection Against Award of Costs

5.5.1 During the hearings, the Committee considered whether it would be desirable to introduce a system whereby an appellant is partially protected from the full weight of a cost order against them (particularly where cases are heard under the ordinary procedures). The Bailiff was opposed to fettering the Court's discretion as this "tied the Court's hands" and prevented it from being able to deal with the case on its merits.

5.6 Legal Representation in Court

5.6.1 The Committee is pleased to note that the Guide to Third Party Planning Appeals produced by the Judicial Greffe now makes it very explicit that all parties to an appeal can appear in person.

5.7 Conclusions

5.7.1 The Royal Court, as the appellate body for Third Party Planning Appeals, can be a daunting prospect for a Third Party Appellant in terms of –

- fear of costs
- fear of the court process.

5.7.2 The speech of the Attorney General in 2004, quoted in paragraph 5.3.7, does appear, in hindsight, to be prescient in summing up the current situation in relation to costs.

5.7.3 Although, at first reading, the modified procedure appears to provide protection from costs, this is far from certain. It becomes clear that, if the applicant decides to be represented by a lawyer, the appellant will feel obliged to do likewise and so incur costs. If the case is lost, the applicant could apply for costs and, despite the expressed intention that the process should be as inexpensive as possible, the Court could nevertheless still decide that such costs should be paid. Even if the award of costs is "extremely remote" as testified by the Bailiff, it is still a fear in the mind of the ordinary appellant and is likely to frighten many third party appellants from taking a case.

5.7.4 Whether an appeal is heard under the modified or ordinary procedures has great significance for any appellant in terms of potential costs. The Committee would encourage the Master of the Court and the officers of the Judicial Greffe to always strongly consider the merits of deciding a case under the modified procedure, wherever possible within legal constraints, so that appellants can be given the maximum protection from award of costs.

5.7.5 Planning applications often involve considerable costs to an applicant, particularly in the case of larger developments. Delayed developments also involve cost. There is therefore an incentive for a developer, if he loses an appeal, to take the matter to judicial review or Court of Appeal, where costs can be awarded. An individual is thus always going to be at a disadvantage in such cases. However, the Committee recognises that this can always be the case in any litigation and an appellant has to weigh up the merits of fighting on against the possible costs it might entail.

5.7.6 The third party appellants who gave their testimony found the process of taking their appeals to Court a daunting experience, particularly with regard to negotiating the complexities of the modified and ordinary procedure. The Committee hopes that, with the production of more information and other improvements in website support and coordination between the Planning and Environment Department and the Judicial Greffe, future appellants will be able to navigate the system more readily.

5.7.7 The Committee recognises the value of appeal cases being heard "on the papers" 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 all parties.

5.7.8 The Committee concurs with the Bailiff in recognising that it is important not to fetter the discretion of the Court in the awarding of costs as it constrains the Court when considering a case.

5.7.9 It is recognised that, whilst the Royal Court remains the appellate body for Third Party Appeals, the test of reasonableness, as defined in the case law quoted above, is the appropriate basis upon which such administrative appeals should be heard.

5.7.10 The Committee considered, during its deliberations, the position that would have obtained under a Planning Appeals Commission as compared with the current Royal Court system. Although outside its remit, on the evidence it received the Committee feels that a Commission would have been a more equitable and less daunting approach to planning appeals. Cases could be considered on their full merits and not restricted to a judgement on the reasonableness of the original decision

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APPENDIX 1

STATES OF JERSEY

COMMITTEE OF INQUIRY INTO THE OPERATION OF THIRD PARTY PLANNING APPEALS

Lodged au Greffe on 26th February 2008
by Deputy C.J. Scott Warren of St. Saviour

STATES GREFFE

2008 Price code: A P.35

PROPOSITION

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

(a) to establish a Committee of Inquiry in order to examine the operation of Third Party Planning Appeals in the Royal Court for the first 12 months since its introduction and, if necessary, make recommendations for the future;

(b) to present its report to the States Assembly by the autumn of 2008;

(c) to appoint the following persons as members of the Committee of Inquiry –

- (i) Mr. Rowland Anthony
- (ii) Advocate Christopher Gerard Pellow Lakeman
- (iii) Deputy Roy George Le Hérissier
- (iv) Deputy Sean Seamus Patrick Augustine Power
- (v) Deputy Celia Joyce Scott Warren;

(d) (i) to agree that the Committee shall appoint a Chairman and Deputy Chairman from within its number;

(ii) in accordance with Standing Order 146(5)(b) and (c) –

(1) that the Deputy Chairman shall, if required, preside in the absence of the Chairman; and

(2) that the quorum of the Committee shall be 3.

DEPUTY C.J. SCOTT WARREN OF ST. SAVIOUR

REPORT

Members will know that on 31st March 2007 the provision was enacted for third party planning appeals to the Royal Court. The original full-scale Amendments at the time of the original debate on the Draft Planning and Building (Jersey) Law 200- would have provided for Third Party Appeals to the Planning and Building Appeals Commission. However, the successful Proposition P.210/2004, brought by the Environment and Public Services Committee, scrapped the formerly endorsed Appeals Commission in favour of determination of planning appeals by the Royal Court.

Members were reassured that an appellant would not have to be represented in the Royal Court by a lawyer. The 'modified' procedure in the Royal Court would enable an appellant not to bear the risk of a cost award. However, the possibility of costs being incurred still remains, either due to a decision that the 'ordinary' procedure is required or the possibility of Court of Appeal costs. The fear of costs is effectively a deterrent against aggrieved third parties requesting an appeal, for all but the wealthy. In other words, the very people the Amendments had been intended to help – neighbours who feel aggrieved by a planning consent which they fear will adversely affect the enjoyment of their property – are in my opinion unable to risk costs that could run into thousands of pounds.

This was the situation that faced the first person to attempt a third party appeal in the Royal Court. She tried to appeal against the planning consent given to a developer but she had to withdraw her appeal, for fear of the costs, even though she may well have won the appeal.

After much thought, following a meeting which included the Minister for Planning and Environment, the Solicitor General, and the lady who had to withdraw from the Appeal, I have decided that there is a need to establish a Committee of Inquiry, in order to examine the operation and effectiveness of Third Party Appeals.

My suggested Terms of Reference, which would need to be agreed or amended in consultation with the other members of the Committee of Inquiry, are as follows –

1. To examine the operation of third party planning appeals in the Royal Court for the first 12 months since their introduction on 31st March 2007.
2. To present a report to the States Assembly by the autumn of 2008.
3. To bring forward for consideration any recommendations.

Financial/manpower implications

There will be costs involved in carrying out a public inquiry, but such is the public concern over this issue, I believe the public will accept that it will be money well spent.

The costs will depend upon the level of officer support required. I would consider that seconding an officer on a part-time basis should cost in the region of £10,000 for the period of the Inquiry, and I consider that a prudent provision for sundry expenditure of £5,000 would be appropriate. The Minister for Treasury and Resources is requested, in pursuance of Standing Order 150(c), to give direction as to how the above expenses should be funded.

APPENDIX 2

Committee of Inquiry to examine the operation of third party planning appeals

PROCEDURE NOTE
(as amended 26/11/08)

The Committee considered on 11th June 2008 how it would conduct the Inquiry.

The Committee appointed Advocate Christopher Lakeman as Chairman and Deputy R.G. Le Hérissier as Deputy Chairman. The Committee decided that it would discuss the scope of the inquiry at its next meeting, and invite written submissions from all those having a direct interest in third party planning appeals.

In the first instance, a notice will be placed in the Jersey Evening Post in the near future to invite members of the public and other interested parties to make a submission outlining their personal experience of the third party appeal system. A submission may take the form of report, a letter, or an email, with supporting documents where appropriate.

All submissions will be made public, unless the Committee is in agreement that a submission should remain private.

The Committee, having considered written submissions, will decide which witnesses it would wish to question at an oral hearing.

The Committee's business meetings will be held in private, and all oral hearings will be held in public, unless there are circumstances in which Committee agrees otherwise. Oral evidence will be transcribed if appropriate, in which case witnesses will have the opportunity to review their evidence for accuracy of transcription. The Committee is not intending to publish the full transcripts on the States Assembly website.

All media releases will be made by the Chairman on behalf of the Committee.

Correspondence and submissions should be sent to 'Committee of Inquiry – Third Party Appeals, States Greffe, Morier House, Halkett Place, St. Helier JE1 1DD' or j.aubin@gov.je.

Judgement – Kerley -v- Minister for Planning and Environment and Riggall

[2008]JRC199

ROYAL COURT
(Samedi Division)

27th November 2008

Before : J. A. Clyde-Smith Esq., Commissioner, and Jurats Bullen and King

Between	**Mrs Susan Kerley**	**Appellant**
And	**The Minister for Planning and Environment**	**Respondent**
And	**Miss Jenni Riggall**	**Applicant**

The Solicitor General appeared for the Minister.

The Appellant and the Applicant appeared in person.

JUDGMENT

COMMISSIONER:

1. This appeal is brought by the appellant under Article 114 of the Planning and Building (Jersey) Law 2002 ("the Planning Law") against a permission given by the respondent (who we will refer to hereafter as "the Minister") to the applicant for the construction of a farm outbuilding and temporary timber accommodation on fields 1566, 52 and 53 in St Lawrence ("the site") which lie within the Countryside Zone and Water Pollution Safeguard Area under the Island Plan approved by the States on 11th July, 2002. The Appellant resides on land part of which is within 50 metres of the site.

2. It is helpful to set out at this stage the principal policies under consideration.

Island Plan policy G2

3. This sets out general development control criteria which apply across the Island to all types of development. The listed criteria include, amongst other considerations, the following criteria which concern the need for applicants to demonstrate that a proposed development:-

(i) will not unreasonably affect the character and amenity of the area;

(ii) will not have an unreasonable impact on neighbouring uses and the local environment by reason of visual intrusion or other amenity considerations;

(iii) will not have an unreasonable impact on agricultural land.

Policy C6 – Countryside Zone

4. This policy concerns development within the Countryside Zone. Policy C6 states that within this zone there will be a high level of protection given and there will be a general presumption against all forms of new development for whatever purpose. However, certain types of development may be permitted where the scale, location and design would not detract from, or unreasonably harm the character and scenic quality of the countryside. Amongst other types of development this includes:-

(i) new development on an existing agricultural holding which is essential to the needs of agriculture in accordance with Policies C16 and C17.

5. Policy C6 goes on to state that ***"in all cases, the appropriate tests as to whether a development proposal will be permitted will be its impact on the character of this Zone … and wherever possible, new buildings should be sited next to existing ones or within an existing group of buildings"***.

6. The Policy finally lists types of development which, for the avoidance of doubt, will not normally be permitted in this zone. Included in this list (sub-section f) is the following statement:-

> ***"Applications for the development of new dwellings will not normally be permitted unless it is demonstrated, to the satisfaction of the Committee, that the development is essential to meet agricultural needs and cannot reasonably be met within the built-up area or from the conversion/modification of an existing building".***

Policy C16 – New Agricultural Buildings and Extensions

7. Policy C16 states that there is a presumption against proposals for new agricultural buildings, unless it can be demonstrated satisfactorily that the proposal amongst other considerations:-

(i) is essential to the needs of agriculture; and

(ii) can not be met in existing buildings elsewhere.

8. Where the respondent accepts the justification for new building, it shall amongst other matters:-

(i) be located within or adjacent to an existing group of buildings, unless it can be demonstrated that a more isolated location is essential to meet the needs of the holding;

(ii) not unreasonably affect the character and amenity of the area.

Policy C17 – New Dwellings for Agricultural Workers

9. This policy states that there is a presumption against proposals for new dwellings in new and permanent buildings, unless it can be demonstrated satisfactorily that the proposal amongst other considerations:-

(i) is essential to the proper function of the farm holding;

(ii) cannot be provided on a site within the boundary of the built up area and still meet the functional need;

(iii) cannot be provided by rearranging, subdividing or extending an existing building on the holding;

(iv) where possible is located within or adjacent to the existing farmstead, or other farm buildings on the holding;

(v) is of a size appropriate to its functional need;

(vi) will not unreasonably affect the character and amenity of the area;

(vii) will not have an unacceptable visual impact;

(viii) will not have an unreasonable impact on neighbouring uses and the local environment by reason of visual intrusion or other amenity considerations.

Planning History/other sites

10. The permission forming the subject of this appeal follows a history of unsuccessful attempts by the applicant to establish a sheep farm and associated dwelling on two other sites.

11. In April 2003, the applicant submitted an application for an 11 vergée sheep farm with associated two bedroom cottage on two fields in St John. Permission was refused by the Planning Sub Committee of the former Environment and Public Services Committee in June 2003, on the grounds that the proposal was contrary to the Island Plan Policies C5 (Green Zone) and C17 (New Dwellings for Agricultural Workers) in that there is a presumption against new development in the Green Zone and the Committee was not satisfied that there was a proven/essential agricultural need for a dwelling on the site.

12. In October 2003, the applicant submitted an application for a 23 vergée farm and associated two bedroom cottage on fields in St Saviour. The application was accompanied by a Business Plan for the proposed enterprise. This application was refused on the grounds that the proposal was contrary to the Island Plan Policies C6 (Countryside Zone) and C17 (New Dwellings for Agricultural Workers) in that there is a presumption against development in the Countryside Zone and the Committee was not satisfied that there was a proven/essential agricultural need for a dwelling on the site.

13. That decision was reconsidered in March 2004. Whilst noting the ‘passion and enthusiasm’ of the applicant, the Committee considered that the need for a dwelling on the site was not proven, particularly as the applicant intended to continue in her existing occupation as a radiographer at the hospital on a part time basis.

14. This decision was further reaffirmed by the Committee in June 2004, following the consideration of comments by the States Veterinary Office on the proposal. Although noting that the States Vet had written to the applicant stating that it is essential, for animal welfare reasons, that an appropriate responsible adult was present at all times on the premises where the animals are born and reared, the Committee noted that this did not tally with the applicant’s stated intentions to continue her other employment elsewhere.

15. In July 2004, the applicant appealed unsuccessfully to the Board of Administrative Appeal. In January 2005, Deputy F J Hill, acting on behalf of the applicant, requested that her application be further reconsidered on

the basis of a revised business plan and further supporting information, which he contended demonstrated a proven need for a dwelling to serve the holding. The Livestock Adviser, in outlining his support for the applicant's agricultural business, explained that the revised business plan demonstrated the possibility for having a long term profitable business but that the 'possibility' of a long term business is not the same as an 'actual' profitable business producing enough profit for her to become wholly or mainly employed in agriculture as then defined under '*bona fide* agriculturalist'.

16. The Committee addressed the issue of when a new entrant into agriculture should be given permission to build an agricultural dwelling in the countryside as part of their business development; specifically whether it should be when that new entrant had proved on paper that his or her proposals are viable or when he or she had grown that business over a number of years and demonstrated that they could run a viable and sustainable business. Interestingly, the Livestock Adviser also referred to the practice in the United Kingdom of granting permission for temporary accommodation so that a new entrant could live on site and develop their business. The Committee maintained its refusal as it was concerned with the issue of precedent and, although impressed by the applicant and of the view that the business plan was sound, was reluctant to allow a person who was not primarily involved in commercial agriculture to construct a new dwelling in the Green Zone.

17. This decision was also taken to the Board of Administrative Appeal in May 2005. The Board asked the Committee to reconsider its decision to ensure that it was satisfied that it had been properly made and that as part of this exercise it should address certain key questions which were put to it. This the Committee did and the Board was satisfied that the Committee had given sufficient consideration to the Board's findings. The appeal therefore failed.

Rural Economic Strategy

18. In 2005, the States of Jersey approved the Rural Economic Strategy which provided a new definition of agriculturalists and policies to allow smallholders (i.e. small and part-time farmers) to benefit from government support and to gain entry into the industry. Up until that time, an agriculturalist was defined as someone who was mainly or wholly employed in agriculture or horticulture. New definitions were required to determine *inter alia* treatment under planning legislation. We set out the relevant part of the Strategy as follows:-

"3.2.2

A bona fide agriculturalist is someone employed in land dependent primary production, obtaining income from agriculture or horticulture which meets a target level of economic activity as defined by the Strategy (see below).

3.2.3

A Smallholder (part time or small scale agriculturist) is a person actively participating in land dependent primary production which meets a reduced level of economic activity compared with a bona fide agriculturalist.

3.2.4

The measurement of economic activity will be based on the farm's Total Gross Margin which will be calculated using average industry gross margins for each crop/livestock enterprise on the unit. Taking into account the views expressed during consultation the economic activity required to qualify as a bona fide agriculturalist is proposed to be £40,000 total gross margin* per annum. This threshold will be met by approximately 35 dairy cows or 57 vergées Jersey Royal potatoes or 90 vergées of courgettes. The lower threshold to qualify as a smallholder is proposed to be £5,000 total gross margin* per annum. By introducing the category of Smallholder the Strategy introduces a new entry route into the industry.

3.2.5

The difference between the entitlements of a bona fide agriculturalist and a Smallholder will be:

- ***Only bona fide agriculturalists using the above definitions will be considered as agriculturalists in respect of the Island Plan and development control considerations.***

- ***Both bona fide agriculturalists and Smallholders can occupy agricultural land under the Agricultural Land (Control of Sales and Leases)(Jersey) Law 1974. However, taking into account the views expressed during consultation, Smallholders will be restricted by only being allowed to occupy up to 20 vergées of land. Beyond this they will be required to occupy any additional land under a temporary licence and this must be linked to a business plan that is designed to move them up to the category of bona fide within 3 years.***

- ***Undertakings below the £5,000 gross margin threshold can only occupy agricultural land covered by the 1974 Law under a temporary licence. They will not qualify for the Single Area Payment.***

- ***If a business or person in either category falls below the appropriate minimum annual threshold they would be given a further 2 years to achieve the appropriate gross margin and retain their status.***

3.2.6

A Smallholder can become bona fide by providing 3 years trading accounts for their business (which show at least one year in profit) with the final year of trading demonstrating they have achieved the required level of economic activity to qualify as a bona fide agriculturalist. The clarification of these definitions will:

- ***Encourage new entrants into the agricultural industry.***
- ***Enable Smallholders to benefit from subsidy payments.***
- ***Provide a clear route for a smallholder to become a bona fide agriculturalist.***
- ***Drive the creation of new businesses and diversified activity.***
- ***Limit area payments to active agricultural businesses.***

****Gross Margin is a measure of the value of the crops and livestock produced less the variable costs involved in producing them. This is an industry wide measure for which there are standard values which can be applied."***

19. Under the strategy a group was established comprising the Director of Environmental Management and Rural Economy, the Livestock Adviser and the Horticultural Adviser and Statutory Services Officer to advise the Minister. We will refer to them as RES.

20. The applicant, whilst unofficially recognised by RES as a smallholder, and thus able to occupy agricultural land, is not a *bona fide* agriculturalist for planning purposes under the RES strategy and would not be until she achieved the total gross margin per annum of £40,000.

Planning History/Current Site

21. On 26th October, 2006, the applicant applied for permission in principle to "create a new farm, including stable type animal infrastructure and orchard. Single storey 2 bedroom dormer cottage on field 53" (we will refer to this as "the 2006 Application"). The layout, but not the dimensions, of the proposed buildings were shown on the plans. Originally the buildings were sited on field 53 close to the road, the appellant's property and a cluster of neighbouring buildings but, in view of a restrictive covenant in favour of the land occupied by the appellant, they were moved to the north west of the site in field 1566.

22. The Minister sought the advice of RES who considered the applicant's business plan, which, because it involved an orchard that required time for trees to mature, extended to six years. They found the plan to be viable and sustainable (although it would not achieve the threshold to enable her to achieve *bone fide* agricultural status) and fully supported the development of a sheep, chicken and apple orchard business on the site and that part of the application which applied to animal housing, which they accepted was essential. They did not support the construction of a permanent dwelling prior to her achieving bone fide status.

23. The application was recommended for refusal by the Planning and Environmental Department. The Department's objection related not to the creation of the farm but to the proposed dwelling. It concluded that the applicant did not meet the economic threshold of a bona fide agriculturalist at which point a dwelling could be considered, and therefore that it was not essential to the proper function of the farm holding required by Policies C6 and C17.

24. Following a public meeting on 16th February, 2007, which was well attended by supporters and objectors (including the appellant) alike, the Minister reserved his decision for further consideration. On 3rd July, 2007, he granted permission in principle to the applicant to construct stable type animal infrastructure in Field 1566 and to form an access across Fields 53 and 1566. Permission for the cottage was not granted.

25. On 10th July, 2007, the Minister decided to approve a dwelling in principle (no permit being issued), subject to the applicant demonstrating that she could attain *bone fide* status in line with the RES criteria by meeting the following tests:–

(i) That a minimum of £40,000 gross margin for the business is reached;

(ii) that it is demonstrated that the margin can be maintained for three years by a sustainable business plan;

(iii) that a minimum of 50% of the threshold must be derived from sheep or other agricultural activity where best practice demonstrates a need for a dwelling on the site of the farming operation.

The dwelling was to be no more than 120 square metres and constructed of granite and of traditional design.

26. On 13th August, 2007, the applicant wrote to the Minister requesting that in order for her to endeavour to fulfil these parameters, she should be granted temporary accommodation in line with UK practice. She suggested a timber cabin in a corner of the field adjacent to the proposed farm building, consisting of four rooms which could be delivered flat-packed and assembled on to breeze blocks without the need for permanent foundations. This would enable her to manage the welfare of her livestock in the safety and security of the building.

27. The Minister responded to the applicant on 4th September, 2007, through a letter written by Mr Thorne, Director of Planning, saying that he would support the erection of temporary habitable accommodation, provided that it was well designed and subject to a time restriction sufficient to enable the applicant to achieve the gross margin thresholds and enabling him to require removal in the future if those thresholds were not met.

28. On 20th November, 2007, the applicant submitted a further application, which is the subject of this appeal, for the construction of the farm outbuilding, the establishment of the orchard and field entrance improvements and temporary timber accommodation. We will refer to this as “the 2007 Application”. The dimensions of the proposed buildings were shown on the plans.

29. The application was accompanied by a revised business plan (again for a six year period) which was considered by the RES group. They found the revised plan to be generally optimistic in both assessing income and calculating costs but they found that the overall plan seemed to be thoroughly researched and had sufficient income generation to meet reasonable cost increases and her obligations. Furthermore the plan indicated that the gross margins for *bona fide* status could be achieved.

30. While stating that the provision of accommodation on an agricultural unit for a person who is yet to qualify as a bona fide agriculturalist and who has not previously proved that they have the ability to run and maintain a profitable and sustainable agricultural business was not endorsed in the RES policies approved by the States in 2005, the RES group recognised the following:-

(i) That the applicant had thoroughly researched her proposed business over a number of years;

(ii) she had produced a 6 year business plan which indicated in future the gross margin of her proposed smallholding should enable her to qualify as a bona fide agriculturalist within 4 to 6 years as long as the financial targets in the plan were achieved;

(iii) that a temporary dwelling on the proposed smallholding was desirable to allow the applicant to manage her unit and to maintain the welfare of her animals;

(iv) that because of the nature of the application, no precedent would be set for similar applications as regard the RES agricultural planning policy.

The RES group therefore advised that it had no further objection to the approval of the application.

31. The Planning and Environment Department, noting that the principle of the erection of the farm infrastructure and the proposed field entrance had been previously established in the 2006 Application and the advice of the RES group, recommended approval of the application subject to conditions in relation to the temporary dwelling which were incorporated in due course into the permit.

32. A public meeting was held on 15th February, 2008. Again it was well attended by supporters and objectors (including the appellant) and at the end the Minister summed up as follows:-

> *"The Minister, in summarising the main issues, recognised that a model of sustainability had been proposed. Had that model had already come into being then the present application would raise little problem. However, it had not and for permission for a temporary structure to be granted, extraordinarily careful consideration would need to be given to the detailed conditions it would be necessary to impose in order to safeguard against insincere applications by those simply wishing to secure a home in the countryside. Account also had to be taken of how best to assure that the removal of all traces of the dwelling and other buildings in the event that the business failed. Consideration needed to be given to the need to install mains drains and close examination made of the proposal for a new access road. Were the proposed buildings to house the animals and equipment on too large a scale? It was necessary to ask all these questions – and more – not least to ensure that the neighbouring properties were not imposed upon or otherwise unreasonably affected. Full landscaping details would be required in due course. The Minister proposed that any proposal to impose conditions in the event that the application were to be supported should be scrutinised by the Law Officers' Department prior to completion. Although there might ultimately be financial cost associated with meeting such conditions as could be imposed, it was for the Applicant to decide whether to accept such risk. The Minister confirmed that the reported rejection by the Applicant of offers of alternative accommodation was of some concern and clarification of the circumstances and nature of this aspect of the application was requested."*
>
> *The Minister, having taken all the above-mentioned considerations into account, reserved his decision but nevertheless indicated that he would be minded in principle to support*

the application, subject to satisfactory resolution of the issues involved (which might include further consideration of providing alternative accommodation off site). It was also apparent that some further detailed financial analysis might need to be undertaken. (Emphasis as in minutes).

Offer of alternative accommodation

33. The appellant lives in the property immediately adjacent to the proposed new entrance to the site and had offered to lease a cottage, which faces the site, to the applicant for the full 8 years required to enable her to achieve her bona fide agricultural status under the RES criteria at a rental of £4,000 per annum (£32,000 over the 8 year period). The appellant's position, set out in her letter dated 31st December, 2007, was that whilst she was 'delighted' that the applicant was farming the land, she objected very strongly to any dwelling, temporary or otherwise, without the RES criteria being fulfilled.

34. This issue was considered by the Minister at a meeting on 5th March, 2008, attended by the applicant and two officers of the Department. The Minister expressed the view that the offer was a good one. He inquired as to the cost of erecting the proposed temporary building and why the applicant felt she could not take up the offer. The applicant did not at that stage know the cost likely to be incurred in the temporary dwelling but could not take up the offer as there was no certainty that it would be honoured for the full 8 years, i.e. she would have no security of tenure. The Environment department had confirmed that she needed a dwelling on site and this had been endorsed by RES. Even though the cottage was opposite the entrance she considered it to be too far from the proposed main farm building. The minutes of the meeting show that the Minister, after due consideration, confirmed that the applicant would be allowed to have a temporary dwelling on her site but it must be a truly temporary structure, i.e. constructed on pads which must be removed should the enterprise fail with no concrete base which would be viewed as a permanent structure. The minutes note that it was the applicant's request for a truly temporary structure that justified the Minister's ruling in her favour and not instead advising that the offer from the appellant should be pursued.

The permission

35. The permission, which is the subject of this appeal, was issued on 16th May. 2008. and was for "*construct farm infrastructure, orchard, field entrance improvements and temporary timber accommodation on Field 1566 to be carried out at the site*". We set out the relevant conditions with their respective reasons below:-

"'Condition 1

The temporary dwelling hereby approved (which shall be constructed on removable base pads) shall be for a period of 6 years from the date of this permission. If by that time the required gross margins from the agricultural practices being undertaken on site have not been achieved, then the dwelling shall be removed and the land reinstated to its previous condition in

accordance with a scheme of works to be submitted to and approved in writing by the Planning and Environment Department before the expiry date. The approved reinstatement scheme shall be implemented in full as soon after the expiry date as is reasonably practicable.

Reason 1

The temporary building is unsuitable to form part of the permanent development of the area and to enable the Planning and Environment Department to give further consideration to the building's retention at the expiration of this permission having regard to the circumstances existing at the time in accordance with the requirements of Policy C17 of the Adopted Island Plan 2002.

Condition 2

Pursuant to Condition 1 above, if the required earnings have been achieved within 6 years, then the gross margins must be maintained for a further 2 years from a date to be agreed in writing with the Planning and Environment Department. Should the required earnings be achieved for 3 consecutive years to the satisfaction of the Planning and Environment Department, then the temporary condition will be removed.

Reason 2

For the avoidance of doubt and to enable the Planning and Environment Department to maintain control over the development in accordance with the requirements of Policy C17 of the Adopted Island Plan 2002.

Condition 3

The audited accounts from the agricultural business shall on an annual basis be submitted to the Planning and Environment Department for information and monitoring. Prior to the development commencing, a date for the annual submission shall be agreed in writing by the Minister for Planning and Environment.

Reason 3

For the avoidance of doubt and to enable the Planning and Environment Department to maintain control over the development in accordance with the requirements of Policy C17 of the adopted Island Plan 2002.

Condition 4

This permission shall inure for the benefit of Jenni Riggall only and shall not inure for the benefit of the land. In the event of the applicant ceasing to occupy the site, the dwelling shall be removed and the land shall not be used for any purpose other than the lawful use that existed prior to the determination of the application.

Reason 4

This permission is only granted in view of the exceptional circumstances of the applicant in accordance with the requirements of Policy C17 of the Adopted Island Plan 2002.

Condition 9

The occupation of the dwelling hereby approved shall be limited to a person solely or mainly employed or last employed in agriculture, as defined in Article 1 of the Planning and Building (Jersey) Law 2002, or a dependent of such a person residing with him or her, unless otherwise agreed in writing with the Minister for Planning and Environment.

Reason 9

There is a presumption against residential development in the countryside unless it can be shown to be essential to meet a desirable agricultural need. The dwelling has been approved to meet such a need and it is necessary to restrict occupancy to ensure that the new dwelling remains available to meet agricultural needs in the future in accordance with the requirements of Policy C17 of the Adopted Island Plan 2002."

The Solicitor General accepted that the conditions needed some clarification (which we deal with below) but the clear intention was that the permission for the farm infrastructure and outbuildings was permanent and inured for the benefit of the land whilst the permission for the dwelling was temporary, was personal to the applicant and did not inure for the benefit of the land. Conditions 1 and 2 together allowed the temporary building for up to 8 years.

36. The appellant appealed against that part of the permission granting consent to a temporary dwelling and, with the leave of the Court granted on 12th September, 2008, to the size of the proposed farm outbuilding.

Legal test

37. An appeal under chapter 2 of the Planning Law can only be made on the ground that the action taken by or on behalf of the Minister was unreasonable having regard to all the circumstances of the case. The Court cannot substitute its own decision. It must come to its own view of the merits in order to determine whether the decision appealed against is not only mistaken but also unreasonable before it can intervene (see Token Limited v Planning and Environment Committee [2001] JLR 698). There is a margin of appreciation before a decision which the Court thinks to be mistaken becomes so wrong that it is, in the view of the Court, unreasonable (Sunier v Planning and Environment Committee [2003] JLR N 49).

38. The Solicitor General reminded us of the following:-

(i) The Minister's discretion is not fettered by previous decisions. Although consistency is important, the Minister may adopt a different approach if that is reasonable (Caesar Investments Limited v Planning and Environment Committee [2003] JLR 566.

(ii) The Minister, in determining an application, must take into account all material considerations (Article 19(1) of the Planning Law), but the weight to be attributed to such considerations is a matter for him (Bolton Metropolitan Borough Council v Secretary for the Environment (1991) 61 P. & C.R. 343).

(iii) The decision maker need not adhere slavishly to policy as to do so would be in breach of the requirements of Article 19(1) of the Planning Law which requires the Minister ***"to take into account all material considerations"***. This is amplified by the provisions of Article 19(2) and (3) whereby in general the Minister shall grant planning permission that is in accordance with the Island Plan but should not grant planning permission that is inconsistent with the Island Plan unless satisfied that there is sufficient justification for doing so.

(iv) The precise meaning to be given to a provision of planning policy is primarily a question for the Minister, as long as the meaning is one that the policy is legally capable of bearing and is not a perverse meaning (R v Derbyshire C.C. ex parte Woods (1997) JPL 958).

(v) The Minister needs to be satisfied that he has available the information necessary to reach a conclusion on the issues before it (Secretary of State for Education and Science v Tameside MBC (1977) AC 1014 at page 1065.

Appellant's submissions

39. The appellant's objections stem not so much from her private interests as adjoining occupier (her property being some distance from field 1566), but from the interests of the Island as a whole. She submitted that

this was a permission for a permanent development of a dwelling and unnecessarily large farm buildings in the Countryside Zone, contrary to Policies C6, C16 and C17 by someone who is not a *bona fide* agriculturalist under the RES criteria based upon an unproven but optimistic business plan. The dwelling would be permanent because, although described as temporary, this was based upon the period of occupancy not the structural nature of the building. In reality, it would never be demolished. If the criteria were not met, the applicant would resist enforcement of any demolition notice over what would then be her home, relying on her rights to home and family life under Article 8 of the Convention. She had understood from the Agricultural Section of the Environment Department that this had been tested in the courts in relation to farm buildings and found to be against farmers Convention rights.

40. Her submissions can be summarised as follows:-

(i) The Minister failed to take full account of Policies C6, C16 and C17 of the Island Plan.

(ii) The Minister failed to give proper consideration to the appellant's offer of accommodation adjacent to the site which negated the need for a dwelling to be built.

(iii) In determining the application, the Minister failed to take into account the requirements of the RES strategy under which only *bona fide* agriculturalists can be considered under the Island Plan under development control regulations.

(iv) The Minister gave disproportionate consideration to the applicant's unproven commitment to become a *bona fide* agriculturalist and to the applicant's questionably achievable and unproven business plan.

(v) The Minister failed to take due cognisance of the decisions of his predecessor Planning Committees which refused two planning applications for developments which were materially the same.

(vi) The Minister granted permission for a dwelling which he described as being temporary, the description of temporary being based on the period of occupancy, not on the structure of the building.

(vii) The Minister modified and personalised the policies of the Island Plan and the RES strategy to enable an individual, not wholly or mainly employed in agriculture, to build a dwelling and extensive outbuildings on agricultural land in order that she could follow a chosen lifestyle.

(viii) The farm outbuilding went far beyond what was 'essential' for the current farm undertaking.

(ix) The decision of the Minister was predetermined.

Farm outbuildings

41. We take the appellant's appeal in relation to the farm outbuildings first. In the report of the Planning and Environment Department prepared for the purposes of the 2006 Application, it noted that as that was an in principle application, there is no indication of scale in relation to the proposed farm outbuildings. Despite this, the Department assumed that the livestock would be housed in agricultural structures of a similar scale found across the Island and indeed as could be seen in an adjacent field to the west, which contained a number of chicken sheds. In its view, similar structures would not harm the appearance of the area in accordance with Policy C6.

42. The 2007 Application with its enhanced business plan provided for a U shaped stable building, some 33 metres long, 20 metres wide and just under 4 metres high. It is certainly a larger building than the Department appear to have envisaged in its report on the 2006 Application.

43. The difficulty for the appellant is that the decision under the 2006 Application to approve in principle stable type animal infrastructure has not been appealed. It was this decision that opened the door to the establishment of a farm on the site and which brought with it the inevitable impact such an undertaking would have on the Countryside Zone. Once that decision is made, then, as advised by the RES Group, stables not just for shelter for the livestock but for lambing, incubating, processing and so on becomes essential. The extent to which the proposed buildings are essential is very much a matter of expert advice. The Minister took advice, in particular from the RES group which in turn consulted the States Vet. The applicant had also taken expert advice on the farm buildings. The advice of the RES group in relation to the farm building is set out in its report as follows:-

> *"'The proposed layout of Miss Riggall's farm infrastructure is of a sufficient size to meet the husbandry and welfare requirements of the livestock enterprises in her current business plan. In particular the open fronted sheep pen will have a floor area of 137m^2 sufficient to accommodate 80 pregnant ewes together with the provision of individual lambing pens and sheep handling facilities. The stable type accommodation (10 units) will be used for the storage of animal feed stuffs, as an office and storage of veterinary supplies, a meat storage area, an apple juice storage area, a poultry plucking and processing area and for chick incubation, chick rearing and meat bird accommodation with 2 units for machinery storage. The area and infrastructure of the buildings proposed for Field Farm, St Lawrence would seem to be designed to meet the requirements of Miss Riggall's business plan and should provide a good working and animal welfare friendly environment2".*

44. The appellant did not oppose the principle of farm buildings, but in her view the applicant's farm undertaking could operate, certainly in the short term, with much reduced and simpler buildings. She accepted however that she is not an agricultural expert and she adduced no expert evidence to support her view.

45. Whatever view the Court may have as to the size of the farm outbuildings, it has no grounds upon which it can find that the decision of the Minister as to what is essential, taken on expert advice, was mistaken let alone unreasonable. To intervene in the decision of the Minister would be to impose its own inexpert view of what is essential for this farm undertaking.

The dwelling

46. We deal with the arguments of the appellant in the following manner and order.

Inconsistency

47. The Solicitor General submitted that the Minister's approach to this part of the application was not in fact inconsistent with his refusal to grant permission for a dwelling under the 2006 Application or with the earlier decisions of the Planning Committee. Those had all been concerned with applications for permanent buildings. Policy C17 (New Dwellings for Agricultural Workers) was by its terms concerned with 'new and permanent buildings' (our emphasis).

48. The proposal for the first time put forward by the applicant in 2007 was for temporary, not permanent, accommodation, in accordance with UK practice. We were informed by the Solicitor General that under National Policy, Guidance No. 7, temporary accommodation was permitted for a period up to 2 years to enable new entrants to the farming industry to establish themselves but was limited, as we understand it, to mobile homes, caravans or similar that could be taken on and off the premises.

49. There is no such policy in Jersey. We were informed that the Minister did not approve of caravans or the like on such a site and certainly not for a period which, under the criteria laid down, could extend to 8 years. Instead, he approved a very small (7.7 square metres) 4 roomed timber clad single storey building, that was in keeping with the farm outbuilding, for a period of up to eight years, and which could be removed if the criteria were not met.

50. We find there is no inconsistency in the Minister's decision. The purpose of granting a temporary personal permission was precisely to ensure that if *bona fide* status was not achieved in accordance with the business plan, no permanent dwelling would be left on site in contravention of the planning policies. The material considerations which the Minister was required to take into account included both those policies which restricted such development in the Countryside Zone and the policy (as set out in the RES report approved by the States) to diversify the rural economy and encourage new entrants into the industry. A further material consideration was that he had already given permission in principle (not appealed) for the establishment of farm infrastructure and the use of a personal permission for a temporary dwelling was a perfectly reasonable way of giving the applicant the opportunity of achieving *bona fide* status and protecting

the Countryside Zone if she failed to do so.

Temporary Status

51. The appellant contended that a truly temporary dwelling would be one that had a chassis or wheels which could be easily moved on and off site. In our view the word "temporary" is not descriptive of the dwelling but of the time it will be there. The Concise Oxford English Dictionary defines "temporary "as meaning "for a limited period". Thus the permission is for a dwelling that will be on the site for a limited period of time. An immobile structure can be temporary in that it can be erected on site and removed after a period of time and a mobile home can be on site permanently. We accept that a mobile home is easier to remove than a structure but in the light of the period of time involved here (potentially eight years) we see nothing unreasonable in the Minister preferring a minimal structure, in keeping with the farm outbuilding, to a mobile home.

Enforceability of Conditions

52. Clearly the Minister granted the application for a temporary dwelling on the basis that the conditions imposed to ensure that temporary status were enforceable. If there is case law, questioning the enforceability of these conditions (as believed by the appellant) then grounds might exist for our finding that the Minister's decision was mistaken. However, the appellant has not cited any such case law and the Solicitor General has not drawn any such case law to our attention. He did cite to us the case of R (on the application of Gosbee) v The Secretary of State (2003) EWHC 77 Admin in which the claimants had obtained planning permission for a dwelling in an orchard adjoining their property, on condition that their property was demolished within one month of the date of occupation of the new dwelling. This was pursuant to a policy which permitted new dwellings on the same site as its replacement, provided there is no increase in the number of dwelling units. The claimants then sold off the orchard with the benefit of the planning permission, remaining in their property, the demolition of which they then sought to resist. One of the arguments put forward was that the demolition of their home constituted a breach of their Convention rights. Article 8 of the Convention is in the following terms:-

> ***"1. Everyone has the right to respect for his private and family life, his home and his correspondence***
>
> ***2. there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".***

It was common ground that the requirement imposed upon the claimants to demolish their house involved

an interference with their Article 8(1) rights, but the question was whether that interference could be justified under Article 8(2) as a proportionate response to protect a legitimate public interest:- in that case the environmental interest of the public. In determining whether the interference was proportionate the Court adopted the twofold test adumbrated by Dyson LJ in the case of R (Samaroo) v Secretary of State for the Home Department (2001) UKHRR 1150, when in the course of giving judgment, his Lordship said this at paragraph 19:-

"…. that in deciding what proportionality requires in any particular case, the issue will usually have to be considered in two distinct stages. At the first stage the question is: can the objective of the measure be achieved by means which are less interfering of an individual's rights…

20. At the second stage it is assumed that the means employed to achieve a legitimate aim are necessary in the sense that they are the least intrusive Convention rights that can be devised in order to achieve the aim. The question at this stage of the consideration is: does the measure have an excessive or disproportionate effect on the interests of affected persons?"

53. In Gosbee, it was contended that the fact that the claimants had brought their misfortune upon themselves was an irrelevant consideration, but as Elias J pointed out in his judgment:-

"I do not accept that. As Mr Maurici pointed out, there are a number of cases where the European Court of Human Rights has taken the view that it is a material fact in a proportionality analysis that the claimant has deliberately chosen to take a risk in the knowledge that his rights might be adversely affected: see the cases referred to in the book, Human Rights Practice by Emmerson and Simor at paras 15056 and 15057. The point is not of course to be decisive, but it is, in my view, capable of being a material consideration, as the inspector was fully entitled to take it into account".

54. Paragraphs 15.056 and 15.057 of Human Rights Practice by Emmerson and Simor are as follows:–

"15.056 Knowledge of possible restrictions prior to purchase. Where the individual was able to foresee the relevant state action, (as, for example, where an individual buys property that is subject to specific planning controls), that knowledge will prejudice any claim that the interference suffered is disproportionate. In Andrews v United Kingdom, one of a series of cases relating to the effect of the Firearms Amendment legislation on handgun retailers and other similar groups, the mere existence of industry regulation was one of the factors taken into account by the Court in upholding the legislation. The Court noted that the applicant 'has at all times had to

operate within the framework of legislative control which has existed in the United Kingdom…. [he therefore] had not legitimate expectation that the use of particular types of firearm, including handguns, would continue to be lawful.

15.057 Development/business risks. The Court and Commission have been particularly unsympathetic towards those who have taken development or business risks and who have subsequently found the value of their investments affected by state action or inaction".

55. Turning to the facts of this case, the following observations can be made:–

(i) Current planning policy would not normally permit a permanent dwelling on the site.

(ii) It was the applicant who suggested and applied for temporary accommodation.

(iii) The imposition of the conditions contained in the permission is reasonable to ensure that the dwelling is indeed temporary.

(iv) In proceeding with the construction of the temporary dwelling (which will apparently cost some £70,000) the applicant does so in the full knowledge of the risk that if she fails to meet the criteria set down by the Minister and accepted by her, the dwelling will have to be removed and the land reinstated.

(v) Demolition of the dwelling in those circumstances (i.e. where the criteria had not been met) would be in conformity with existing planning policies which do not normally permit permanent dwellings in the Countryside Zone.

56. Whilst it is not possible to foresee the circumstances under which the enforcement of these conditions might in the future be challenged, we have no grounds to believe that they would not be enforceable in accordance with their terms. Even though the demolition of what would then be her home would be an interference with her Article 8(1) rights, it would, in our view, be justified under Article 8(2), as a proportionate response to protect the public interest – as in Gosbee, the environmental interest of the public:- in circumstances where the applicant has deliberately chosen to take the risk of constructing a temporary dwelling in the knowledge that her right to a home will be adversely affected if she fails to meet the criteria.

Alternative Accommodation

57. The reported rejection by the applicant of the appellant's offer of alternative accommodation was clearly of concern to the Minister as the minutes of the public meeting held on 13th February, 2008, demonstrate. His department obtained clarification from the appellant as to the terms of the offer and the matter was considered at the meeting held with the applicant on 5th March, 2008. The Minister heard the applicant's explanation and the views of his officers and, after due consideration, accepted that explanation.

58. This Court might not have accepted that explanation but that does not entitle us to quash the Minister's decision. As Bailhache, Bailiff put it in Token:-

> ***"'The Solicitor General submitted that the decision in Fairview Farm did not entitle the Court to find that the Committee's decision was reasonable but quash it because the Court had reached an equally reasonable but different decision. We agree. The Court might think that the Committee's decision is mistaken, but that does not of itself entitle the Court to substitute its own decision. The Court must form its own view of the merits, but it must reach the conclusion that the Committee's decision is not only mistaken but also unreasonable before it can intervene".***

59. We regard the decision as to whether or not to accept the explanation as finely balanced and it would have been reasonable to decide either way. We do not consider that there are grounds for regarding the Minister's decision to accept the explanation as mistaken, let alone unreasonable.

Commitment

60. In paragraph 34 of his affidavit Mr Gladwin, Senior Planner of Planning and Building Services, stated that the application for the temporary dwelling was approved because the Minister regarded this case as an exceptional one due to the applicant's obvious commitment and genuine long running desire to become a *bona fide* agriculturist. It was clear to the Minister that this was no short term opportunist attempt to have a dwelling in the Countryside Zone. This was reflected in Reason 4 of the permission which makes it clear that the personal permission for a temporary dwelling was granted because of "*the exceptional circumstances of the applicant*".

61. The appellant questioned the applicant's commitment. Her true objective, she contended, was to build a home in the Countryside Zone in order to follow a chosen lifestyle and not to become a *bona fide* agriculturalist. This is a matter of judgement and without setting out the appellant's detailed submissions on this point, we are satisfied that the Minister had sufficient grounds to conclude that the applicant was committed and, importantly, his department and the RES Group supported this view. On the strength of the consent in principle to establish the farm infrastructure the applicant has sold her home and purchased the site. She informed us that she will be investing some £50,000 in the farm outbuildings and some £20,000 on bringing in services. She will be investing some £70,000 on the temporary dwelling on the basis of a

personal temporary permission in the full knowledge that if she fails to achieve *bona fide* status it will have to be demolished. In our view the Minister was entitled to take her circumstances into account as a material consideration in the way that he did.

Planning Policies and RES Strategy

62. We do not accept the appellant's submission that the Minister failed to take into account planning policies C6, 16 and 17 and the requirements of the RES strategy. They clearly informed his refusal to grant permission for a permanent dwelling under the 2006 Application. He made express reference to them at the public meeting held in respect of the 2007 Application. The advice of the RES Group, whilst supporting the application for a temporary dwelling, reiterated its strategy and that advice was expressly referred to by the Minister at the meeting held on 5th March, 2008, when the decision was made .It was because of these policies and requirements that the Minister was only prepared to grant a personal temporary permission.

Predetermination

63. The appellant submitted that the Minister had decided to allow temporary accommodation on the site prior to the 2007 Application being submitted and considered. She relied principally on the Department's letter of 4th September, 2007, in which the applicant was informed that the Minister had agreed to support the erection of temporary habitable accommodation for her full-time occupation, provided that it was a well designed structure. She also relied on the following extract from the minutes of the public meeting held on 16th February, 2007:-

> *"The Minister went on to say that whilst he would make no promises he had no doubt as to Miss Riggall's dedication and commitment to agriculture and he believed that she deserved to be given a chance to realise her ambitions. The Minister stated that he had been impressed by the level of support she had received from relevant professional bodies".*

We have not taken into account other matters referred to by the appellant which were hearsay.

64. As submitted by the Solicitor General, there is a difference between predisposition, which is consistent with a preparedness to consider and weigh relevant factors in reaching a final decision and predetermination, which involves a mind which is closed to the consideration and weighing of relevant factors It is for the appellant to demonstrate that, in all the circumstances, a fair-minded and informed observer, having regard to the identified facts, would conclude that there was a real possibility of bias or predetermination on the part of the Minister (See Porter v Magill (2002) 2 AC 357. In Condron v National Assembly for Wales (2006) EWCA Civ. 1573, the English Court of appeal made reference (Paragraph 43) to a number of English cases drawing the distinction between the legitimate predisposition towards a particular outcome and an illegitimate predetermination of the outcome.

65. In Token, the Planning Committee gave two indications in relation to applications before it. Bailhache, Bailiff said this:-

> ***"One might ask whether the Committee should have given this indication. It is well established that the Committee must, when considering an application, take into account all material circumstances, including, as appropriate the views of the parochial and statutory authorities and any objections which might be made by neighbours or other interested parties. At the time when the indication was given, none of those circumstances could have been taken into consideration. On the other hand, it seems to us that sensible administration would be paralysed if the Committee were to be precluded from giving any indication as to the likelihood of development permission being forthcoming by the fear that it would be held strictly to the last letter of its indication. Equally, it would be very unfair upon neighbours and others with a legitimate interest in the application if an indication were to be construed as decisive of a subsequent formal application. An indication of this kind is merely a preliminary view or an amber light".***

66. We agree that sensible administration of the planning process must permit the Minister to indicate his preliminary views on proposed applications whilst remaining prepared to consider and weigh up relevant factors in reaching his final decision. The applicant had written asking if she could be granted temporary accommodation. It was helpful of the Minister to indicate whether he would support such an application. That is not to say, and the applicant could not have expected, that his mind would thereafter be closed to considering objections or other material considerations that arose at the relevant time.

67. It is clear to us that the Minister's mind was not closed. At the very outset of the public hearing on 15th February, 2008, he informed all those present that he had given an indication to the applicant that he would support the erection of temporary habitable accommodation. He then proceeded to hear those in favour and against the application, and having taken all of the considerations into account, indicated that he remained minded in principle to support the application, subject to certain issues. In particular, he wished to consider further the issue of the offer of accommodation. That matter was the subject of a further meeting on 5th March, 2008, which we have described above.

68. This is a case of legitimate predisposition not illegitimate predetermination.

Conclusion

69. In conclusion we are not satisfied that the actions of the Minister in relation to the dwelling were unreasonable in all the circumstances of the case and, in the light of our decision on the size of the farm

outbuilding, the appeal fails.

70. We recognise the sincerity of the views held by the appellant and her strongly felt desire to protect the Countryside Zone. Her written submissions were well researched and would have done credit to an experienced lawyer. She presented her case with clarity and great courtesy. The decisions facing the Minister were difficult, as he himself acknowledged, and opinions on his actions will differ. However as the Solicitor General pointed out, the Court is not there to substitute its own views. Rather it must be satisfied that the actions of the Minister were unreasonable and we are not satisfied that they were.

Conditions

71. It became clear during the course of the appeal that the conditions attaching to the permit need clarification. At this stage, we set out our observations on those conditions upon which we would wish to hear from the parties when this judgment is handed down, with a view to our making an order under Article 114(8)(b) of the Planning Law:-

(i) Condition 1: In our view, this condition should set out the 'gross margins'.

(ii) Condition 2: This introduces a further undefined term 'required earnings'. We assume that it means the same as 'gross margins'. It is not clear what happens if the Planning and Environment Department and the applicant cannot agree on the date. We presume the Planning and Environment Department can ultimately determine the date. The condition is silent as to what happens if the three consecutive year requirement is not achieved. We assume the dwelling would then be removed.

(iii) Condition 4: It should be made clear that is only that part of the permission relating to the temporary dwelling which is personal to the applicant and shall not inure for the benefit of the land.

(iv) Condition 9 needs to be amended to permit the applicant to occupy the temporary dwelling.

72. Finally as a result of this appeal the applicant has been delayed in the implementation of her business plan. Fairness dictates that the time periods in conditions 1 and 2 should be reset.

Authorities

Planning and Building (Jersey) Law 2002.

Rural Economic Strategy.

Token Limited v Planning and Environment Committee [2001] JLR 698.

Sunier v Planning and Environment Committee [2003] JLR N 49.

Caesar Investments Limited v Planning and Environment Committee [2003] JLR 566.

Bolton Metropolitan Borough Council v Secretary for the Environment (1991) 61 P. & C.R. 343).

R v Derbyshire C.C. ex parte Woods (1997) JPL 958.

Secretary of State for Education and Science v Tameside MBC (1977) AC 1014.

R (on the application of Gosbee) v The Secretary of State (2003) EWHC 77.

R (Samaroo) v Secretary of State for the Home Department (2001) UKHRR 1150.

Human Rights Practice by Emmerson and Simor.

Porter v Magill (2002) 2 AC 357.

Condron v National Assembly for Wales (2006) EWCA Civ. 1573.

APPENDIX 4

The Chronology of the Planning and Building (Jersey) Law 2002

December 1996	Draft Law Drafting Brief issued for consultation, detailing proposed changes to Island Planning (Jersey) Law 1964
August 1998	Post-consultation Drafting Brief
November 1998	The P&E Committee decided to broaden the scope of the Law Drafting Brief by combining the Public Health (Control of Buildings) Law 1956 and the Island Planning (Jersey) Law 1964 in a single piece of legislation
November 1999	Draft Law published for consultation
20th July 2000	Act of P&E agreeing to introduce a **Planning Commission** to consider planning appeals
18th January 2001	Act of P&E noting that appropriate resources and remuneration were of utmost importance prior to the introduction of the Law, including the formation of the Appeals Commission
27th March 2001	P.50/2001: **Draft Planning and Building (Jersey) Law 200-** lodged *au Greffe*. Comments: Finance and Economics (3rd April) Amendments: (1st) Deputy J.L. Dorey (10th April) (2nd) P&E (24th April) (3rd) Deputy C.J. Scott Warren (1st May) **(to introduce Third Party Appeals)** (4th) Deputy P.N. Troy (1st May)
6th June 2001	States debate on Draft Law **Amendment 3 "Third Party Appeals" carried**
17th April 2002	Third Reading of Law
November 2002	Registration of Law in the Royal Court
November 2002	P.206/2002 **Repeal of Third Party Appeals (P&E) (withdrawn under the 12 month rule).**Discussions subsequently held with Deputies Scott Warren and Dorey regarding limited Third Party Planning Appeals provision
Approved: 15th December 2004	First Amendment P.210/2004: **"Reinstatement" of Royal Court as the appellate body instead of P&B Appeals Commission**
Approved: 20th April 2005	Second Amendment P.47/2005: To amend Law from reviewing cases *de novo* under P&B Appeals Commission to **use of 'reasonableness' test in Royal Court**. Additional amendment to introduce 50m limit for third party qualification
Approved: 19th July 2005	Third Amendment P.128/2005: **Establishing Planning Applications Panel** (consequence of move to Ministerial government)
Approved: 23rd May 2006	Draft Planning and Building (Jersey) Law 2002 (Appointed Day) Act 200-

1st July 2006	1st Appointed Day **Brought into force whole Law exception provisions for Third Party Appeals and dangerous structures.** N.B. Relevant amendments to Royal Court Rules brought in at same time
Approved: 6th December 2006	Draft Planning and Building (Jersey) Law 2002 (Appointed Day) (No. 2) Act 200- (P.156/2006)
31st March 2007	2nd Appointed Day **Brought into force provisions for Third Party Appeals** and Dangerous Structures N.B. Relevant amendments to Royal Court Rules brought in at same time
8th May 2007	First Third Party Appeal filed

APPENDIX 5

Planning and Building (Jersey) Law 2002 Chronology – Discursive Account

Preparations for the replacement of the Island Planning (Jersey) Law 1964 began in earnest in 1996, when negotiations to secure law drafting time commenced and the first substantive law drafting brief was published by the Planning and Environment Committee for the purposes of public consultation.

In subsequent years the scope of the new draft Law was broadened to encompass the provisions of the Public Health (Control of Buildings) (Jersey) Law 1956 and draft legislation to control dangerous structures. Further consultation with States members and with the public was agreed in December 1999 and was progressed subsequently. Options for a new planning appeals process was one of the matters considered during this period and the Planning and Environment Committee, in its Draft Planning and Building (Jersey) Law 200-, proposed the setting up of a Planning Appeals Commission to consider such appeals (albeit noting that judicial review of the Commission's ruling would remain an option for any legitimate complainant). It was envisaged that the Commission would include a full time, salaried Commissioner and a panel of 5 Deputy Commissioners, al professionally qualified and conversant with the constraints under which the Committee operated.[1]

At that time the Committee declined to pursue the implementation of 3rd Party Appeals in view of problems reportedly experienced in other jurisdictions (i.e. delays, vexatious appeals, additional workload and costs). Instead the introduction of open application meetings was proposed as a way of informing the public of the applications process and promoting openness and transparent decision-making.

Scope to deal with certain appeal cases via written submissions only and/or, in more straightforward cases, by way of hearings conducted by a single Commissioner was identified. The Committee had noted in 2000 that a majority of applications were determined under delegated powers and that such cases demanded a proportionate or 'fair and efficient' appeals system.[2]

Compliance costs arising from the new draft Law were assessed in the latter part of 2000. In December of that year the Committee was formally advised that 'an increase in funds would be required in order to implement many of the new functions contained in the revised appeal procedure'. There was nevertheless a corresponding expectation of financial savings for the Royal Court as fewer cases might need to be brought before it.[3] Further advice on the resource implications was sought by the Committee and one month later specific estimated resource implications were provided. This caused the Committee to conclude that 'appropriate resources and remuneration were of utmost importance prior to the introduction of that Law'.[4]

On 27th March 2001 the draft Law was lodged 'au Greffe' (P.50/2001 refers), with comments from the then Finance and Economics and Human Resources Committees. The former had noted that the annual ongoing cost of £632,000 was –

> '- *a significant sum which ha[d] not been provided for in the 2002 Cash Limits which were agreed by the States in 2000.'*

It declined to support the necessary increase in cash limits. Instead it suggested that the Committee should bid for the necessary funding in the context of the agreed cash limit for 2003 and, further, that the draft Law be referred to the then ongoing Committee of Inquiry into Building Costs with a view to identifying possible savings. The response of the latter Committee was also circumspect. It stated –

> '*If the States agree the proposals, any staffing requirements would only be considered in the light of the States policy on manpower and would not normally be approved unless compensatory savings are made elsewhere.'*

Debate on **P.50/2001** commenced on 15th May 2001. Several amendments to the draft Law had been lodged. None of these had a particular bearing on the proposed appeals process, with the notable exception of the 3rd Amendment, which had been lodged by Deputy C.J. Scott Warren of St. Saviour. This was subsequently adopte

by the States on 6th June 2001.

On 17th April 2002 the States adopted the Planning and Building (Jersey) Law 200- in 3rd reading. It was subsequently registered in the Royal Court 7 months later.

One week after the adoption in 3rd reading, the Committee lodged an amendment to the Law (**P.56/2002** refers) to amend the way in which the Planning and Building Appeals Commission would be constituted. In the accompanying report the Committee referred to a need for a ‘nucleus of full-time, salaried commissioners, but also the ability to appoint part-time commissioners to hear cases as the need arises’. It was envisaged that remuneration for Commissioners would be a matter for the States, so as to ensure an appropriate degree of independence. With this in mind, and having acknowledged the previous decision of the States to embrace the concept of 3rd party appeals, the Committee set out the financial and manpower implications of its proposals as follows –

Financial implications for the States/Third Party Appeals

Estimated increased costs of Independent Appeals Commission

	First party appeals only	***With third party appeals***
Manpower		
Commissioners	*3*	*5*
Temporary Commissioners	*2.5*	*5*
Registrar/administration	*3*	*5*
Overall costs	*£565,000(A)*	*£880,000(B)*

Estimated increased costs to Planning and Environment Committee

	First party appeals only	***With third party appeals***
Manpower		
Planners(Appeals Section)	*2*	*5*
Clerks/secretaries	*1*	*3*
Overall costs	*£140,000(A)*	*£364,000(B)*

Estimated additional cost of Third Party over First Party appeals = £539,000

In its comment to **P.56/2002**, the Finance and Economics Committee expressed grave concern that the proposition had been lodged at a time of budgetary deficits and without commensurate provision having been made for the Commission in the 2003 cash limits. It recommended that the States should not approve the amendment until such a time as the States had determined that the Commission represented a sufficient funding priority for funding as part of a future Resource Plan. The Human Resources department also commented, stating that any decision by the States to agree the proposals would be interpreted as support for the creation of 11 full-time equivalent posts.

Projet **P.56/2002** was subsequently withdrawn by the Planning and Environment Committee in accordance with the then Standing Order 22(3) and on 5th November 2002, in a pronounced change of tack, the Committee lodged **P.206/2002** entitled, ‘Planning and Building (Jersey) Law 2002 – removal of 3rd party appeals’. The proposition was deemed withdrawn after 12 months, having never been debated.

On 17th February the Committee resigned in the face of a vote of no confidence concerning a matter not related to the introduction of the new Planning and Building Law. The Committee was reconstituted under the presidency of Senator P.F.C. Ozouf. One of its first acts was to consider the matter of 3rd party appeals. It formed the view that there were sound philosophical reasons for maintaining opposition to Third Party Appeals and noted that additional funding for the establishment and operation of such an appeals system had not been forthcoming through the Fundamental Spending Review process. Therefore, the Sub-Committee concluded that it should look

beyond an 'in principle' decision and move to resolve the matter permanently in order that the Law could be brought into force on 1st January 2005. It instructed officers to pursue an amendment to the Law to deliver –

(a) the formal removal of Third Party Appeals,

(b) the introduction of a mediation procedure, and

(c) the retention of the Royal Court as the appellate body.[5]

In the intervening period the Committee faced the controversy of a major infill application in the parish of Trinity. An independent report into the circumstances of that application made a number of recommendations, one of which was that the new Law should be brought into force as soon as possible. Later that year the Committee resigned and was again reconstituted under the presidency of Senator Ozouf, following which it pressed forward with its proposal to amend the appeals procedure.

On 23rd November 2004 the Committee lodged the Draft Planning and Building (Amendment) (Jersey) Law 200-, which would reinstate the Royal Court as the appellate body and thereby maintain the Royal Court appeals system. The proposition **(P.210/2004)** was debated on 15th December of that year and was adopted by 32 votes to 6, with no abstentions.

In January 2005, the Environment and Public Services Committee received a report from the Acting Corporate Resources Director regarding the resource allocation process for 2006 to 2008[6]. The Committee recognised that, because of the service reductions and efficiency savings they needed to make, there would not be the resources to implement all aspects of the proposed Planning and Building Law 2002.

The matter of Third Party Appeals and their likely cost implication became a subject for debate once again when the Committee lodged the Draft Planning and Building (Amendment No. 2) (Jersey) Law 200- 'au Greffe' on 15th March 2005 (**P.47/2005** refers). The amendment replaced the Planning and Building Appeals Commission with the Royal Court as the appellate body under Article 114, and was lodged in accordance with a States decision on the matter in December of the previous year. Deputy C.J. Scott Warren lodged a further amendment to **P.47/2005** on 5th April 2005. If approved, the Deputy's amendments would limit the right to appeal to those who lived, or had an interest in property that was, within 50 metres of the site where planning permission had been given. The intention was that this would reduce the number of appeals made against the grant of planning permission, and would therefore enable the third party provision to be enacted within the Planning and Building (Jersey) Law 2002.

But it was the cost of running any kind of Third Party Appeal system which remained a cause for concern, and the Finance and Economics Committee presented a comment to that effect on 19th April 2005. It stated –

> *'The amendment does not detail its financial and manpower consequences, whilst they may be less than the full original Third Party Appeals Process, the costs, whilst unknown at this stage, will still be significant. There is no allocation within cash limits to fund the Third Party Appeals Process, no matter what form it takes.'*

The Environment and Public Services Committee did not feel able to support the Deputy's amendment either. Following its meeting on 18th April 2005 (Minute A2 refers), the Committee submitted a comment the following day, saying that, unlike its predecessors, its members supported the principle of Third Party Appeals in some form. However, since the States approval in December 2004 of the amendment to the Law replacing the Planning and Building Appeals Commission with the Royal Court as the appellate body, earlier assessments of financial and manpower implications were no longer relevant or appropriate. The Committee felt that the current implications were unclear, and at such short notice, it had not been possible to quantify what they might be. It recalled that the Committee President had given an undertaking to the States that the Committee would conduct consultation on the principle of a limited form of Third Party Appeal and further research on the costs and manpower implications, and considered that the amendment could not be supported in the absence of such research.

The matter was debated on 20th April 2005, when the Planning and Building (Amendment No. 2) (Jersey) Law 200- was adopted by 33 votes to one, and Deputy Scott Warren's amendment was also adopted by 19 votes to 18. The Planning and Building (Amendment No. 2) (Jersey) Law 2005 was registered in the Royal Court on 19th August 2005. The Third Party Appeals system was not included when the Law came into force the following year.

On 13th April 2006, the Minister for Planning and Environment, Senator F.E. Cohen, lodged 'au Greffe' the Draft Planning and Building (Jersey) Law 2002 (Appointed Day) Act 200-. This was adopted by the States by 37 votes to 13 on 23rd May 2006. The Act brought into force the whole Law, with the exception of Chapter 3 of Part 6, Article 114, and certain provisions of Articles 22, 109 and 117 on 1st July 2006. These provisions, which related to Third Party Appeals and the powers to remedy dangerous structures, were not introduced because the Minister stated that there were insufficient resources available to him and the Royal Court to support them, but that they would be introduced as resources permitted.

It was not until 31st March 2007 that the remainder of the Planning and Building (Jersey) Law 2002 was brought into force. The Draft Planning and Building (Jersey) Law 2002 (Appointed Day) (No. 2) Act 200- (**P.156/2006** refers) was lodged au Greffe on 21st November 2006 by the Minister for Planning and Environment and approved by the States on 6th December 2006 by 45 votes to 2, bringing Third Party Appeals into operation on 31st March the following year.

APPENDIX 6

DRAFT PLANNING AND BUILDING (JERSEY) LAW 200- (P.50/2001): THIRD AMENDMENTS

Lodged au Greffe on 1st May 2001
by Deputy C.J. Scott Warren of St. Saviour

STATES OF JERSEY

STATES GREFFE

180 2001 P.50 Amd.(3)

Price code: B

DRAFT PLANNING AND BUILDING (JERSEY) LAW 200- (P.50/2001): THIRD AMENDMENTS

(1) PAGE 67, ARTICLE 11 -

Delete paragraph (1) and substitute the following paragraph -

"(1) The Committee shall by Order prescribe the manner in which -

(a) an application for planning permission shall be publicized or otherwise notified; and

(b) representations may be provided by members of the public.".

Insert after paragraph (3) the following paragraph -

"(4) The Committee shall take into account in determining the application any representations provided by the public under this Article.".

Renumber the subsequent paragraphs accordingly.

(2) PAGE 76, ARTICLE 22 (1) -

Insert, after sub-paragraph (a), the following sub-paragraph -

"(b) to grant planning permission in circumstances in respect of which a right of appeal would lie under Article 114 in respect of that decision;".

Designate the subsequent sub-paragraphs as (c) and (d).

(3) PAGE 140, ARTICLE 106 -

Delete paragraph (2) and substitute the following paragraph -

"(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.".

(4) PAGE 141, ARTICLE 108 -

Delete paragraph (2) and renumber the subsequent paragraphs accordingly.

(5) PAGE 146, NEW ARTICLE 114 -

After Article 113 insert the following Article -

"ARTICLE 114

Persons who may appeal against grant of planning permission

(1) This Article applies to a decision by the Committee to grant planning permission on an application made to it in accordance with Article 9(1), if any person other than the applicant has made a submission to the Committee in respect of the decision prior to the Committee making its decision.

(2) For the purpose of paragraph (1), a person who has made a submission to the Committee includes a highway authority, Committee, or a body or person created by statute that has commented on the application as a result of the Committee's compliance with Article 14, 15, 16 or 17.

(3) A decision to which this Article applies shall not have effect during the period of 28 days immediately after the decision is made.

(4) If during that period a person appeals in accordance with this Article the period shall be extended until either the appeal is withdrawn or is determined.

(5) When the appeal is determined the decision shall have effect, if at all, in accordance with the determination.

(6) The Committee shall serve a copy of the notice informing the applicant of the decision on each other person who made a submission to which paragraph (1) refers.

(7) The copy of the notice must -

(a) be served within 7 days of the decision being made; and

(b) be accompanied by a notice informing the person that the person may appeal against the decision or any part of it (including any condition of the planning permission) within 14 days of the service of the notice,

and that person, if aggrieved by the decision, may appeal to the Commission accordingly.

(8) On the appeal the Commission may -

(a) confirm the decision of the Committee; or

(b) order the Committee to vary its decision or any part of it (including any condition of the planning permission) as the Commission may specify; or

(c) order the Committee to cancel its decision to grant the planning permission.

(9) The Committee shall comply with an order made under paragraph (8)(b) or (c).".

Renumber subsequent Articles and correct any cross references.

DEPUTY C.J. SCOTT WARREN OF ST. SAVIOUR

REPORT

Introduction

The draft Law is, as has been said, a major improvement on the present Law. Greater transparency in decision-making, with open Committee meetings and public inquiries for large-scale developments, is to be commended, and the setting-up of a Planning Appeals Commission is a positive step forward.

My amendments, however, are designed to rectify what I consider to be significant omissions in the area of allowing third parties, who may be affected by a proposed development, to express their concerns, and to have those concerns heard. In the event of an "adverse" Committee decision, my amendments, if approved, would offer the means whereby a third party could have swift access to an independent tribunal, and can therefore be seen as a safety-net.

Under the present Law, an aggrieved neighbour can appeal under the Administrative Decisions (Review) (Jersey) Law 1982, but the outcome is not binding upon the Committee. A third party has no "locus standi" for an appeal to the Royal Court.

If the House approves my amendments, the Committee would serve a copy of the notice informing the applicant of the decision, on all persons who had made a submission in respect of the application. This would be accompanied by a notice to inform these persons that they could appeal against the decision of any part of it within 14 days.

The provision for Third Party Appeal is restricted to decisions on applications which have been the subject of submissions by third parties; such decisions would not take effect for a period of 28 days. In the event of ar appeal, this period could be extended until the appeal is withdrawn or determined. The decision of the Commission would be final and binding upon the Committee, and could reasonably be achieved within the same period of three or four months as is already envisaged within the draft Law for appellants.

My amendments would have minor administrative financial and manpower implications for the States, but I believe these can be justified in order that the right of appeal is extended to all who feel aggrieved by a planning decision. The Commission could rightly dispense with appeals that were without foundation or frivolous, within a short time span.

I see my amendments as a common sense extension of the Planning and Building Law.

Amendment (1):

Article 11, as drafted, empowers the Committee to prescribe the manner in which applications shall be publicised. There is little purpose in this, however, if individuals have no statutory right (as do other bodies under Articles 14-17) to make representations to the Committee.

Equally, when individuals exercise their statutory right to make such a representation, the Committee must have a duty *to consider* that representation before reaching a decision.

Amendment (2):

Any appeal against the grant of planning permission would clearly need to be based on arguments which take the Committee's reasoning into account. This amendment therefore includes the granting of contested applications in the list, in Article 22, of matters on which the Committee has a duty to explain its reasoning.

Amendment (3):

This is a technical amendment, on the Law Draftsman's recommendation, to make it clear that Committees and other bodies making comments under Articles 14-17 will be in the same position, in terms of appeals, as private individuals who have made a representation on the subject of a planning application.

Amendment (4):

This amendment deletes the provision in the draft Law, whereby no appeal can be made against the *granting* of planning permission.

Amendment (5):

This amendment makes it clear that any person who has made a representation in respect of an application must be given notice of the Committee's decision, and a reasonable opportunity to appeal against that decision.

(Amendments 1-3 stand or fall on their own merits. Amendments 4 and 5 depend on the House's approval of Amendments 1-3.)

PLANNING AND BUILDING (JERSEY) LAW 2002 - REMOVAL OF THIRD-PARTY APPEALS

Lodged au Greffe on 5th November 2002
by the Planning and Environment Committee

STATES OF JERSEY

STATES GREFFE

150 2002 P.206

Price code: B

PROPOSITION

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

to agree, in principle, that the Planning and Building (Jersey) Law 2002, adopted by the States on 17th April 2002, should be amended so as to delete from that Law those provisions relating to appeals by third parties, and to charge the Planning and Environment Committee to bring forward draft legislation to that effect at the earliest opportunity.

PLANNING AND ENVIRONMENT COMMITTEE

Note: The Finance and Economics Committee's comments are to follow.

REPORT

Introduction

1. When the States debated, in second reading in June 2001, the Planning and Environment Committee's proposed new Planning and Building Law, Deputy Scott Warren was successful in introducing an amendment which granted a right of statutory appeal to any person or body who had been party to consideration of a planning application, and making them parties to the statutory appeal.

2. The Planning and Environment Committee had previously considered this issue at length in its deliberations on the draft Law. It had come out against third-party appeals in an early draft Law which it had published for consultation in November 1999. It subsequently received comments for, and against, third-parties having rights of appeal. Although it did not accept this principle in the new Law, it recognised that this would be an issue of debate when the draft Law came before the States, and thus stated its position against clearly in the projet.

3. The Committee now brings this proposition because it remains philosophically opposed to a system of third-party appeals. It is also genuinely concerned about the additional costs of supporting third-party appeals. It believes that these considerable costs, and additional staff, both for the Planning and Building Services Department and for the Planning and Building Appeals Commission which will be established under the new Law, are not justified by the questionable benefits that a third-party appeals system would bring. That is why, even if it fails to convince members to reconsider the third-party provisions of the new Law, it will seek to defer introducing third-party appeals until such time that the new appeals provisions in the draft Law have matured and Planning has introduced greater transparency into its proceedings. This will ensure that third-party representations are considered fully by the Committee before decisions are made.

Philosophy

4. Under Jersey's current planning Law, and indeed under the Town and Country Planning Acts in the United Kingdom, the right of appeal against a planning decision only exists for those persons aggrieved by a decision to refuse permission, or by the imposition of a condition on a permission. **There is no right of appeal against a decision to grant permission.** In other words the appellant will generally be the applicant.

5. Prior to the Island's planning laws coming into being, owners of land or property were able, more or less, to do as they wished with their property. The underlying principle is that the planning Law exists only to constrain the activities of property owners where they are not in the best interests of the community. That is why the Planning and Environment Committee has to consider its decisions under the Law judiciously. The laws are not in place to protect the interests of individuals nor to confer on those individuals, rights in respect of other peoples' property.

6. There is a natural tendency for objectors to believe that their representations have been ignored when they learn that planning permission has been granted. It is often difficult to convince them that their views had been taken fully into account, but that the Committee did not consider that this warranted modification or rejection of proposals that represent the reasonable expectations of an applicant for their property. More often than not, this is because the general community interest was not unreasonably affected or because the objection raised issues of a non-planning nature or were not relevant.

7. The Committee's view is that by making the applications process more open and transparent, as the new Law requires, e.g. introducing new methods of advertising applications and open Committees, applicants and objectors will be able to experience at first-hand how their representations have been taken into account by the Committee when making a decision. These changes alone will give applicants and third parties far greater confidence in our planning system, and reduce the likelihood of appeals being made.

8. It is also the Committee's view, supported by legal opinion, that the applicant has a greater entitlement to

an appeal than the objector given the fundamental basis of the Law which seeks to limit, in the community interest, the previously-enjoyed rights to property. The property owning system in Jersey gives no rights to neighbours over another's property save through registered legal covenants. The Planning Law is restricted to the protection of amenities in the community or general interest, terms which, although incapable of specific definition, are clearly not intended to confer rights on an individual property in lieu of legal rights. It is for these reasons that the Committee did not propose to introduce a third-party appeals system into local law and why it is now bringing this proposition to reconsider the States decision.

9. The Committee is also of the view that a third-party appeal process will de-politicise the planning system in Jersey. This has been the case in the Republic of Ireland. Every contentious planning decision is likely to be appealed by either the applicant or a third-party, effectively removing the decision from States Members to a non-elected and independent Appeals Commission. Some may say this is a good thing. The Committee's view, and possibly that of other States members, is closer to that of the U.K. government which wrote, in its recent Green Paper on reforming their planning system…

> "…such a right *(of third-party appeals)* would not be consistent with our democratically accountable system of planning. Elected councilors [*sic*] represent their communities – they must take account of the views of local people on planning matters before decisions are made and justify their decisions subsequently to their electorate."

More bureaucracy and delays

10. The Committee believes that the system of third-party appeals agreed by the States is far too bureaucratic. We should instead be trying to simplify our administrative procedures. The planning system is already seen by many sectors of this community as unnecessarily intrusive in daily life and too complicated. It is important to engage the public in the planning process when policies are formulated, and the new law makes excellent provision for this. The Committee's success in gaining unanimous approval to the new Island Plan last July demonstrates the wisdom of this approach. However, the expectations of objectors are often unrealistic and unreasonable. Objections have the effect of slowing down the application process, creating uncertainty and delays for applicants. The cumulative effect of delays is contributing to greater construction costs.

11. Deputy Scott Warren's amendment to the new Law succeeded in making all parties to an application, "interested persons" to an appeal. This means that all parties are entitled to make submissions and be heard by the Appeals Commission, with the inevitable increase in paperwork circulating between the parties, and a much longer hearing by the Commissioner. The Commissioner's judgements will also, as a result, take longer to produce.

12. For the third-party appeal system to be effective there would also need to be a deferred period before a "provisional" Committee decision becomes effective as a permission and capable of implementation. The draft Law, as approved by the States, requires interested persons to an application to be notified of the Committee's decision and allows 28 days for them to lodge an appeal. In practice, therefore, if there had been representation on any application, it would **add nearly 6 weeks** to the time it takes to obtain permission after the Committee's decision, even if no appeal were made. If a third-party appeal **is** made and subsequently dismissed, it would take **a minimum of 19 additional weeks** (nearly 5 months) before the permission becomes effective. Clearly this will have the effect of delaying applicants in carrying out construction work and will increase costs. As the Committee pointed out in its original projet, it is important for members to bear in mind that this situation is just as likely to occur when one neighbour objects to another's proposal for a small extension, as it will for more substantial developments.

Costs

13. When the States considered the third amendment to the draft Law (P.50/2001) lodged by Deputy Scott-Warren, the States made its decision on 6th June 2001 accepting the accompanying argument put forward that the amendment "would have minor administrative and financial and manpower implications for the States".

14. The Committee's report accompanying the draft Law (which did not include third-party appeals) advised the States that the costs of the new Independent Planning and Building Appeals Commission might, in the Committee's estimation, be in the order of £250,000 per year which would be offset by savings in the Royal Court and Law Officers' Department. The Committee estimated in the order of 250 appeals per year. The Appendix to the Committee's report to the States included costs of £242,500 attributed to the Appeals Commission in its detailed breakdown of additional annual costs of the Law.

15. During the debate on the amendment, the Committee advised the States that it believed the adoption of third-party appeals would significantly increase these costs because of the increase in the number of appeals expected.

16. Subsequent to the States decision to adopt the amendment, a fact-finding trip to Ireland took place to establish the costs of third-party appeals with greater certainty. It was established that a significant increase in workload would arise - 450 appeals p.a. being expected. It was also recognised that the importance of this quasi-judicial role and its time-consuming and demanding nature would require greater remuneration for the Commissioners than had previously been expected.

17. The Attorney General also reviewed the amended Law as approved by the States. It was established that the inclusion of third parties would require further amendments to the Law to ensure third parties could be joined with first-party appeals against refusals. This unexpectedly increased both the volume of work and complexity of the appeals as a result of third parties' rights being included in the Law.

18. Consequently the estimates of additional cost were revised upwards to those since quoted in the submissions and reports published by the Committee. The Appendix to this report both re-states the estimated costs of the Independent Appeals Commission and shows the details. These figures have not changed since they were published in R.C.13/2002.

The Appendix to this report also shows the estimated costs of the appeal process upon the Planning Department. This is as stated in P.56/2002, a slight reduction from £370,000 previously quoted in R.C.13/2002.

19. If the States approve this report and proposition, then the Committee will review the additional costs of first party appeals set out in the Appendix to this report, and resubmit full details to the States with the required amendment to the Law. This will provide an opportunity to both confirm the extent of extra costs remaining for first-party appeals and ascertain whether it is possible for these costs to be further reduced as a result of removal of third-party complications.

20. The additional costs shown in the Appendix for first-party appeals can be fully justified by the benefits of a more effective and accessible appeals system than presently exists. The costs which fall on the Planning Department can be met by charges to applicants. The costs met by the Independent Appeals Commission will be offset by savings in both the States legal costs and costs met by applicants because such cases would no longer have to be dealt with by the Royal Court.

21. In the Committee's view it is the additional cost of continuing with the States approved inclusion of third parties in the new appeals arrangements which requires members' particular attention. Combining both the extra costs met by the Planning Department and the Appeals Commission results in an amount of £539,000 p.a. attributable to third-party appeals made up of £315,000 for the Commission and £224,000 for the Department (although this element could be recovered in additional fees to applicants). This extra cost for third-party appeals is, in the Committee's view, simply not justified.

Human Rights

22. Repeal of third-party rights of appeal do not, in the Committee's view, infringe the European Convention on Human Rights. Third parties retain the right to make a request to the Greffier of the States under the Administrative Decisions (Review) (Jersey) Law 1982, and to seek judicial review of a Committee

decision in the Royal Court.

23. If the States, in debating this proposition, confirm that the principle of third-party appeals should remain in the new Planning and Building Law then the Committee considers that it will be necessary to phase the introduction of third-party appeals allowing the new system of first-party appeals being dealt with by the new Commission to become properly established.

APPENDIX *[TO P.206/2002]*

The main resource issues concern the costs and manpower implications of the independent appeals commission, with and without third-party appeals.

Third-party appeals both increases the administrative processes for the Commission's secretariat and increases the number of appeals.

The following figures explain these implications in detail -

1. Estimated increased costs of the Independent Appeals Commission

A	B	
	First-party appeals only	**With third-party appeals**
Manpower (outside States)		
Commissioners	3	5
Temporary Commissioners	2.5	5
Registrar/administration	3	5
Estimated no. of appeals	250	450
Estimated annual costs (less savings in legal costs - for first-party appeals only)	£565,000	£880,000
Cost to be met by taxpayer		

2. Estimated increased costs of Planning and Environment Committee

A	B	
	First-party appeals only	**With third-party appeals**
Manpower		
Planners (Appeals Section)	2	5
Clerks/secretaries	1	3
Estimated annual costs	£140,000	£364,000
Less increased planning charges	£140,000	£364,000
Cost to taxpayer	NIL	NIL

3. Estimated additional cost of third-party appeals (B less A)

Independent Appeals Commission £315,000
- (paid by taxpayer)
- no savings from legal costs

(Additional States 5 FTE)

Planning and Building Depts. £224,000
(paid by increased fees to applicants)

£539,000

STATES OF JERSEY

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

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

STATES GREFFE

2004 Price code: C P.210

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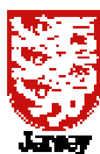


DRAFT PLANNING AND BUILDING (AMENDMENT) (JERSEY) LAW 200-

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*

Item	*Posts*	*Costs £*
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
		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.

STATES OF JERSEY

DRAFT PLANNING AND BUILDING (AMENDMENT No. 2) (JERSEY) LAW 200-

Lodged au Greffe on 15th March 2005
by the Environment and Public Services Committee

STATES GREFFE

2005 Price code: B P.47

REPORT

This further Amendment to the Law is submitted as a consequence of the States agreeing, in December 2004, the Committee's Amendment to substitute the Royal Court for the Planning and Building Appeals Commission as the appellate body in the Planning and Building (Jersey) Law 2002.

It was intended that the Planning and Building Appeals Commission would have been staffed by persons with specialist planning skills, and accordingly it had been considered that the Commission should have full jurisdiction to review cases *de novo* and substitute its own decision for the Committee's taking into account its view of the merits of the application. Such an appeals jurisdiction is not the same as currently applies in relation to Article 21 of the Island Planning (Jersey) Law 1964, where the appeal to the Royal Court may be brought on the grounds that the decision of the Committee was unreasonable having regard to all the circumstances of the case. There is considerable authority in the Royal Court and the Court of Appeal as to the approach which the Royal Court ought to take to an appeal right of this nature, and the Committee considers that now the decision has been taken to dispense with the Planning and Building Appeals Commission, it would be appropriate to reinstate, in the right of appeal contained in Article 113(2) of the 2002 Law, the same provisions as appear in Article 21 of the 1964 Law. If adopted by the States, the test will be whether the Committee's decision was unreasonable having regard to all the circumstances of the case. The Committee has consulted with the Bailiff on this amendment, which has his support.

The second Amendment is consequential on the substitution, by the Royal Court, of the Planning and Building Appeals Commission, agreed by the States in December 2004.

There are no financial or manpower implications from the States arising from this Draft Law.

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 3rd March 2005 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 No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

The purpose of this Law is to amend the Planning and Building (Jersey) Law 2002 to continue the same ground for an appeal to the Royal Court against an action taken by the Committee as presently exists under the Island Planning (Jersey) Law 1964 – namely a right to appeal to the Royal Court against an action taken by the Committee on the ground that the action taken was unreasonable having regard to all the circumstances of the case.

Other consequential amendments to the Law are also made.

STATES OF JERSEY

DRAFT PLANNING AND BUILDING (AMENDMENT No. 2) (JERSEY) LAW 200- (P.47/2005): AMENDMENTS

Lodged au Greffe on 5th April 2005
by Deputy C.J. Scott Warren of St. Saviour

STATES GREFFE

DRAFT PLANNING AND BUILDING (AMENDMENT No. 2) (JERSEY) LAW 200- (P.47/2005): AMENDMENTS

PAGE 10, ARTICLE 3 –

Insert immediately after the heading to the Article –

"(1) In Article 114 of the principal Law for paragraphs (1) and (2) there shall be substituted the following paragraphs –

'(1) This Article applies to a decision by the Committee to grant planning permission on an application made to it in accordance with Article 9(1) if a submission was made to the Committee in respect of the application prior to the Committee making its decision by a person (other than the applicant) who –

(a) has an interest in land; or

(b) is resident on land,

any part of which is within 50 metres of any part of the site to which the planning permission relates.

(2) For the purposes of paragraph (1), a person who has made a submission to the Committee includes a body or person created by statute (other than a Committee) that has commented on the application as a result of the Committee's compliance with Article 17.' "

Number the existing paragraph of Article 3 as paragraph (2) of that Article.

DEPUTY C.J. SCOTT WARREN OF ST. SAVIOUR

REPORT

Members will be aware that the delay in bringing the Planning and Building (Jersey) Law 2002 into force has in part been due to concern that third party appeals may increase to an unacceptable level the cost to the Environment and Public Services Committee of implementing the Law.

The Law at present provides that any person who has objected to an application for planning permission may appeal against the grant of the permission. This means that a person who may in no way be affected if the development goes ahead would have a right of appeal merely by objecting to the application.

My proposed amendments will limit the right to appeal against the grant of planning permission to those who, having objected at the time of the application for the permission, fulfil the criterion of either living within 50 metres of any part of the site to which the planning permission relates, or having an interest in property, any part of which is within 50 metres of any part of the site. The interest in property includes a body or person created by statute.

If these amendments are agreed the number of appeals against the grant of planning permission should fall considerably and consequently the cost to the Committee of implementing the Law would be greatly reduced. However, the original intention of providing a third party right of appeal for those who feel genuinely aggrieved by a grant of permission would still be retained, albeit limited to a radius of 50 metres of a site.

It should therefore be possible to implement the Law IN FULL, as it was intended to be implemented, soon after the amending Law has been approved by the Privy Council.

PLANNING AND BUILDING (JERSEY) LAW 2002: EXTRACT

9A Minister's power to delegate[7]

(1) This Article applies to the functions conferred upon or vested in the Minister under –

(a) Part 3;

(b) Articles 40, 42 and 45; and

(c) Orders made under Articles 76 and 81.

(2) The power conferred upon the Minister by Article 28(1) of the States of Jersey Law 2005 to delegate, wholly or partly, the function to which this Article applies shall include the power to delegate, wholly or partly, those functions to a panel of at least 3 elected members of the States chosen by the Minister from a group of not more than 9 such members approved by the States on the nomination of the Minister.

(3) A panel appointed under paragraph (2) to determine the grant of planning permission under Article 19 must permit members of the public to attend its meetings.

(4) The panel must give at least 3 days notice in the Jersey Gazette of a meeting–

(a) that specifies the date, time and place of the meeting and the application for planning permissions that it is to consider; and

(b) that invites members of the public to attend.

(5) At such a meeting the presiding member may request a person to leave the meeting if the member is satisfied that the person's behaviour is prejudicing the conduct of the meeting.

(6) A person who fails to comply with such a request shall be guilty of an offence and liable to a fine not exceeding level 2 on the standard scale.

(7) Except to the extent that the Minister directs otherwise, a panel mentioned in paragraph (2) may determine its own procedures.

APPENDIX 12

JUDICIAL GREFFE WEBSITE – GUIDANCE NOTES

Planning Appeals Procedure

PLANNING APPEALS

The operative provisions of the Royal Court Rules 2004 (RCR) are Part 15 RCR (Appeals from Administrative Decisions) as amended which provide a modified procedure for planning appeals and a procedure for so called 'third party' planning appeals. In addition, Practice Direction RC 06/03 lays down certain guidelines for planning appeals heard before the Royal Court under the modified procedure.

Basically, planning appeals can be dealt with in one of 3 ways–

(i) by determination by the Judicial Greffier (in practice the Master or Deputy Judicial Greffier) 'on the papers';

(ii) under the new modified procedure by way of hearing before the Royal Court; or

(iii) under the ordinary procedure applicable to all administrative appeals under Part 15 of RCR.

In summary, the procedural steps applicable to planning appeals are the following –

1. An appeal is brought by serving a Notice of Appeal on the respondent (i.e. the Minister) in the form set out in Schedule 4A of RCR. The notice must specify the grounds of the appeal with sufficient particularity to make clear the nature of the appellant's case (RCR 15/2(1)). Notices of Appeal must be served through the intermediary of the Viscount's Department.

   Service of the Notice of Appeal on the person who applied for planning permission (paragraph 2) and service of affidavits on various parties referred to in paragraphs 4, 5 and 7 below can be effected by delivery or posting the Notice of Appeal to the usual address of the person who applied for planning permission or in the case of service of affidavits to the address for service given by the relevant party.

2. The appellant in a Third Party Appeal must also serve a copy of the Notice of Appeal on the person who applied for the planning permission. That person must within 14 days inform the Judicial Greffier in writing whether he wishes to be heard at the appeal. The Judicial Greffier will advise the appellant and the Minister if that is the case. (See also paragraph 5 below).

3. The appellant must –

   (a) within 2 days of service, provide to the Judicial Greffier a copy of the Notice of Appeal and the Viscount's record of service; and

   (b) within 5 days of service, apply to the Bailiff's Judicial Secretary for a day to be fixed for the hearing of the appeal. (RCR15/2(3)).

4. Within 28 days of service, the Minister must lodge with the Judicial Greffier and serve on the appellant an affidavit setting out the decision, the reasons for it and exhibiting any documentary evidence (RCR 15/3(1)).

5. If the appeal is a Third Party Appeal, the Minister's affidavit must also be served on the person who applied for the planning permission ('the applicant') who – if he or she wishes to be heard – has the option of filing an affidavit within 14 days. The applicant must also serve a copy of this affidavit on both the appellant and the Minister.

6. Within 5 days of the Minister's affidavit (or, in a Third Party Appeal, the applicant's affidavit) having been lodged, the Judicial Greffier – in practice the Master or the Deputy Judicial Greffier – must decide whether the appeal should be dealt with under the conventional procedure for administrative appeals or under the modified procedure (RCR 15/3A(1)) having first given the parties the opportunity to make written representations, which the Greffier must take into account (RCR 15/3A(2)). In practice, the Greffier will at the same time indicate whether or not he is minded to deal with the appeal on the papers and invite representations on this also (RCR 15/3B(2)).

7. In the meantime, the appellant must, within 21 days of receiving the Minister's affidavit, lodge with the Judicial Greffier and serve on the Minister (and, in a Third Party Appeal, on the applicant) an affidavit in response (RCR 15/3(2)). The Minister then has 14 days in which to file any affidavit on reply (RCR 15/ (3)).

APPEALS ON THE PAPERS (RCR 15/3C)

8. The Judicial Greffier may decide to determine an appeal on the basis of the documents only and without oral argument if –

   (a) the appellant has indicated in the Notice of Appeal that he does not require an oral hearing; and

   (b) the Judicial Greffier has notified the parties that he is minded to deal with the appeal on the papers and given the parties the chance to make representations on this point and has considered such representations.

9. The Judicial Greffier can if he thinks it necessary give directions for filing further written statements or submissions.

10. If an appeal is dealt with on the papers, no award for costs will normally be made (Practice Direction RC 06/03).

APPEALS UNDER THE MODIFIED PROCEDURE

11. If the Judicial Greffier decides that the modified procedure will apply to a planning appeal, he must give directions to bring the appeal on for hearing before the Royal Court at the earliest opportunity (RCR 15/3B)).

12. At least 14 days before the hearing, the appellant must file and serve a written statement of his or her submissions (RCR 15/3B(2)) and, within a further 7 days, the Minister must do likewise (RCR 15/3B(3) In a Third Party Appeal, the applicant, if he or she wishes to be heard, must do the same.

13. At the hearing of the appeal, the appellant (and, in a Third Party Appeal, the applicant) may be represented by –

   (i) an advocate or a Jersey solicitor, a registered architect or a chartered surveyor or a member of the Royal Town Planning Institute; or

   (ii) a person approved by the Judicial Greffier or the Bailiff (RCR 15/3(4)).

   The Minister may also be represented by a senior officer of the Planning and Environment Department authorised by the Minister or a lawyer employed by the Law Officers' Department (RCR 15/3B(5)).

14. Practice Direction RC 06/03 sets out the requirements to be followed where an appeal is heard before the Royal Court under the modified procedure.

APPEALS UNDER THE CONVENTIONAL PROCEDURE

15. In practice, planning appeals under the conventional administrative appeals procedure will be limited to those involving complex or novel points of law. The general procedure to be followed in such cases is that laid down in Part 15 of RCR.

SUMMARY

(1) In all cases, the appellant must file and serve a Notice of Appeal and, within 5 days, fix a date with the Bailiff's Judicial Secretary for the hearing of the appeal.

(2) Once the appellant and the Minister (and, in a Third Party Appeal, the applicant – if he or she wishes to be heard), have filed their affidavits, the Master or Deputy Judicial Greffier will decide whether the conventional or the modified appeal procedure should apply or whether the appeal can be determined on the papers. He will advise the parties of his views and invite written representations before making a final decision.

(3) Appeals will then proceed as detailed above.

Updated as at 19th November, 2007

APPENDIX 13

PLANNING DEPARTMENT WEBSITE

Third Party Rights of Appeal

Article 114 of the Planning and Building (Jersey) Law 2002 makes provision for"Third Party Appeals".

If there have been submissions made by a Third Party on an application which is granted permission, then that permission will not have effect for 28 days from the date of the permit, to allow an appeal to be made by the Third Party. If a Third Party Appeal is made against that decision, then the permission will not have effect until the appeal is decided.

The right of appeal by a Third Party is a legal process and does not extend to every person who has made a submission on an application, and only applies in the following circumstances –

- if the Third Party has made a prior submission to the Minister on the planning application;
- if the Third Party is resident on land, or has a legal interest in land, any part of which is within 50 metres of any part of the application site;
- when the appeal is made within the period prescribed in the Law.

The procedures, including how to correctly make your appeal, are set out in the Royal Court (Amendment No. 3) Rules 2006 and the Royal Court (Amendment No. 5) Rules 2007. Copies of these documents can be obtained from the States Greffe Bookshop, Morier Street, St. Helier , or on the Internet at http://www.jerseylaw.je

If you decide to proceed with an appeal to the Royal Court you are advised to consult a lawyer or other suitably qualified professional.

A Third Party Appeal must be lodged with the Judicial Greffe in accordance with the Rules, **within 14 days of the service of the notice**.

For further information you should contact the Judicial Greffe on 441300.

APPENDIX 14

ROYAL COURT RULES 2004 (EXTRACT)

PART 15

APPEALS FROM ADMINISTRATIVE DECISIONS

15/1 Application and interpretation

(1) Except where provision is otherwise made, this Part applies to appeals to the Court from an administrative decision of a person, or body, in exercise of a right of appeal conferred by or under any enactment (including an Act of the Parliament of the United Kingdom or instrument thereunder extended by Order in Council to, or otherwise having effect in, Jersey).

(2) In this Part, unless the context otherwise requires –

"appeal" means an appeal to which this Part applies and "appellant" shall be construed accordingly;

"modified procedure" in relation to a planning appeal means the procedure set out in paragraphs (2), (3) and (4) of Rule 15/3B;

"ordinary procedure" in relation to a planning appeal means the procedure set out in paragraphs (2), (3) and (4) of Rule 15/3;

"planning appeal" means an appeal under Part 7 of the Planning and Building (Jersey) Law 2002 and 'appellant' in relation to such an appeal shall be construed accordingly;

"the respondent" means the person, or body, whose decision is appealed from.[8]

15/2 Notice of Appeal and fixing day for trial

(1) An appeal to the Court shall be brought by serving on the respondent a Notice of Appeal in the form set out in Schedule 4 or, in the case of a planning appeal, in the form set out in Schedule 4A, and every such notice must specify the grounds of the appeal with sufficient particularity to make clear the nature of the appellant's case.[9]

(2) The appellant shall not, except with the leave of the Court, be entitled to rely on any ground of appeal unless it is specified in the Notice of Appeal.

(3) The appellant must –

(a) within 2 days after service of the Notice of Appeal furnish a copy of the notice to the Greffier together with a copy of the record of the Viscount certifying that the Notice of Appeal has been duly served;

(b) within 5 days after the service of the Notice of Appeal apply to the Bailiff's Secretary for a day to be fixed for the hearing of the appeal.

(4) If the appellant does not apply for a day to be fixed for the hearing of the appeal in accordance with paragraph (3)(b), the appeal shall be deemed to have been withdrawn.

(5) Except with the leave of the Bailiff, the day fixed for the hearing of the appeal shall be not more than 4 months from the date of service of the Notice of Appeal.

15/3 Documents for use of the Court

(1) Within 28 days after receiving Notice of Appeal, the respondent must lodge with the Greffier and

serve on the appellant an affidavit setting out –

(a) a statement of the decision from which the appeal is brought; and

(b) the facts material to the decision and the reasons for it and exhibiting all documentary evidence relating thereto.

(1A) When paragraph (1) has been complied with in relation to a planning appeal, Rule 15/3A shall apply to the remaining procedural steps in the appeal.[10]

(2) Within 21 days after service of the affidavit on the appellant in accordance with paragraph (1), the appellant must lodge with the Greffier and serve on the respondent an affidavit in response.

(3) The respondent may, within 14 days after service of the appellant's affidavit in accordance with paragraph (2), lodge with the Greffier and serve on the appellant an affidavit in reply thereto.

(4) Not less than 14 days before the date of the hearing of the appeal, the appellant and the respondent must each furnish to the Court (and serve upon one another) a written statement of the submissions that the appellant or the respondent, as the case may be, will make at the hearing concerning the issues in dispute between them.

15/3A Planning appeals[11]

(1) Within 5 days of the respondent having complied with Rule 15/3(1) the Greffier shall consider the Notice of Appeal and the respondent's affidavit and any accompanying documents and, having regard to –

(a) the nature and complexity of the issues raised;

(b) the questions of law (if any) involved;

(c) the extent to which any matter of pubic interest may arise in the proceedings; and

(d) any other circumstances of the appeal,

shall, subject to Rule 15/3C, notify the parties in writing whether the Greffier is minded to treat the appeal as an appeal to be dealt with under the ordinary procedure or under the modified procedure and shall give the parties the opportunity to make written representations in that regard within such time as the Greffier may determine.

(2) The Greffier shall consider any such representations and determine whether the appeal is to be dealt with under the ordinary procedure or under the modified procedure.

(3) The appeal shall then proceed in accordance with that determination, but paragraph (2) does not affect the power of the Court at any stage of the proceedings of its own motion or on the application of any of the parties to order that the appeal be dealt with under whichever procedure the Court thinks fit.

15/3B Modified procedure in planning appeals[12]

(1) If the Greffier determines that a planning appeal is to be dealt with under the modified procedure, the Greffier shall give such directions as the Greffier thinks fit with a view to bringing the appeal on for hearing at the earliest opportunity.

(2) Not less than 14 days before the hearing of the appeal, the appellant must furnish to the Court (and serve upon the other parties to the appeal) a written statement of the submissions that the appellant will make at the hearing concerning the issues in dispute in the appeal.

(3) Not less than 7 days before the hearing of the appeal the respondent must furnish to the Court (and serve upon the other parties to the appeal) a written statement of the submissions that the respondent will make at the hearing concerning the issues in dispute in the appeal.

(4) An appellant may, at the hearing of the appeal, appear and be heard by a representative who, if not an advocate, shall be –

(a) a solicitor (*écrivain*) of the Royal Court;

(b) an architect registered under the Architects (Registration) (Jersey) Law 1954[13]; a member of the Royal Institution of Chartered Surveyors or a member of the Royal Town Planning Institute; or

(c) a person approved by the Greffier or by the Bailiff as a person appropriate to represent the appellant.

(5) The respondent may, at the hearing of the appeal, appear and be heard –

(a) by a senior officer of the Planning and Environment Department authorized by the respondent for that purpose; or

(b) by a representative who, if not an advocate, has a relevant qualification and –

(i) is employed in an established post in the Law Officers Department, and

(ii) has been approved by the Greffier or by the Bailiff as a person appropriate to represent the respondent by reason of his or her expertise in planning law and practice.[14]

(5A) A person has a relevant qualification for the purpose of paragraph (5)(b)(i) if he or she has been admitted –

(a) as a solicitor (*écrivain*) of the Royal Court;

(b) as an advocate of the Royal Court of Guernsey;

(c) to the degree of the Utter Bar of one of the Inns of Court of England and Wales;

(d) as a member of the Faculty of Advocates in Scotland;

(e) as a solicitor of the Supreme Court of England and Wales;

(f) to the Roll of Solicitors in Scotland;

(g) as a member of the Bar of Northern Ireland; or

(h) as a solicitor of the Supreme Court of Northern Ireland.[15]

(6) Provision may be made by practice directions in respect of the mode and duration of hearings of, and awards of costs in, planning appeals under the modified procedure.

15/3C Planning appeals 'on the papers'[16]

(1) When, in accordance with paragraph (1) of Rule 15/3A, the Greffier has considered the Notice of Appeal and the respondent's affidavit and any accompanying documents and has had regard to the matters referred to in sub-paragraphs (a) to (d) of that paragraph, the Greffier may, if the requirements of paragraph (2) are met, consider and determine the appeal on the basis of the documents filed with the Court and without oral arguments by the parties.

(2) The requirements of this paragraph are that –

(a) the appellant has in the Notice of Appeal stated that the appellant does not require an oral hearing of the appeal;

(b) the Greffier has notified the parties in writing that the Greffier is minded to consider and determine the appeal under paragraph (1) and has given them the opportunity to make representations in that regard; and

(c) the Greffier has considered any such representations.

(3) If the Greffier decides to consider and determine the appeal under paragraph (1), the Greffier may give such directions to the parties as may be necessary for the filing of further written statements or submissions.

(4) Provision may be made by practice directions in respect of awards of costs in relation to planning appeals considered and determined in accordance with this Rule.

15/3D Planning appeals by third parties[17]

(1) This Rule applies to an appeal under Article 114 of the Planning and Building (Jersey) Law 2002.

(2) In this Rule "respondent's affidavit" means the affidavit filed by the respondent in accordance with Rule 15/3(1).

(3) The appellant shall, when the Notice of Appeal is served on the respondent in accordance with Rule 15/2(1), cause a copy of it to be served on the person to whom planning permission was granted (hereinafter referred to as "the applicant").

(4) The respondent shall, when the respondent's affidavit is served on the appellant, cause a copy of it to be served on the applicant.

(5) Within 14 days of receiving the copy of the respondent's affidavit, the applicant –

(a) must inform the Greffier in writing whether or not the applicant wishes to be heard at the appeal; and

(b) may lodge with the Greffier and cause to be served on the appellant and on the respondent an affidavit setting out anything relevant to the determination of the appeal not contained in the respondent's affidavit.[18]

(6) An applicant who informs the Greffier that he or she wishes to be heard at the appeal shall thereupon be joined as a party to the appeal and the Greffier shall inform the appellant and the respondent that the applicant has been so joined.[19]

(7) In an appeal to which this Rule applies –

(a) Rule 15/3A shall have effect as if the reference in paragraph (1) of that Rule to the respondent having complied with Rule 15/3(1) were a reference to the applicant (if the applicant has informed the Greffier that he or she wishes to be heard at the appeal) having lodged an affidavit under paragraph (5)(b) of this Rule or the time within which to do so having expired;

(b) subject to sub-paragraph (c), Rule 15/3B applies to such an applicant as it applies to the respondent;

(c) Rule 15/3B(4) applies to such an applicant as it applies to the appellant;

(d) in Rule 15/3C "respondent's affidavit" includes an affidavit lodged under paragraph (5)(b) of this Rule; and

(e) Rule 15/4 shall be taken to empower the Court to allow such an applicant on terms as to costs or otherwise to file supplementary affidavits.

15/4 Amendment of Notice of Appeal, etc

The Court may at any stage of the proceedings allow the appellant to amend his or her Notice of Appeal, or the appellant or the respondent to file supplementary affidavits, on such terms as to costs or otherwise as may be just.

15/5 Dismissal of appeal for non-prosecution

(1) Without prejudice to Rule 15/2(4), if the appellant or the respondent fails to comply with any requirement of this Part or with an order of the Court made in connexion with the appeal, the Court may, on the application of either party to the appeal, make such order as it thinks fit, including an order as to costs and, in the case of an application by the respondent, an order that the appeal be

dismissed.

(2) If, after 6 months have elapsed from the day the appeal was brought, the appeal has not been heard the Court may, of its own motion, after giving not less than 28 days notice in writing to the appellant and to the respondent, order that the appeal be dismissed, and the Court may make such consequential order as to costs or otherwise as it thinks fit.

APPENDIX 15

PLANNING AND BUILDING (JERSEY) LAW 2002 (EXTRACTS)

19 Grant of planning permission

(1) The Minister in determining an application for planning permission shall take into account all material considerations.

(2) In general the Minister shall grant planning permission if the proposed development is in accordance with the Island Plan.

(3) The Minister may grant planning permission that is inconsistent with the Island Plan but shall not do so unless the Minister is satisfied that there is sufficient justification for doing so.

(4) The Minister may grant planning permission in detail or in outline only, reserving specified matters to be subsequently approved by the Committee.

(5) The Minister may grant planning permission unconditionally or subject to conditions.

(6) The Minister may also refuse to grant planning permission.

(7) Action taken by the Minister under this Article does not give any person the right to claim compensation in respect of any loss or damage the person may suffer as a result of that action.

114 Persons who may appeal against grant of planning permission

(1) This Article applies to a decision by the Minister to grant planning permission on an application made to the Minister in accordance with Article 9(1) if a submission was made to the Minister in respect of the application prior to the Minister's making the decision by a person (other than the applicant) who –

(a) has an interest in land; or

(b) is resident on land,

any part of which is within 50 metres of any part of the site to which the planning permission relates [20]

(2) For the purposes of paragraph (1), a person who has made a submission to the Minister includes a body or person created by statute (other than a Minister) that has commented on the application as a result of the Minister's compliance with Article 17.[21]

(3) A decision to which this Article applies shall not have effect during the period of 28 days immediately after the decision is made.

(4) If during that period a person appeals in accordance with this Article the period shall be extended until either the appeal is withdrawn or is determined.

(5) When the appeal is determined the decision shall have effect, if at all, in accordance with the determination.

(6) The Minister shall serve a copy of the notice informing the applicant of the decision on each other person who made a submission to which paragraph (1) refers.

(7) The copy of the notice must –

(a) be served within 7 days of the decision being made; and

(b) be accompanied by a notice informing the person that the person may appeal against the decision or any part of it (including any condition of the planning permission) within 14 days of the service of the notice,

and that person, if aggrieved by the decision, may appeal to the Royal Court accordingly.[22]

(8) On the appeal the Royal Court may –

(a) confirm the decision of the Minister; or

(b) order the Minister to vary his or her decision or any part of it (including any condition of the planning permission) as the Royal Court may specify; or

(c) order the Minister to cancel his or her decision to grant the planning permission.[23]

(9) The Minister shall comply with an order made under paragraph (8)(b) or (c).

115 Appeal against condition subject to which planning permission, etc. granted

(1) This Article applies to a person aggrieved by –

(a) a condition subject to which planning permission was granted;

(b) a condition subject to which building permission was granted;

(c) a condition subject to which permission to undertake on a site of special interest an activity referred to in Article 55(1) was granted; or

(d) a condition subject to which permission to import or use a caravan was granted.

(2) In paragraph (1) a reference to a person aggrieved by a condition subject to which any permission was granted includes a person being aggrieved by a requirement or term of any such condition.

(3) A person to whom this Article applies may within 28 days of being notified of the imposition of the condition appeal to the Royal Court.[24]

(4) On the appeal the Royal Court may –

(a) confirm the imposition of the condition; or

(b) order the Minister to remove the condition from the Minister's permission or to vary the requirement or term of the condition in such manner as the Royal Court considers appropriate.[25]

(5) The Minister shall comply with an order made under paragraph (4)(b).

116 Appeal against revocation or modification of planning permission

(1) This Article applies to a decision made by the Minister in accordance with Article 10(2)(a), or 27(1) or (2) to revoke or modify planning permission.

(2) A person aggrieved by a decision to which this Article applies may within 28 days of being notified of the decision appeal to the Royal Court against the decision.[26]

(3) On the appeal the Royal Court may –

(a) confirm the Minister's decision; or

(b) order the Minister to cancel his or her decision; or

(c) order the Minister to cancel his or her decision but to modify the permission to which it relates or any condition subject to which that permission was granted as the Royal Court considers appropriate.[27]

(4) The Minister shall comply with an order made under paragraph (3)(b) or (c).

(5) Until the Royal Court makes a decision in accordance with paragraph (3) the decision of the Minister to revoke or modify the permission to develop the land shall remain in effect.[28]

APPENDIX 16

PRACTICE DIRECTION

ROYAL COURT OF JERSEY
RC 06/03
PLANNING APPEALS

1. Rule 15/3A of the Royal Court Rules 2004, as amended, ("the Rules") has introduced a modified procedure for certain planning appeals. This Practice Direction applies to such planning appeals.

2. Appeals under the modified procedure where there is an oral hearing will be dealt with primarily by means of affidavit evidence. If a party to an appeal wishes to cross-examine a deponent on the contents of his affidavit he must obtain the leave of the judge who is to preside at the appeal. Such an application must be made (with notice being given to the other parties) at a pre-trial directions hearing which must take place at least seven days before the time fixed for the hearing of the appeal. Such leave will only be granted in exceptional circumstances.

3. Where an appeal involving an oral hearing is considered to fall within the modified procedure the amount of time allowed for the hearing before the Royal Court (the date of which will have been fixed under Rule 15/2(3)(b) of the Rules) will normally be no more than one to one and half hours. In such appeals although either party is entitled to be legally represented or otherwise represented as provided by Rule 15/3B(1) of the Rules, the Royal Court will only make an award of costs in such an appeal in exceptional circumstances (whether or not a party is legally or otherwise represented).

4. The expectation is that, in appeals under the modified procedure, parties will not ordinarily be legally represented. It is the Court's intention that the proceedings should be conducted with as much informality as is consistent with the proper administration of justice. Members of the Court will not be robed and would not expect any advocate appearing before it to be robed.

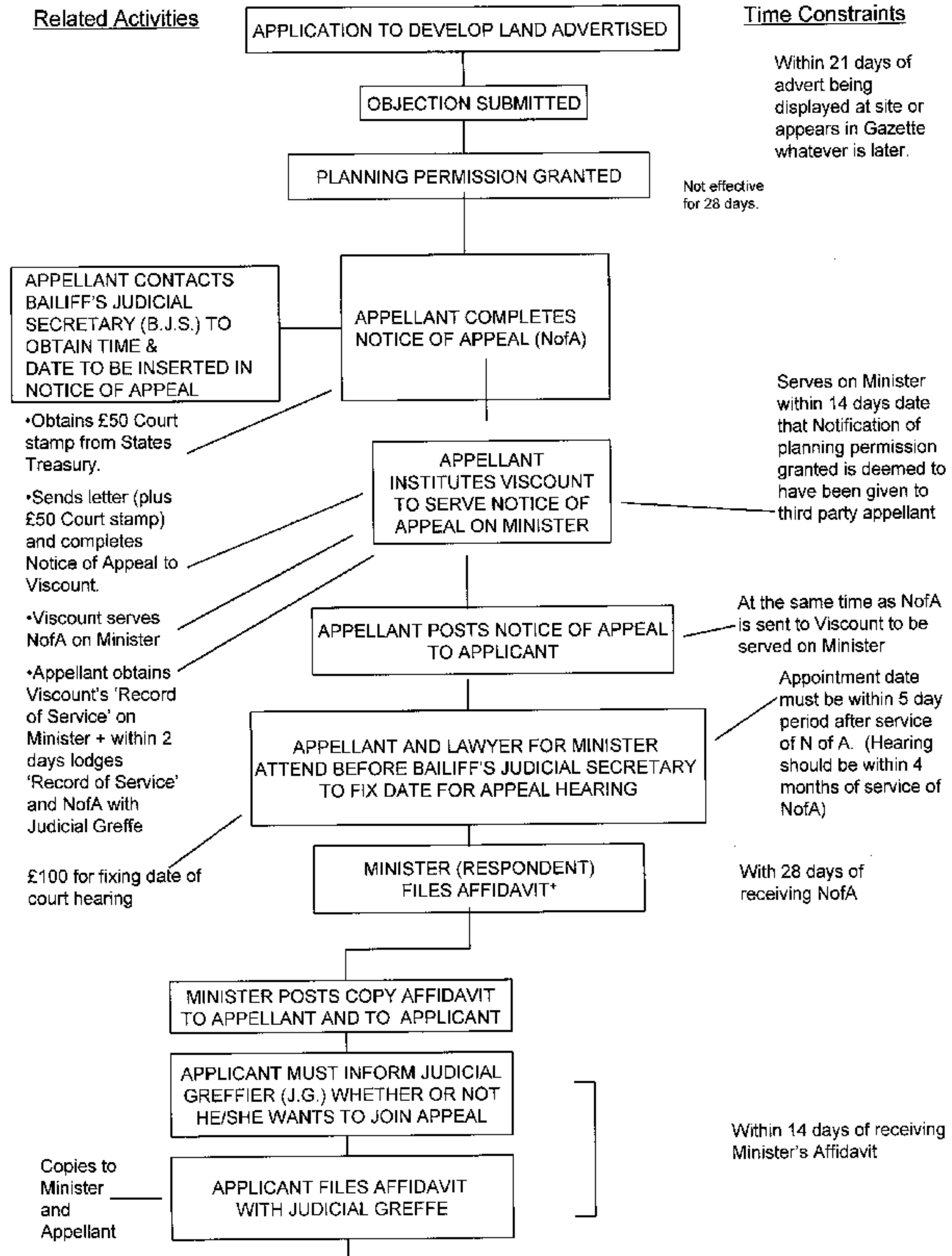
5. Parties are reminded of the terms of Practice Direction RC 05/20. This provides that where an action is to last less than a full day parties must be ready to appear at an earlier date than that allocated on receiving seventy-two hours' notice requiring them to do so.

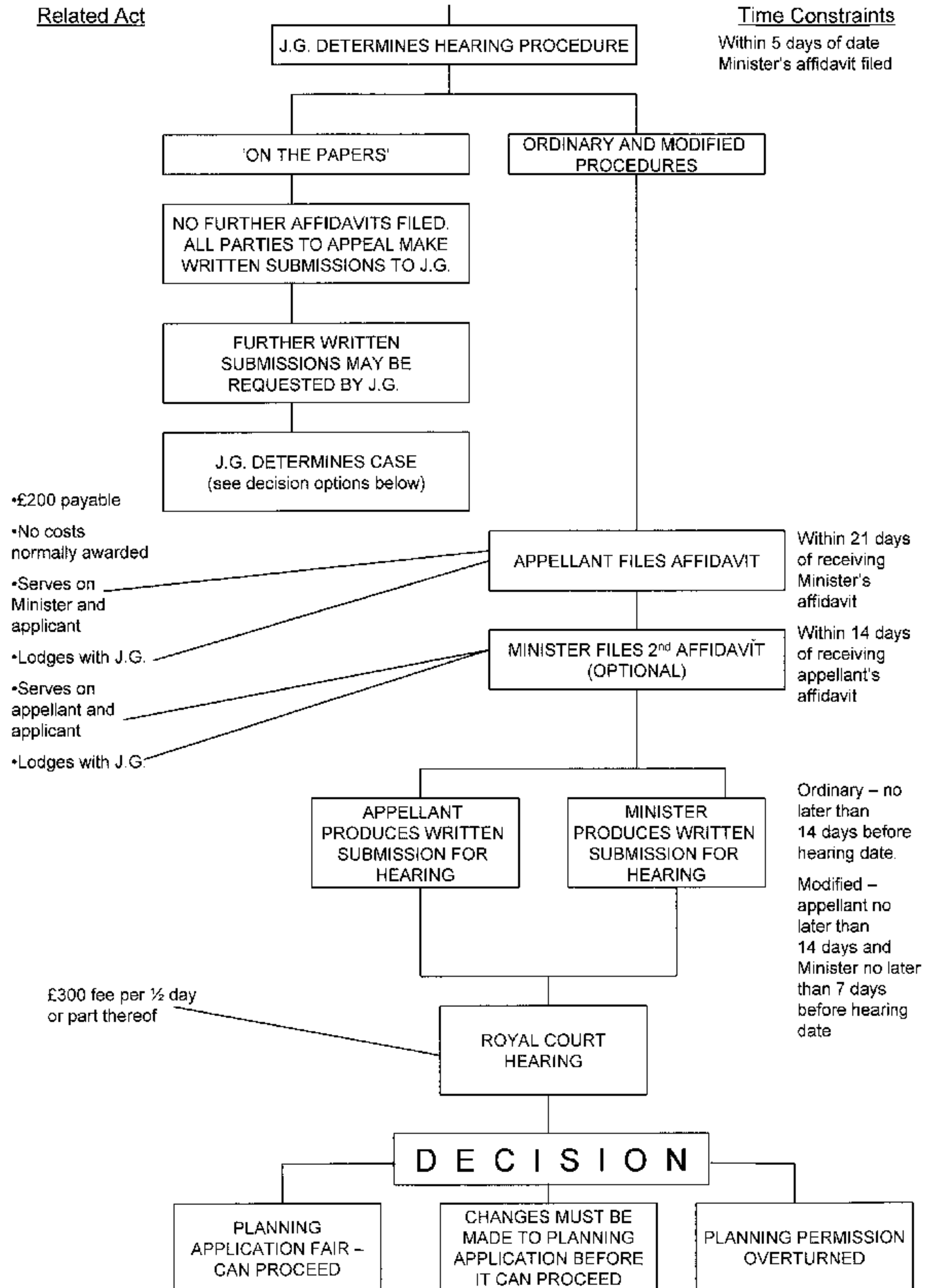
6. The modified procedure under Rule 15/3C allows for appeals to be dealt with by the Judicial Greffier without the need for an oral hearing. In such cases the Court would not expect to make any award of costs.

7. The Bailiff has directed that the fee payable for which is to be dealt with by the Judicial Greffier (as described in paragraph 6 above) shall be £200 payable on the filing of the Notice of Appeal. The usual fees are payable in relation to appeals to be heard by the Royal Court.

J.G.P. Wheeler
Master of the Royal Court
Page last updated 30 Jun 2006

APPENDIX 17




FLOWCHART FOR THIRD PARTY PLANNING APPLICATIONS (2)
Related Act
Time Constraints
J.G. DETERMINES HEARING PROCEDURE
Within 5 days of date Minister's affidavit filed
'ON THE PAPERS'
ORDINARY AND MODIFIED PROCEDURES
NO FURTHER AFFIDAVITS FILED. ALL PARTIES TO APPEAL MAKE WRITTEN SUBMISSIONS TO J.G.
FURTHER WRITTEN SUBMISSIONS MAY BE REQUESTED BY J.G.
J.G. DETERMINES CASE (see decision options below)
•£200 payable
•No costs normally awarded
•Serves on Minister and applicant
•Lodges with J.G.
APPELLANT FILES AFFIDAVIT
Within 21 days of receiving Minister's affidavit
•Serves on appellant and applicant
•Lodges with J.G.
MINISTER FILES 2nd AFFIDAVIT (OPTIONAL)
Within 14 days of receiving appellant's affidavit
APPELLANT PRODUCES WRITTEN SUBMISSION FOR HEARING
MINISTER PRODUCES WRITTEN SUBMISSION FOR HEARING
Ordinary – no later than 14 days before hearing date.
Modified – appellant no later than 14 days and Minister no later than 7 days before hearing date
£300 fee per ½ day or part thereof
ROYAL COURT HEARING
D E C I S I O N
PLANNING APPLICATION FAIR – CAN PROCEED
CHANGES MUST BE MADE TO PLANNING APPLICATION BEFORE IT CAN PROCEED
PLANNING PERMISSION OVERTURNED

[1] P&E Committee Act No. B7 of 20th July 2000.

[2] P&E Committee Act No. B18 of 31st August 2000

[3] P& E Committee Act No. B4 of 15th December 2000

[4] P&E Committee Act No. B4 of 18th January 2001

[5] Minute No. B5 of the Environment and Public Services Policy Sub-Committee, dated 25th March 2004.

[6] E&PS Committee Act No. B4 of 20th January 2005

[7] *Article 9A substituted by L.26/2007*

[8] *Rule 15/1(2) amended by R&O.63/2006*

[9] *Rule 15/2(1) amended by R&O.63/2006*

[10] *Rule 15/3(1A) inserted by R&O.63/2006*

[11] *Rule 15/3A inserted by R&O.63/2006*

[12] *Rule 15/3B inserted by R&O.63/2006*

[13] *chapter 05.025*

[14] *Rule 15/3B(5) substituted by R&O.131/2007*

[15] *Rule 15/3B(5A) inserted by R&O.131/2007*

[16] *Rule 15/3C inserted by R&O.63/2006*

[17] *Rule 15/3D inserted by R&O.44/2007*

[18] *Rule 15/3D(5) amended by R&O.131/2007*

[19] *Rule 15/3D(6) amended by R&O.131/2007*

[20] *Article 114(1) substituted by L.25/2005*

[21] *Article 114(2) substituted by L.25/2005*

[22] *Article 117(7) amended by L.25/2005*

[23] *Article 114(8) amended by L.25/2005*

[24] *Article 115(3) amended by L.25/2005*

[25] *Article 115(4) amended by L.18/2005*

[26] *Article 116(2) amended by L.18/2005*

[27] *Article 116(3) amended by L.18/2005*

[28] *Article 116(5) amended by L.18/2005*