

Development Control Practice Note No. 3

The Planning Appeal Process

1. **Introduction** - because the planning process involves decisions on whether development can take place on land by people other than the owner, it is right that there are proper checks and balances to ensure that those decisions are appropriate and reasonable. An applicant who is dissatisfied with a decision has 3 options for appealing against a decision of the Minister for Planning and Environment – these are a request for reconsideration, a Board of Administrative Appeal (Review Board) and an Appeal to the Royal Court.
2. **Request for Reconsideration** – this is the first and most frequently-used route and involves requesting that the Minister for Planning and Environment reconsiders the matter. Nearly all applications are determined under powers delegated to the Planning Applications Panel or an officer of the Planning and Building Services Department. It is one of the roles of the Minister to oversee these decisions in order to ensure consistency and reasonableness. However, it is important to recognise that this is an informal procedure, without a right to be heard, which adds to the administrative burden of the Department. Accordingly, there are certain conditions attached to this procedure, which applicants are required to follow:-
 - (i) The applicant (or agent) must write within 2 months of the date of the decision notice requesting reconsideration of the decision.
 - (ii) The letter should be addressed to Peter le Gresley, the Assistant Director – Development Control, who will ensure that the letter is acknowledged, logged-in and routed to a forthcoming Planning Applications Panel agenda with the appropriate departmental report and other relevant papers.
 - (iii) The letter must set out clearly the planning reasons why you consider that the decision of the Planning Applications Panel or Department is unreasonable and should refer to any relevant planning considerations you feel have not been given sufficient weight; please note that a copy of this letter will be placed on the public counter so that neighbours may see the reasons for the request for reconsideration.
 - (iv) The Minister for Planning and Environment will not entertain requests to reconsider a decision more than once and this process should not be used as an attempt to present a proposal which is different to that previously considered.

The papers will then be forwarded to the Minister for its consideration and the applicant is notified of the subsequent decision in writing.
3. **Review Board** - An alternative course of action, for people who want the decision of the Minister to be re-examined by a different body, is to submit a request to the Greffier of the States for the matter to be reviewed by a Board of Administrative

Appeal. This procedure can apply to a decision made by any Committee or Department of the States. It is provided by the Administrative Decisions (Review) (Jersey) Law 1982.

If the Greffier of the States, after consultation with the chairman of the Administrative Appeals Panel, considers the circumstances of the case justify a review by a Board then a hearing will be arranged. This is normally held in the local Parish Hall and hears evidence from both the complainant and the Minister. These proceedings are usually relatively informal and although a complainant may wish to present his or her case with the help of an agent or adviser, this is not strictly necessary. After the hearing, the Board will report its findings. If it considers the Minister's decision to be unreasonable, the Board can request the Minister to reconsider its decision. However, it is important to realise that the Minister is not bound by the conclusion of the Board.

If you wish to follow this route, you should write to the Greffier of the States, setting out the details of your planning application and the reasons why you consider the Minister's decision to be unreasonable and why there is justification for a hearing. The Greffier will inform you whether he agrees that the matter merits a hearing by a Board. If a hearing is to be held, you will be informed about the process and timetable.

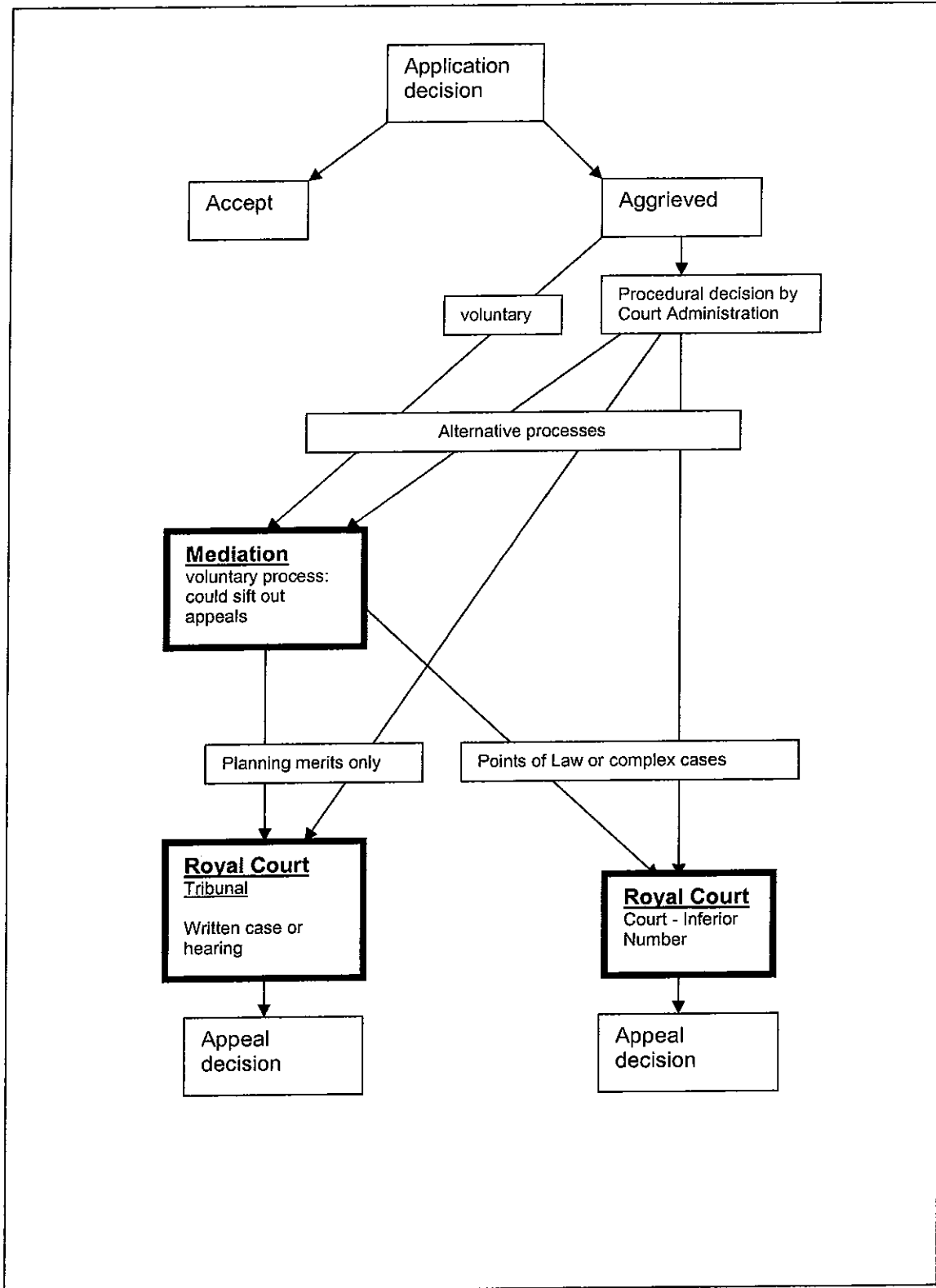
The Greffier's address is:
Greffier of the States of Jersey
States Greffe
Morier House
St. Helier JE1 1DD

4. **Royal Court** - finally, Article 24 of the Island Planning (Jersey) Law 1964 provides the right of appeal to anyone who is aggrieved by any decision of the Minister for Planning and Environment. This right is restricted to a refusal to grant planning permission, the imposition of a condition on a planning permission, which effectively limits the right to the applicant only and not those making representations. In addition the right to appeal exists for recipients of any Notice under the Island Planning Law. Such an appeal is made to the Royal Court and must be officially lodged within two months of the date of notification of the Minister's decision, or service of Notice.

If you decide to proceed with an appeal to the Royal Court, you are advised to consult a lawyer. It is possible to pursue an appeal without representation by a lawyer and the procedure is set out in Part XII of the Royal Court Rules, 1992. A copy of this document can be obtained from the States Greffe Bookshop, Morier House, St. Helier. It is also published on the Web, at www.jerseylegalinfo.je.

5. **The Future** - the new Planning and Building Law has been approved by the States of Jersey and has received Royal Assent. This law provides for the creation of a new independent Planning and Building Appeals Commission to replace the exiting arrangements. However, the implementation of this new law is currently delayed, pending the availability of resources to establish the Commission. In the meantime, the above procedures remain valid.

Planning Appeals Process (New Royal Court Rules)



ENVIRONMENT & PUBLIC SERVICES COMMITTEE

Planning and Building Services Division

2004 Report on Planning and Building Application Services

This is the first annual report on planning and building application performance since the Environment and Public Services Committee adopted a Service Level Agreement for its customers in September 2003. It includes data from 2002 and 2003 to enable year-on-year comparisons to be made, and subsequent reports will extend this to the four preceding years of information.

In November 2002, the States adopted a proposition of the (then) Planning and Environment Committee, to fund improved services through across-the-board increases in application fees. This was a response to the diminution in service caused in 1999-2002 by a significant rise in the number of applications and construction projects commencing, with fixed staff resources. It enabled up to 10 additional staff to be appointed on short-term contracts so that available resources could be tailored flexibly to workloads (it should be noted that some of these posts have had to be given up in the States fundamental spending reviews for 2004-2006).

The States also agreed higher exemption thresholds in November 2002 (Island Planning (Exempted Operations) (Jersey) Regulations 2002), and this has contributed to the reduction in the number of applications in the last two years.

In early 2003 the Department reviewed its application procedures to improve efficiency. In particular, it separated planning and building applications, which has streamlined the building application process. Furthermore, compliance with the Building Bye-laws is best achieved by inspecting works in progress, and greater efficiency in dealing with the application process has enabled more time to be spent on site – reflected in the increase in site inspections in 2003 and, especially, in 2004.

The attached statistics show that the required improvements in service have been substantially achieved, and continue to improve as we monitor application processes and introduce further improvements. The Committee is about to commission an external review of planning and building services as it prepares for ministerial government and the introduction early in 2006 of the Planning and Building Law 2002.

The percentage of planning applications determined in 8 weeks (target 75%), for example, has increased from 58% in 2002 to 73% in 2004, and in 2005 is running at 78%. As a corollary, the average number of days for a planning decision to be made has reduced from 76 to 46 over the same period.

For building control, over the same period, the percentage of applications actioned within 5 weeks (either decided, or applicant advised of further action necessary) increased from 48% to 99% (target 100%).

Discussions continue as to the best method of gaining qualitative feedback on value added by the planning and building application processes.

Response times to requests for preliminary planning advice for the more complex cases has slipped as planning officers concentrate on the statutory duty to deal with applications in a timely manner.

The Committee recently announced that it intended to carry out a review of the planning and building functions in preparation for the change to ministerial government, including the establishment of the Planning Applications Panel, and the introduction in 2006 of the Planning and Building (Jersey) Law 2002.

Planning statistics

	2002	2003	2004
Applications:			
Number of applications	2,584	2,438	2,196
Percentage decided in 8 weeks	58	68	73
Percentage decided in 13 weeks	77	83	90
Average number of days for decision	76	56	46
Percentage outcomes:			
approved	88	86	90
refused	8	10	8
withdrawn	4	4	2
Percentage delegated officer decisions	86.8	89.4	89.2
Committee reconsiderations:			
number maintained	-	-	76
number approved	-	-	20
Enforcement:			
cases investigated	308	634	612
notices served	19	11	4
prosecutions	6	6	5
Royal Court cases:			
won	5	3	1
lost	2	4	0

Review Boards:			
won	5	2	5
lost	1	2	3
Significant deviations from Island Plan	0	1	0
Net cost of service	-	-	£610,924

Building Control statistics

	2002	2003	2004
Applications:			
Number of applications	1,672	1,352	1,214
Percentage actioned in 5 weeks	48	86	99
Work on site:			
New job starts	1,109	1,156	1,284
Satisfactory conclusions	1,116	1,006	981
Total site inspections	10,841	11,966	14,469
Net cost of service:	-	-	£600,421

Environment & Public Services Committee

SERVICE LEVEL AGREEMENT - PLANNING AND BUILDING APPLICATION SERVICES

The States has agreed a proposition of the former Planning and Environment Committee to introduce a "beneficial user pays" method of funding improvements to application services. This Service Level Agreement sets out the new service standards and came into force on 19th September 2003.

The Committee will only be able to meet these service levels if applicants and their professional agents ensure:

- a) *that the **content** of submissions are adequate for the purpose and contain sufficient information and necessary detail;*
- b) *that drawings are **accurately** scaled and dimensioned with no contradictions between plans, elevations, sections and explanatory notes; and*
- c) *that the **presentation** of submissions is clear and the proposal can be readily understood in its proper context.*

Agents are expected to be aware of law, Committee policies, building bye-laws, supplementary planning guidance and standards of best practice in relation to development issues.

Applicants, or their Agents where retained to act in implementing changes, are also expected to notify the Department in writing of changes in proposals, for example between planning permission and bye-law application, or made during work on site.

AGREEMENT

1. The Planning and Building Services Department (the Department) will aim to provide a level of service equal to comparable best practice standards.
2. Pre-application advice will be provided by the Department at no charge, in accordance with the provisions in its Development Control Practice Note No. 1.
3. The Department will issue a prioritised programme for the preparation and publication of supplementary planning guidance to bring existing guidance in line with the principles and policies of the 2002 Island Plan. The Department will monitor the value of existing and the requirement for new guidance in response to practice and trends and will ensure that guidance is updated. The revision of existing and the provision of new guidance will be the subject of consultation prior to adoption (see 17.).
4. Applications will be validated and registered within 3 working days of receipt in the Department, and confirmation of registration and a fee receipt issued to the agent / applicant. Failure to comply with the required standards of submission will result in the application being returned unregistered.
5. Consultation letters will be issued by the Department within 2 working days of an application being registered, unless an unforeseen issue is raised during later consideration of the application. Consultees will be allowed 10 working days to respond. However, if the views of an elected body are required a reasonable extension of time will be permitted.

6. Applications will be sent to the Jersey Evening Post for publication within 5 working days of registration.
7. Copies of all representations received by the Department will be sent to the agent/applicant within 5 days of receipt. The agent / applicant will be given at least 10 working days to comment prior to the application going forward for a decision.
8. The Environment & Public Services Committee (the Committee) will aim to decide 75% of all planning applications within 8 weeks of registration, or within 4 weeks of all representations, including consultations, being received (including the applicant's), whichever is the later, provided it is not necessary to negotiate revisions to the proposals.
9. At least 90% of all applications for building bye-law permission will be determined within 5 weeks of an application being registered. Where amendments are necessary to enable building permission to be granted the applicant/agent will be advised in writing within 5 weeks, and given an option of submitting further plans. Where this option is taken up a decision notice will be issued with 5 weeks of receipt of the revised plans.
10. Agents/applicants can expect a decision on all but the most complex applications within the above time-scales. However, in the event of failure to reach a decision within the time-scales, the Department will write to the agent/applicant advising on progress and the reasons for the delay.
11. Planners will present clear, concise, recommendations in a report to the Committee, based on impartial analysis of planning issues, published policies and policy guidance, and any other material planning considerations. Once the new Law is brought into force, Committee meetings will be open to the public and agendas, including reports and all written representations, will be published.
12. The Committee, its Sub-Committee, and Officers will be:-
 - timely and consistent in their decision making,
 - apply approved policies firmly and fairly,
 - take account of all agents' and applicants' comments and other representations before making their decisions.
13. The Department will inform the agent/applicant by telephone, e-mail or fax, within 24 hours of the application decision being made by the Planning Sub-Committee or the Committee, before the media or anyone else is informed. A formal Notice, giving full reasons for all conditions attached to permissions and for refusals of permissions will be sent within 5 working days, after which the decision will be published on the Department's web-site.
14. On commencement of and during work, Building Control Surveyors will carry out site inspections within 1 working day of request. If the Building Control Surveyor has any concerns / issues about works on site he will instruct the contractor immediately. It is the responsibility of the contractor to inform the client or agent of these changes. However, where the necessary changes are significant, the Building Control Surveyor will also inform the agent when the Department has been advised of the agent's retention in a supervisory capacity. It will be the responsibility of the agent to advise the Department of the retention of his services.

15. Routine correspondence from agents/applicants to Planners or Building Control Surveyors, in respect of current applications, will be responded to within 10 working days of receipt. Replies on complex matters involving research and pre-application advice will generally take up to 20 days.
16. The Department will regularly update its web-site. The Department is committed to developing the content of the web site to provide immediate access to as wide a range of information as possible. The Department is also committed to using information systems to their full potential, as their development within the Department allows, to offer an increasing range of services over the internet to all users of its services.
17. Prior to the Committee or the Department making any changes to its policies, supplementary planning guidance, application procedures (where they have an external effect) and Codes of Practice, the Department will obtain the views of the Association of Jersey Architects, other representative User Groups and the general public, as appropriate, on the proposed changes.
18. The Committee will conduct regular user feedback surveys in accordance with the recommendations set out in the 1995 report "*Review of the Application Process*" undertaken by the District Audit Service.
19. The Committee will publish an annual statistical report, to contain:-
 - a) The number of applications received, by type.
 - b) The percentage of Planning decisions taken within 8 weeks and the number of Building Bye-law decisions taken within 5 weeks.
 - c) The number and outcome of decisions taken by the Committee, or the Planning Sub-Committee.
 - d) The costs of the Department's Services.
 - e) Qualitative measures of performance.
 - f) The number and nature of significant deviations from the Island Plan.
 - g) The number of enforcement cases referred and dealt with.
 - h) The number and outcome of decisions reconsidered by the Committee.
 - i) The number and outcome of Royal Court cases submitted and outcome of cases heard.
 - j) The number of Review Board requests submitted and outcome of cases heard.
 - k) Any other suitable performance indicators.