

STATES OF JERSEY



PLANNING APPEALS: FEES

Lodged au Greffe on 13th January 2015
by the Minister for Planning and Environment

STATES GREFFE

PROPOSITION

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

to agree that fees can be charged for the submission of an appeal against a decision or action taken under Article 112 of the Planning and Building (Amendment No. 6) (Jersey) Law 2014 at a level as set out below –

1. For an appeal against the refusal (or deemed refusal after non-determination of the application) for planning permission, including for a development which has already taken place, for a minor development (as defined by the Department) £100.00
2. For an appeal against the refusal (or deemed refusal after non-determination of the application) for planning permission, including for a development which has already taken place, for a major development (as defined by the Department) £300.00
3. For an appeal against the imposition of a condition or the refusal to vary or remove a condition (both major and minor applications) £100.00
4. For an appeal against the granting of a planning permission (both major and minor) £300.00
5. For an appeal against –
 - (a) the listing of a building or place,
 - (b) the listing of a tree,
 - (c) the service of a notice requiring action (including an enforcement notice), or
 - (d) the refusal to grant building bye-laws permission,
 - (e) the refusal to grant a certificate of completion,
 - (f) the refusal to grant permission to undertake particular activities on/in/under a Site of Special Interest;
 - (g) the imposition of a condition on any permission previously granted,
 - (h) the refusal to grant permission for the importation or use of a caravan in Jersey,
 - (i) the revocation or modification of any planning permission£100.00

MINISTER FOR PLANNING AND ENVIRONMENT

REPORT

Introduction

A new process for the consideration of appeals against decisions and actions taken under the Planning and Building (Jersey) Law 2002 has taken shape through the consideration of Propositions [P.87/2013](#) and [P.94/2014](#). The result is the [Planning and Building \(Amendment No. 6\) \(Jersey\) Law 2014](#), which was registered with the Royal Court on 17th October 2014.

A fair and accessible appeals process is important for the efficient and effective functioning of any public administrative system. Such a system not only allows decisions to be examined and challenged, but also requires the system itself to justify its actions and to evolve and improve its decision-making capability.

The Law (as amended) allows for the charging of a fee for the submission of an appeal as a contribution to the cost of administering and determining the appeal. The report accompanying P.87/2013 stated –

- 3.11 *There has been support for the charging of a fee to access the new appeals process, through comments received from the Green Paper consultation [R.24/2013 – “Planning appeals – can we improve the process? Green Paper March 2013”]. A fee contributes to the cost of the service with user pays a well-established principle. Payment of a fee can also deter frivolous appeals from any of the parties concerned. If, as I intend to do, a fee is levied, it must strike the balance of not being prohibitively expensive, but equally make a meaningful contribution to the costs of the process. The fee should also reflect the fact that in the case of applications for planning permission applicants will have already paid a fee and third-party appellants will not have paid a fee. At the same time a fee should also reflect that at the lower end of the application for planning permission minor proposals, such as small extensions or fences, attract a very low, or sometimes nil, fee.*
- 3.12 *With this Proposition it would be difficult to propose a definitive mechanism for fees and what those fees might be, and at this time I would like the support of the Assembly for the principle of introduction a fee regime. As with all charging regimes, it would need to be reviewed annually and this would also allow how the new system is used by appellants to inform fee levels and indeed the structure of a charging regime.*
- 3.13 *I would therefore like to gain the Assembly’s endorsement to request that the Minister for Treasury and Resources allocates an initial sum to cover what would be an estimate of the full costs of an appeals process, with a view that some of this would be offset by the charging of a fee to pursue an appeal. Full details of the level of fee and mechanism to establish a fee that was fair and proportionate in respect of all the different appeals that could be pursued, will be brought back for Members’ consideration alongside the changes in law that will be required to facilitate the new process.*

The report accompanying P.94/2014 stated –

A fee is proposed to make an appeal, but as indicated above this structure has not yet been settled upon. There will be a fee income to offset the costs, but it will not be full cost recovery, probably 25% at this stage. This may change in the future depending on the level of take-up of appeals.

This Proposition shares with Members the level of fee I wish to charge and the mechanism I used to establish a fee regime that was fair and proportionate.

The new appeals process involves the Minister being removed from first-tier decision-making, with the officers of the Department of the Environment and the Planning Applications Committee (a successor to the existing Planning Applications Panel) making those decisions. Appeals by those affected by decisions would be made to an independent inspector in a process administered by the Judicial Greffe. The inspector would then consider an appeal and make a recommendation to the Minister, and then the Minister will make the final decision in light of the inspector's findings.

Fees

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

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

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

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

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

planning and building controls, and neighbours of a site which has been granted planning approval, can have their concerns considered independently.

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

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

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

Minor applications are defined by the Department as –

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

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

Major applications are defined by the Department as –

- Residential development of 1 unit and above
- New commercial development
- Commercial extensions and ancillary structures of >250 sqm. (gross external)
- Any mixed residential or commercial development
- Any change of use of land or buildings including domestic curtilage and al fresco areas
- Wind turbines, telecom masts or similar
- Miscellaneous developments (outdoor recreation areas, mineral extraction, etc.).

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

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

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

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

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

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

5. **For an appeal against –**
- (a) **the listing of a building or place,**
 - (b) **the listing of a tree,**
 - (c) **the service of a notice requiring action (including an enforcement notice),**
 - (d) **the refusal to grant Building Bye-Laws permission**
 - (e) **the refusal to grant a certificate of completion**
 - (f) **the refusal to grant permission to undertake particular activities on/in/under a site of special interest**
 - (g) **the imposition of a condition on any permission previously granted**
 - (h) **the refusal to grant permission for the importation or use of a caravan in Jersey**
 - (i) **the revocation or modification of any planning permission,**
- £100.00**

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

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

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

Financial and manpower implications (as described in previous publications)

The Minister for Treasury and Resources, in his comments on P.87/2013, said –

“The Minister for Treasury and Resources supports this Proposition and confirms below the estimated associated costs. The Minister further confirms that, should Members support this Proposition, funding will be allocated from Central Contingency for 2014 and 2015.

The Minister for Planning and Environment has set out the estimated costs to his department as follows –

	£
Based on 200 appeals per year	
Inspector’s fees:	123,000
Expenses:	25,000
Total:	148,000

Following discussion with the Judicial Greffe, the costs are estimated as follows –

	£
Based on 200 appeals per year	
Administration – 50% of a Grade 8 FTE	18,734
Management – 20% of a Grade 12 post	11,716
Premises – 25% of current rental paid for the Tribunal premises	13,750
Total:	44,200

The costs of any Law Drafting have not been included in this analysis, but will be allocated through the normal Law Drafting process.

The total expenditure request is therefore estimated as a maximum of £192,200, sourced from an allocation from Central Contingency. The Minister for Planning and Environment has suggested that part of this expenditure will be offset by the introduction of a fee which, if proposed, will be subject to a States decision.”.

So the total resource being requested is, for 200 appeals per year –

	£
Inspector’s fees:	123,000
Expenses:	25,000
Judicial Greffe resources	44,200
TOTAL	192,200

Example of possible fee income

The number and profile of appeals is difficult to predict, but considering some examples will give an indication of the level of fees income.

Currently available figures for 2014 (which may be subject to final verification) show that there were 110 applications for planning permission refused (out of a total of 1,448 determined), of which 41 were for minor developments (1,001 determined), and 59 were for major developments (437 determined).

There were 14 enforcement notices served, and there were 15 listings of buildings where the owner of the property raised concerns over the listing of the building.

Disputes over the grant of Building Bye-Law permission have not been tested in any appeal forum, but a total of 1,353 were submitted.

The great unknown is the number of appeals that may be brought against the grant of planning permission, but out of a total 1,338 approved.

Using these figures as a framework, the following example can be considered –

Example

Half of all refusals for planning permission are appealed =

20 against refusals for minor planning permission 20 x £100 = £2,000

30 against refusals for major planning permission 30 x £300 = £9,000

Half of enforcement notices appealed =

7 appeals against an enforcement notice 7 x £100 = £700

Two-thirds of Listing decisions appealed =

10 appeals against Listing of buildings 10 x £100 = £1,000

2% of decisions against Building Bye-Laws appealed =

27 appeals 26 x 100 = £2,700

100 appeals against grant of planning permission 100 x £300 = £30,000

TOTAL FOR 293 APPEALS = £45,400

In this case, fee income would be equal to approximately 24% of the cost of the appeals process.