

# STATES OF JERSEY



## **DRAFT PLANNING AND BUILDING (AMENDMENT No. 6) (JERSEY) LAW 201- (P.94/2014): THIRD AMENDMENT (P.94/2014 Amd.(3)) – COMMENTS**

---

**Presented to the States on 30th June 2014  
by the Minister for Planning and Environment**

---

**STATES GREFFE**

## COMMENTS

### **Introductory notes**

I welcome the input by Deputy J.H. Young of St. Brelade in respect of the processes and procedures that will facilitate a new merits-based appeal process against decisions and actions taken under the Planning and Building (Jersey) Law 2002. There are some excellent points raised by Deputy Young and, as I set out in my comments below, I think that some of his ideas add value to the scheme I wish to put in place. There are, however, some fundamental issues raised on which I cannot agree with Deputy Young.

My comments follow the sub-headings that Deputy Young has used in the report accompanying his amendments.

### **Planning Applications Committee**

I have no particular objection to the renaming of the Planning Applications Panel (PAP) as the Planning Applications Committee (PAC).

(I refer to PAP/C below to reflect the potential change.)

I have proposed that PAP/C procedures, including the composition and conduct, be set out in Standing Orders. This is because PAP/C is an important part of the States' machinery. PAP/C is comprised of elected Members, who are appointed by the Assembly as a whole. The formulation of how PAP/C should operate ought to lie with the body to whom it is accountable, which means that such rules should be formulated by the Assembly as a whole rather than by a Minister. Accountability to the Assembly is more meaningful if the Assembly is enforcing rules that it has created, as opposed to those ultimately owned by the Minister. Including those rules in Standing Orders would allow all States Members to be involved in the structure. Standing Orders provide the appropriate place to establish a body whose composition, appointments and accountability is controlled by the States Assembly – and any other system which involved all States Members would simply involve creating Standing Orders by another name.

Deputy Young has suggested that an Order by the Minister should be the mechanism to establish the procedure, etc. of the PAP/C. This would not be appropriate for the reasons I have set out above, in terms of allowing the Minister to set rules for a Panel that is accountable to the Assembly. The use of a Ministerial Order for setting procedure and practice would also be inappropriate in creating a link between the Minister who will determine appeals and PAP/C as a decision-making body. The aim of the new Law is to enable the first decision to be independent of the Minister, so this is a further reason why it would be anomalous for the Minister to determine how PAP/C should go about its decision-making business.

I think that Deputy Young's suggestion of an annual report back to the States of the work of the PAP/C is an excellent idea, and will bring to the fore discussions about planning policies for all States Members. However, I am not convinced that this should be a report on a statutory basis within the primary legislation. The best place for such a commitment should be in the Code of Conduct for PAP/C, which will undoubtedly require to be revised to reflect the changed operations of PAP/C. Such a commitment will encourage an ongoing consideration of policies in the Island Plan

and whether they are achieving their stated aims. That in itself will encourage ongoing engagement with policies, rather than just when the Island Plan is debated.

Regarding the publication of agendas for PAP/C, I have no concerns about the notice of a meeting appearing in the Jersey Gazette at least 5 days before the meeting as opposed to the current requirement of at least 3 days. This will be accompanied by the availability of the relevant papers for the meeting.

I think that allowing as wide a range of Members as is practical to sit on PAP/C should be encouraged, and I agree that Assistant Ministers should be able to become members of PAP/C. Exemptions would probably include the Assistant Minister for Planning and Environment and probably Treasury and Resources, given potential conflicts of interest, but these can be decided by Members in agreeing the Standing Orders for PAP/C.

### **Review of decisions delegated to Planning Officers by the PAP/C**

Deputy R.G. Le Hérissier of St. Saviour's successful amendment to retain a review of an application by PAP has been accommodated in my proposals. It was clear from the debate at the time, that the Deputy and current and former members of PAP felt that the process was a valuable tool that allowed an appeal without reference to the Royal Court, and that the current system should be maintained.

Before commenting on Deputy Young's proposals on this matter, it may be appropriate to clarify his comments. Deputy Young seems to imply that the only route of appeal against the granting of planning permission is/will be to the Royal Court. Whilst this is currently the case, the new appeals process will allow an appeal against the granting of permission to the Minister via an inspector. The ability to bring an accessible, affordable and proportionate appeal against the grant of a planning permission will be significantly enhanced with the new process.

I consider that the ability to bring a formal appeal within 28 days through the inspector/Minister route is accessible and proportionate and would allow proper engagement in a structured process. The fee payable for such an appeal would discourage vexatious or mischievous appeals.

Allowing a review of an approval by Panel/Committee would add a significant delay to the processing of an application for planning permission that is ultimately judged to be acceptable. There would be an initial 28 day period within which to bring a request for a review. There would then be a period of time – which could be up to 4 or 5 weeks depending on the cycle of the next available meeting – to place the review on a Panel/Committee agenda. Following consideration of the review, if the approval was endorsed by the Panel/Committee, there would be another 28 day period within which an appeal to the Minister via an inspector could be brought. There would be no cost to requesting such a review.

This would be frustrating for genuine and appropriate approvals and create a complex, confusing and unreasonable delay in resolving the issue, and increase the likelihood of vexatious or mischievous appeals against the granting of permission.

At the heart of Deputy Young's concerns in this matter appears to be the fact that a decision can be made on an application where some representations have been

received, but not enough to trigger the consideration of the application by the Planning Applications Panel.

The Development Control Planning Improvement Programme (PIP), in early 2011, suggested that only applications with 4 or more unresolved representations should be automatically referred to PAP for consideration. Prior to 2012, all applications with unresolved representations would be considered by PAP. If there is a concern that those making representations are allowed to have the involvement of the PAP/C, it would be more appropriate to require any application with an unresolved representation to be considered in the first instance by the PAP/C.

Notwithstanding the above, I feel that the current arrangements for referral to PAP/C are satisfactory, and under the new appeals process anyone genuinely aggrieved can pursue an appeal against a grant of planning permission. It is worth bearing in mind that, since 2012, officer reports on applications, along with all representations and consultations received, are published online along with any decision. This makes clear how representations have been considered, and allows more accessible and therefore more rigorous ability to scrutinize any decision.

### **The Appeals Panel**

Deputy Young proposes the use of a Panel of 3 – one professional inspector accompanied by 2 others who must be resident in the Channel Islands – to consider appeals, and then subsequently report to the Minister, who will make the decision. The appeal Panel members will be required to state their reasons for any recommendation individually, whether they are unanimous or otherwise.

The Proposition that established the model for the new appeals process examined the involvement of a Panel of one professional and 2 lay-people to consider appeals. This echoed the Guernsey model of bringing appeals with such a Panel having full decision-making powers. Notwithstanding that Deputy Young's amendments retain the Minister as the ultimate decision-maker, the weaknesses of a Panel considering an appeal remain.

First and foremost in these weaknesses is that an appeal needs to be considered by someone with the appropriate qualifications, skills and experience in order to produce a credible recommendation to the Minister. The proven ability to be able to weigh the often complex issues – aesthetic, environmental, economic, technical, legal and policy – often raised with appeals is vital for the credibility of the process. This is particularly important when appeals can be made against the refusal and the granting of permission, as will be the case. The involvement of individuals who may have some transferable skills, but primarily are chosen because they are resident in the Channel Islands, would be likely to raise concerns over the impartiality of the process. Added to this, the individuals may well have been previously involved in the development industry, and could be viewed by one side or another in an appeal to have particular conflicts of interest.

The Panel proposed in the amendment would become involved in the process after the PAP/C had already considered an issue. The whole purpose of PAP/C is to balance issues with their knowledge of the community and character of Jersey. PAP/C's opinion on these matters would be evident to an inspector and the Minister in making a decision on an appeal. The assistant inspectors would be unaccountable individuals

as well as not being experts in the field, whereas PAP/C members and indeed the Minister, are democratically accountable for the decisions they take.

Utilising a single individual who demonstrably has no conflicts of interest, along with the exact skills and experience to balance the issues, is a far more credible arrangement.

Although by no means a defining issue, a Panel would create a process that would need to be more formal in its approach to considering appeals. Hearings would be more intimidating with 3 people rather than an individual who is trained in extracting all the relevant evidence from participants. The formality of the existing appeals process is one of the factors that discourage appeals, and this should not be replicated in any new system which should be kept as simple and unthreatening as possible and practical. Added complexity would also have implications for coping with the anticipated volume of appeals, and the vision of a speedy and accessible process would be lost.

Single inspectors will have to demonstrate they have the experience and ability for holding hearings and making sure that all involved have the ability to make their points of view known.

Deputy Young claims that a Panel would provide greater insight into the basis of the recommendation that would be made, but I do not understand how this could be the case. If anything, the presence of individuals who are not expert in weighing the complex issues that may arise will more likely lead to obfuscation of the issues. Added to this the requirement in the amendment that each Panel member should make their individual opinions and recommendations known, could lead to a 3 way split of opinions. Any Minister will want clear and rational advice presented by an appropriate independent expert. The Minister will then apply the local knowledge and sensitivity to the case that Deputy Young feels the assistant inspectors would bring, and then the Minister will be democratically accountable for the decision.

## **Conclusion**

I have no objection to Deputy Young's amendment in relation to –

- Renaming the Planning Applications Panel as the Planning Applications Committee.
- Requiring publication of the notice of a Committee meeting – which should be accompanied by the availability of the relevant papers – 5 days before the meeting is held.
- The ability of Assistant Ministers to be a member of the Committee.

I have no objection to Deputy Young's suggestions contained in his amendment in relation to –

- The production of an annual report from the Committee to the States with a response from the Minister,

but I think that this should not be a statutory requirement; rather an undertaking from the PAP/C code of conduct. As such, the amendment should not be accepted in relation to this issue.

I do not support Deputy Young's amendment in relation to –

- The ability to request a review of an approved application by the Committee if the decision was made by officers.

If there is a concern over applications being determined with outstanding objections to the decision, then arrangements could be put in place to require such decisions to be made by the Committee in the first instance.

- A panel of 3 people – one inspector and 2 assistant inspectors – to provide a recommendation to the Minister.

This would allow the involvement of people who do not have the appropriate qualifications, skills and experience to weigh often complex aesthetic, economic, technical, legal and policy issues. As for the provision of a Jersey context to the process, I am certain that the Planning Applications Panel/Committee are best placed to provide this knowledge and, if appropriate, their position will be obvious to the Minister in making a final decision.

- The Panel/Committee process to be defined by Order.

The Panel/Committee are part of the machinery of the States as a whole, and should be embedded in the architecture of the States rather than being defined by an individual Minister's Order.