STATES OF JERSEY

PLANNING APPEALS: REVISED SYSTEM

Lodged au Greffe on 22nd July 2013
by the Minister for Planning and Environment

STATES GREFFE

2013 Price code: C P.87

PROPOSITION

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

(a) to agree that a new Planning Appeals process to replace the present appeal provisions in the Planning and Building (Jersey) Law 2002 should be established to determine appeals against decisions made under the Planning and Building (Jersey) Law 2002 entirely on their merits, with the exception of deciding points of law arising from such appeals, with the new system consisting of an independent Inspector considering the case along with all the material evidence and reporting findings to the Minister for Planning and Environment who would then determine the appeal;

(b) to agree that applicants for planning permission should be able to require a decision to be made if an application has not been determined within an identified timescale;

(c) to agree that appropriate mechanisms and procedures should be established with the agreement of the Jersey Appointments Commission to permit the appointment of independent Inspectors to consider appeal cases and advise the Minister as appropriate, with the Judicial Greffe administering the appeal process and appointing an Inspector with appropriate skills and experience to consider each appeal;

(d) to agree that the new appeal system should be designed to allow appeals to be considered either on the basis of written representations or by means of an Appeal Hearing and to agree that a fee may be charged for each appeal;

(e) to request the Minister for Treasury and Resources to allocate funding from a source to be identified by that Minister for the years 2014 and 2015 for the Judicial Greffe to administer the process and engage the required Inspectors as appropriate, with the Minister for Planning and Environment then being accountable for public finance and manpower purposes;

(f) to request the Minister for Planning and Environment to bring forward for approval by the States detailed proposals on the structures and procedures for the new appeals process together with the necessary draft amendments to the Planning and Building (Jersey) Law 2002 to enable the new appeal process to be established.

MINISTER FOR PLANNING AND ENVIRONMENT

REPORT

1. INTRODUCTION

1.1 The successful proposition brought by my colleague, Deputy J.H. Young of St. Brelade (P.26/2013) sought a process for appeals against actions taken under the Planning and Building (Jersey) Law 2002 to be considered on the merits of the case. The responses to the Green Paper I published in March had an overwhelming response in favour of appeals to be considered on their merits. On the basis of these circumstances, I concur with Deputy Young that the need to change the current system is beyond question.

1.2 A Green Paper is often followed by a White Paper which sets out options and invites comments on those options. The information gathered from the Green Paper and debate surrounding P.26/2012 means that the stage of proposing options is passed, and I will now set out my proposals for an appeals system. I am extremely grateful to all those who made comments on the Green Paper, as those comments have helped me to reach the proposals I wish to promote. A summary of the comments can be found at –

www.gov.je/Government/Consultations/Pages/ConsultationPlanningAppeals.aspx

along with a commentary on how they relate to the system I propose.

1.3 In this Proposition I will set out my proposals for a balanced process that will allow independent consideration of appeals on their merits. The approach will ensure an accessible, affordable and proportionate process that allows not only the independent scrutiny of decisions but also crucially at the same time recognises the fundamental issues of sovereignty and accountability that a mature and democratically accountable planning process requires.

1.4 It is important for everyone to appreciate that a change in the system will still result in one or other party within the process not getting the decision they desire. A new appeals process will not change this, but should go some way to make those involved feel that they have had a system that allowed their point of view to be considered in reaching of a decision.

2. A MODEL FOR APPEALS

2.1 Any appeals process must be –

- merits based,
- independent,
- accessible, and
- affordable,

and I propose a process that achieves all of these goals.

2.2 The merits of a case must be at the heart of the consideration of an appeal. This is how first-tier decisions under the Planning and Building (Jersey) Law 2002 are made, and it is only right that challenges to those decisions should be judged on the same basis. This process will replace the existing statutory and informal opportunities for appeal, currently through the Royal Court or a Request for Reconsideration (RfR) respectively, and create a single process for all appeals.

2.3 Any process must be able to cater for appeals against the following decisions –

1. The refusal to grant planning permission.
2. The refusal to approve or amend an application for planning permission for development which has already taken place.
3. The refusal to vary a previously approved application for planning permission.
4. The refusal to grant a certificate of completion (confirming a development has taken place in accordance with a previously approved planning permission).
5. The refusal to grant building bye-laws approval.
6. The refusal to grant permission to undertake particular activities on/in/under a site of special interest.
7. The refusal to grant permission for the importation or use of a caravan in Jersey.
8. The imposition of a condition on any permission previously granted by the Minister.
9. The revocation or modification of a planning permission.
10. The service of notices requiring actions.
11. The inclusion of buildings/places/trees on relevant lists for their protection.
12. The granting of planning permission – appeal by a third party.

Considered options

2.4 In reaching the model I have indicated in my Proposition, I considered 3 models as a route for appeal. These were –

1. Appeals determined by a Tribunal with full decision-making powers, chaired by an appropriate Planning professional.

2. Appeals determined by a single Inspector with full decision-making powers.

3. Appeals considered by an independent Planning Inspector who then makes a recommendation to the Minister, who then makes a decision on the basis of the Inspector's findings.

2.5 Before discussing the relative pros and cons of each of the models, it is important to highlight the similarity. The sometimes complex technical, aesthetic, policy and legal arguments that are raised with appeals should be weighed by someone with relevant qualifications, experience and skills. The experience of Guernsey and the Isle of Man in seeking such individuals has led me to conclude that there will be sufficiently interested people who can be called upon at reasonable expense to be involved in any appeal considerations. Guernsey, for example, during their latest round of recruitment in 2011, received applications from 60 individuals, of which half were experienced Planning Inspectors from the UK Inspectorate, the Isle of Man Planning Commission or the Irish Planning Inspectorate – the An Bord Plenanala. I propose the involvement of such individuals in any process. In order to be appointed, the Inspectors will have to demonstrate that they have absolutely no conflicts of interest within Jersey and demonstrate that they will provide a level of independence that it is clear to all parties who may be involved. I propose to establish a list of Inspectors, recruited through the Jersey Appointments Commission, who can be called upon to be involved in the consideration of appeals.

2.6 The first model I considered was for a Tribunal to be formed with full decision-making powers. The Tribunal would be comprised of a planning professional and individuals who do not have direct relevant qualifications and experience, but can make a case as having transferable skills. I do not find favour with such an arrangement, as I consider that it would not be appropriate for what would be a decision-making body where the majority of members would lack the direct skills and experience of considering planning-related issues. As I have indicated, the complex technical, aesthetic, policy and legal arguments raised with appeals should be considered by individuals with relevant qualifications, experience and skills. I am also concerned that lay-people who put themselves forward would not be able to demonstrate a clear and unequivocal absence of a conflict of interest. Planning has long been a contentious and sensitive issue for Jersey, and the likelihood of individuals with relevant experience from Jersey being able to create a perception that they have no prejudices one way or another is unlikely. Of considerable concern to me is the fact that the Tribunal would have the ability to over-rule the decisions of elected politicians, whether that is the Planning Applications Panel (PAP) or the Minister, who have to account directly to the electorate for their actions.

2.7 There have been suggestions that the Guernsey model of an Appeals Tribunal should form the template for Jersey's process. There have also been suggestions that there could be an opportunity to establish an organisation that served both Islands in considering appeals. I am not attracted to this way forward for a number of reasons. Most importantly, as I have indicated above, I do not think that transferring the decision-making powers away from an accountable Minister or Panel to a Tribunal including lay-people is appropriate in principle. There is also the difference in comparative scale of the appeals process. In the last year there have been 31 appealed decisions in Guernsey. This compares with an average of 94 per year over the past 7 years in Jersey, and this figure is anticipated to rise significantly with the introduction of a revised process which at its heart seeks to be more accessible.

2.8 As well as the difference in scale of numbers, Guernsey's legislation for dealing with applications for planning permission differs from Jersey's in some significant ways, particularly that there is no right of appeal by a third party against a planning application decision. This represents not only a fundamental difference of approach, but also a likelihood of more appeals being generated then the Guernsey model is used to dealing with, as approvals as well as refusals could be challenged. There is also a difference in the involvement of legal professionals in the process in Guernsey, compared to the level of involvement in the current Jersey process. Legal professionals do not appear to feature prominently in appeal processes in Guernsey. In Jersey the current process has resulted in significant involvement and, although I wish to see a process without heavy legal involvement, it may take time to move away from the involvement of legal professionals. I appreciate this is a chicken and egg situation – with the current legal-based process leading to the involvement of legal professionals – but a change in this legal involvement is unlikely to happen instantaneously with any new system.

2.9 Given the above, I am not persuaded that a Tribunal made up of a planning professional and lay-members is the correct solution for Jersey, and accordingly I do not think that adopting the Guernsey model would be appropriate.

2.10 The second model I considered was a single independent Inspector with full decision-making powers. As I have indicated, the complexity of planning-based issues would require a planning professional with suitable experience and skills of considering appeals, along with an ability to demonstrate absolutely no conflict of interests in Jersey. However, such individuals would lack local sensitivities, and there would be the same issue over accountability as with a Tribunal, that is an unelected individual over-ruling a democratically elected decision-maker. I am as uncomfortable with this arrangement as with the Tribunal model because of the unaccountability of the decision-maker and the lack of a Jersey perspective on any decision. I am very uncomfortable with the potential removal of these responsibilities away from the elected body of the States.

2.11 What I consider to be the unsuitability of the above options leads me to my proposal, which is the third model, of an independent Inspector reporting to the Minister with whom the final decision will lie. Inspectors will consider appeals on their merits and then produce a report that highlights the determinative factors of a recommendation. The Inspectors will then present the report to the Minister for Planning and Environment, who will take the decision on the appeal. Following the independent consideration of the issues by an Inspector, along with the rehearsal of issues through the application process itself, the Minister would have to have very good reason to go against the Inspector's findings. The Minister could do so, but would have to explain clearly the reasons for the decision. This arrangement addresses directly the constitutional issue of where the decision-making power lies and the issue of accountability to an electorate, whilst at the same time allowing an independent consideration of the merits of the appeal.

2.12 I envisage resistance to the retention to the role of the Minister in an appeals process, but on balance I feel it is the best arrangement. Any new process should not cede the power to determine appeals to a democratically unaccountable body. When an appellant receives an appeal decision, it must be underpinned by the principle of democratic accountability. Concerns that allowing a body with no understanding of the character and personality of Jersey to be an ultimate decision-maker have been raised in the responses to the Green Paper and I agree with this caution. The Ministerial role will also allow for the particular sensitivities and environment of Jersey to be factored into any decision. For these reasons, my proposal retains the Minister as the ultimate arbiter in appeal decisions, but I recognise the role of the Minister in events leading to any appeal must fundamentally alter so as to ensure balance in the process.

2.13 There will remain the opportunity to test the decision in the Royal Court, but only within particular circumstances. Guernsey have a specific provision within the Land Planning and Development Law 2005 which only allows for appeals on the basis of a point of law, and I will take guidance from the Law Draftsman in this matter over the potential to repeat this requirement in any subsequent legislation.

Implications for the role of the Minister

2.14 In order to provide a fair system, the Minister cannot be involved in an original decision against which an appeal could be brought. For example, the Minister cannot become involved in a decision to protect a tree and then consider an appeal against that decision. Consequently, the Scheme of Delegation for the Minister for Planning and Environment will have to authorise either the Planning Applications Panel (PAP) or officers to make all decisions that will be challengeable on appeal.

2.15 Perhaps of most significance with this arrangement will be that the Minister will not be involved with applications for planning permission, either in terms of discussing specific proposals or determining an application for planning permission. The Minister will still set policies and guidance against which decisions should be considered, and indeed the policies and guidance will be relevant in the consideration of any appeal, but initial decisions must be remote from the Minister.

2.16 As well as implications for the Minister, there will be inevitable alteration in the role of the Planning Applications Panel (PAP). Although direct Ministerial Decisions on applications for planning permission are currently very limited following the adoption of the Ministerial Code of Conduct in December 2010, under the new appeal process all such applications are likely to be considered by PAP. As currently formulated, when PAP are minded to come to a different conclusion on an application than the officer recommendation, the Minister may become involved. With the new appeals process, PAP's decision will be binding and the Minister will only become involved if there is an appeal against their decision.

2.17 There may be occasions when the Minister's attention is drawn to an issue where a decision is required but the Minister wishes to consider the issue. On such an occasion, the Minister will indicate, without prejudice, that the issue should be considered by an Inspector. This will involve the decision process going through its statutory stages – publicity and/or consultation as appropriate – and then being referred to the Judicial Greffe, who will arrange for an Inspector to consider the matter and report to the Minister. In such cases the Department of the Environment will present their case to the Inspector along with other interested parties.

2.18 This call-in process can be bundled with the existing Public Inquiry procedures when, if an application for planning permission is a substantial Departure from the Island Plan or if it is likely to have a significant effect on a substantial part of the population if approved, the Law allows for a Public Inquiry to be held. Such a process will involve the application to run up to a point where the decision is about to be made, and then if appropriate referred to the Judicial Greffe to arrange for an Inspector to consider the proposal and report to the Minister. For example, a major development proposal may be taken to PAP for consideration. If PAP are unhappy with the proposal, the application can be refused and the applicant may appeal. If PAP are happy with the proposal, the application would then be referred to an Inspector who can consider all the issues and then report to the Minister for a decision to be made.

2.19 If the appeal decision itself is challenged on a point of law, as indicated in paragraph 2.13, the Minister would be called upon to justify the decision to the Royal Court. Such a challenge would be addressed by the Department of the Environment and the Law Officers on behalf of the Minister, taking into account the material considerations that led the Minister to make the decision on the appeal. These will include not only the information available at the time of the first decision, but also the report from the Inspector where all the issues should be laid out and discussed and then weighed to result in a recommendation to the Minister. If the Minister had disagreed with the recommendation of the Inspector then the reasons would be clearly documented.

Further considerations

2.20 There was slightly less support in the responses to the Green Paper for a merits-based approach to extend to third-party appeals against the granting of planning permission. However, in the main, respondents recognised that it would be iniquitous not to extend the same rights and test to third-party appeals. I fully agree with this. The introduction of third-party rights of appeal was considered and debated with the 2002 Law, and they are now an accepted part of the planning landscape. It would be inappropriate to try and cause any change to that situation or introduce any difference in the value attached to the ability to appeal. As such, the changes I propose will extend to both first and third parties in regard to appeals in connection with the determination of applications for planning permission. Whilst some of the responses to the Green Paper sought to widen the ability to bring a third-party appeal, I consider the present arrangements are appropriate. As with the principle of third-party appeals, these limitations were considered thoroughly with the introduction of the 2002 Law, and they continue to strike a proportionate and appropriate balance. The limitations as to who can bring a third-party appeal, that is having made a representation on the original application and living/ owning land within 50 metres of the application site, reflect parties who are directly impacted upon by a development. Concerns over the ability for third-party appeals to stifle development and hinder the industry should be addressed by ensuring a swift process that allows proportionate consideration of the grounds of appeal.

2.21 The Department currently seeks to determine applications for planning permission within set deadlines (8 weeks for minor applications and 13 weeks for major applications). Respondents to the Green Paper favoured an ability to appeal against applications that have been with the Department for longer than these deadlines. The ability to appeal against non-determination of applications for planning permission would encourage the Department to work to the prescribed periods, but also encourage keeping open lines of communications with applicants so that they are aware where their proposal is heading. However, such an appeal could exclude third parties from the original decision-making process. I therefore would like to introduce a requirement in the Law that after, the expiry of the identified periods, an applicant can submit a formal request that their application is determined within 28 days on the basis of the information provided. There would be a legal obligation for compliance with this request, and the process could then move forward. An applicant will be unlikely to invoke such a request if their proposal is shortly to be determined in their favour. Equally, an applicant would be unwise to invoke the request if there were crucial matters outstanding with the proposal as the lack of information could form a reasonable ground of refusal. The discipline of being able to make a request for determination will allow applicants to feel more in control of the process and will focus the minds of the Department in service delivery.

2.22 The register of Inspectors who will consider appeals will be administered independently through the Judicial Greffe. They will register the appeals (initially by the submission of simple appeal documentation), appoint an appropriate Inspector, manage documentation deadlines, and ensure all interested parties are involved with an opportunity to have their opinions and views considered. A suggested timeline for the processing of an appeal is

included in the **Appendix**. The process will allow a quick response to register an appeal and then a reasonable but limited time to prepare a full statement of case and the exchange of information/grounds of appeal. The matters under consideration should have been considered at the time of the original decision, and there will only be limited further information to expand upon. If crucial determinative information was not considered at the time of the decision, then the Minister has existing powers to act in such cases. Given this circumstance, statements of case will be limited to no more than the previously submitted information and a maximum of 1,500 word supporting documentation. Such a limit to information will ensure comprehensive original submissions and allow the time limits for the submission of information to be met. The Greffe will make an assessment of the issues involved in the appeal and appoint an appropriate Inspector to consider the case. The Inspector will be drawn from a list of retained Inspectors who have been appointed. Within the list of Inspectors will be specialists in particular areas of the issues covered by the Planning and Building (Jersey) Law 2002. For example, as well as Planning Inspectors there will be appropriately qualified and experienced individuals who can consider appeals against building bye-law decisions or a decision to List a tree.

2.23 In order to provide an effective and efficient appeals process there will be two distinct routes for an appeal that will be proportionate to the complexity of the issues raised. For minor appeals and appeals of a technical nature – such as whether a building should be a Listed Building – the default position will be to deal with the appeal on the basis of written submissions. Householder applications where there has been little or no public comment, minor applications subject to third-party appeal where there have been few other representations, and advertisement appeals, are all examples of those which would be more quickly and efficiently addressed on the basis of written representations. The majority of appeals currently considered are Requests for Reconsideration (RfRs) relating to minor developments previously determined under delegated powers. By making these considerations quick and attractive to appellants, I hope to establish a relatively rapid review of decisions involving the consideration of arguments and a visit to the site by an appointed Inspector. The second route for an appeal – an Appeal Hearing as discussed below – could be requested, but there would have to be exceptional circumstances where one was required for minor cases. I anticipate that the written submissions process will be significantly speedier than a Hearing process on the basis of the relative logistics involved.

2.24 Appeal Hearings would be convened for more complex issues. Planning applications with significant representations, major applications or appeals against the service of an enforcement notice would be better considered in the context of an Appeal Hearing. These Hearings need not be long affairs, the Isle of Man generally hold Hearings of 1½ hours in length. There is only so much anyone can say about issues when challenging a decision, particularly when the information has been previously crystallized in statements of case which will still be required to be produced. More complex matters would be allocated longer periods for deliberation.

2.25 Whatever the route of appeal, all parties involved in the original decision will be included directly in the appeal process and given the opportunity to make representations to an Inspector, or to allow their previously submitted information to be taken into consideration.

2.26 The appointed Inspectors will carry a wide spectrum of skills that will allow the consideration of appeals against all the actions that can be taken under the Law. Much of the debate over the introduction of appeals has centred on the grant or refusal of applications for planning permission. However, other actions, such as the listing of buildings, the protection of trees and the consideration of bye-laws applications, should all be exposed to the test of appeal. The prospect of engaging with the Royal Court for these other matters has, I consider, been a significant barrier for the proper functioning of the processes laid down by the Law. Independent and speedy consideration of appeals in these matters will improve the process, and the panel of Inspectors will therefore seek to include specific experts in these other matters who will be able to offer a review of decisions on an impartial basis. There will be some scope for some appeals to be dealt with quickly where the issues raised are relatively straightforward. Taking building bye-laws as an example, an Inspector will consider whether what is in dispute accords with the bye-laws provisions or not. It might be that an application has proposed a different way to meet the requirements of the bye-law, and the Inspector will act as an independent arbiter as to whether the suggestions are acceptable or not.

2.27 Inspectors will consider appeals on their merits and then they will produce a report that highlights the material factors of a conclusion they will reach in regard of the case. The Inspectors will then present the report to the Minister who will, without any interaction from the Department of the Environment, make a decision and issue notice of that decision. In the case of issuing a permission, the notice may contain appropriate conditions and limitations. In the case of dismissing an appeal, the notice will fully document the reasons for the dismissal.

2.28 At the **Appendix** I have attached flowcharts of the potential path of various applications so as to clarify the process.

3. RESOURCES AND COSTS

3.1 The new appeal process will replace an existing structure. That existing structure generates demands on officers and departments and these demands will remain, albeit serving a different system. Whilst I appreciate the comments within Deputy Young's proposition regarding resources and costs (P.26/2013), the true position is that the resources that currently serve the appeal process will still need to be dedicated to serving any new process. For example, Planning Officers will still have to justify challenged decisions, but this will be to an Inspector rather than the Planning Applications Panel (PAP) in the case of a Request for Reconsideration (RfR), or the Royal Court for larger proposals. Indeed, in making the process more accessible – with lack of accessibility being one of the main criticisms of the existing processes – it is reasonable to assume that there will be an increase in the number of appeals that have to be addressed. This increase will occur not only for appeals in

connection with applications for planning permission, but also for all the other decisions which are too difficult to appeal under the current processes.

3.2 With regard to the costings for departments other than the Department of the Environment, in P.26/2013 they represent parts of existing roles and it is very difficult to extract those parts in an instant to transfer from one process to another. Law Officers will still be involved in advising the Minister on appeals to an Inspector, and inevitably some cases will end in the Royal Court. The role of the Judicial Greffe will expand considerably with the system I propose.

3.3 Given these circumstances, in order to establish a new process, additional resources will have to be allocated across the process to enable it to function. In particular, the costs of engaging relevant Inspectors and the additional administration and governance that would be required in the Judicial Greffe must be supported.

3.4 As the resources required to run the appeals will be related to the number of appeals submitted, it is difficult to provide definitive figures as to how many appeals there will be and what kind of resources will be required to service them. For example, if all appeals are dealt with by means of written representations, the cost is likely to be less than if a significant proportion are dealt with by Appeal Hearing.

3.5 It is useful to look to the Isle of Man as a template for numbers of appeals received and resources required. Their appeals are considered by a single Inspector and they receive comparable numbers of applications along with first- and third-party appeals. In the Isle of Man, Inspectors currently sit in weekly blocks. They carry out 2 days of preparatory work per week of sitting, have inquiry days (to include site visits and travel time) of a maximum of 5½ days per week, and reporting days (usually 1½ days per sitting day). Inspectors are paid on the basis of an agreed day rate of £298 per day to include the distinct phases of work. In Guernsey the reimbursement is similar, although the system is different, with a tribunal process in place. In Guernsey, 3 professional Inspectors are paid an annual retainer of £2,000 to ensure their availability on particular dates, and thereafter a rate of £200 per half day for sitting, with up to one day's preparation per sitting day and one day to 1½ days' drafting time. In both of these examples these timings are subject to agreed flexibility dependant on the complexity of the case.

3.6 In the year April 2011/March 2012, the Isle of Man processed 191 appeals at a cost of £117,500 for Inspectors' fees, and expenses of £27,000. The costs of administration of the process could not be readily extracted from the embedded tasks of the Chief Secretary's Office who administer the process. On the basis of these figures, the average Inspector's costs of the process was £615 per appeal, with a range across major appeals for supermarkets and large housing developments down to domestic extensions and alterations. During that year, Inspectors were sitting for 2 weeks in each month due to the number of appeals submitted, and some of those appeals were complex proposals that required greater preparation and reporting time than the general indication above.

3.7 At the moment I anticipate that some 200 appeals per year will be submitted under the new process. I have based my estimate on the current average of 97 appeals per year – both in the Royal Court and Requests for Reconsideration (RfRs), with a system that is considered difficult to access and expensive to engage, and extrapolating out how many more cases are likely to be submitted to a more efficient process for both first and third-party in connection with applications for planning permission and other previously inaccessible appeals relating to more technical issues. I must stress that this is only an estimate, and one might argue that a significant increase in the number of appeals lodged will in the short term be a measure of success for the new system.

3.8 On the basis of 200 appeals per year, using the Isle of Man template, the Inspectors' fees costs would equate to a total of £123,000. Expenses should be similar to the Isle of Man, given normally standard business rates in hotels, etc., so £25,000 expenses seems reasonable to allocate at this stage.

3.9 As indicated above, officers who currently process and consider appeals will still be involved in processing appeals, and the volume of appeals is highly likely to increase. Notwithstanding the increase in volume, the probable simplification of the process means that it is unlikely that there will be a need for any additional resource within the Department of Environment. The Law Officers' Department on the one hand should see a fall in appeal involvement, with most of the action not involving the Royal Court, but there may be an alteration in the character of their involvement. For example, involvement will remain in the few cases that will end up in the Royal Court, but time will be spent advising planning officers on procedural/legal points raised via any new process.

3.10 The Judicial Greffe would inevitably require extra resource to administer the process. This resource is difficult to identify prior to the detailed proposals for the process being designed, but it is likely to require judgements to be made over which part of the process to apply, negotiations with all the parties involved, including the Inspectors, and judgements being made over aspects of process and information. Further discussion with the Judicial Greffe will have to take place to ascertain what level of resource these tasks would require, but certainly additional staff costs would appear to be inevitable.

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. 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.

3.14 In light of the above considerations, the resource implications for the process are estimated to be –

For 200 appeals per year –

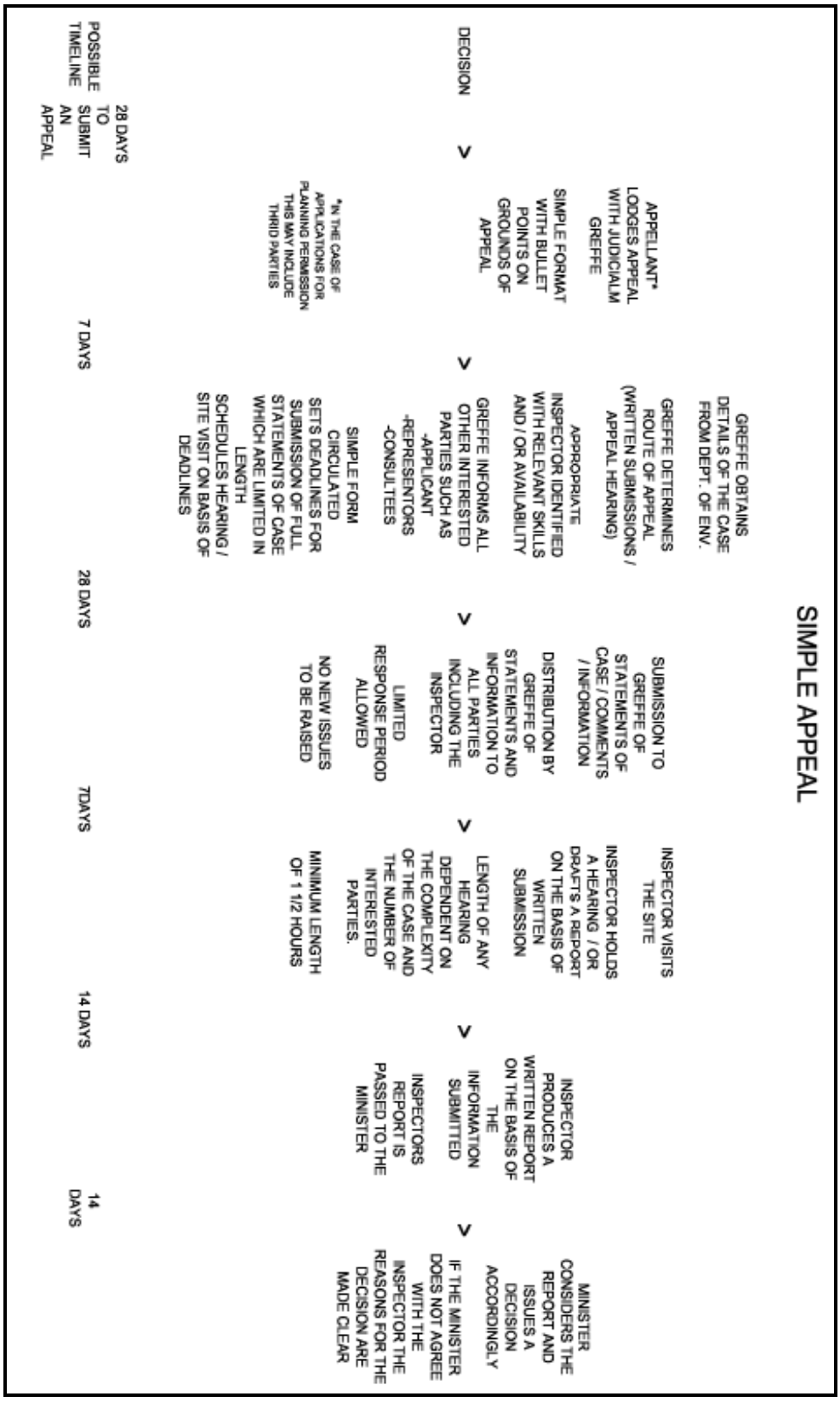
Inspector's fees:	£123,000
Expenses:	£25,000
Total	£148,000

Plus: Staff implications for the Judicial Greffe yet to be identified.
Minus: Fee income to be determined.

3.15 In light of the above estimates, I would like Members to support my request to the Minister for Treasury and Resources for £148,000 per year in the first instance to fund the Inspectors, and a further figure yet to be identified by the Judicial Greffe to support their role in the process following the establishment of the details of that role as indicated in parts (b) and (c) of my Proposition.

APPENDIX

Flowcharts for examples of Appeals



MINISTER CALLS IN AN APPLICATION FOR DETERMINATION

APPLICATION FOR PLANNING PERMISSION SUBMITTED

APPLICATION IS BROUGHT TO THE MINISTERS ATTENTION

MINISTER INDICATES THAT IF THE PROPOSAL IS TO BE SUPPORTED IT SHOULD BE CONSIDERED BY AN INSPECTOR

CONSULTATION PROCESS IS COMPLETED BY THE DEPARTMENT OF THE ENVIRONMENT

FOLLOWING CONSULTATION AND EXPIRY OF PUBLICITY THE APPLICATION IS TAKEN TO THE POINT OF DECISION

APPLICATION NOT SUPPORTED = DECISION ISSUED

APPLICATION SUPPORTED = REFERRED TO GREFFE FOR AN INSPECTORS CONSIDERATION

GREFFE OBTAINS DETAILS OF THE CASE FROM DEPT. OF ENV.

GREFFE DETERMINES ROUTE OF APPEAL AND APPROPRIATE INSPECTOR IDENTIFIED WITH RELEVANT SKILLS AND / OR AVAILABILITY

GREFFE INFORMS ALL OTHER INTERESTED PARTIESOF THE PROCESS TO FOLLOW INCLUDING DEADLINES FOR SUBMISSION OF INFORMATION

28 DAYS

SUBMISSION TO GREFFE OF STATEMENTS OF CASE / COMMENTS / INFORMATION (INCLUDING THE DEPARTMENT OF THE ENVIRONMENT)

DISTRIBUTION BY GREFFE OF STATEMENTS AND INFORMATION TO ALL PARTIES INCLUDING THE INSPECTOR

LIMITED RESPONSE PERIOD ALLOWED

NO NEW ISSUES TO BE RAISED

7 DAYS

INSPECTOR VISITS THE SITE

INSPECTOR HOLDS A HEARING / OR DRAFTS A REPORT ON THE BASIS OF WRITTEN SUBMISSION

LENGTH OF ANY HEARING DEPENDENT ON THE COMPLEXITY OF THE CASE AND THE NUMBER OF INTERESTED PARTIES.

14 DAYS

INSPECTOR PRODUCES A WRITTEN REPORT ON THE BASIS OF THE INFORMATION SUBMITTED

INSPECTORS REPORT IS PASSED TO THE MINISTER

14 DAYS

MINISTER CONSIDERS THE REPORT AND ISSUES A DECISION ACCORDINGLY

IF THE MINISTER DOES NOT AGREE WITH THE INSPECTOR THE REASONS FOR THE DECISION ARE MADE CLEAR

PAP OVERTURN OFFICER RECOMMENDATION

APPLICATION FOR PLANNING PERMISSION REPORTED TO PAP

PAP DO NOT AGREE WITH RECOMMENDATION AND WISH TO ISSUE A DIFFERENT DECISION

APPLICATION IS DEFERRED TO ALLOW THE DEPARTMENT TO FORMULATE A DECISION (APPROVE WITH CONDITIONS OR REFUSE) IN LINE WITH PAP POSITION

APPLICATION REPORTED BACK TO PAP TO CONFIRM THE DECISION AND AUTHORISE THE CONDITIONS / REASON FOR REFUSAL

DECISION ISSUED

28 DAYS TO SUBMIT AN APPEAL

APPELLANT LODGES APPEAL WITH JUDICIAL GREFFE

SIMPLE FORMAT WITH BULLET POINTS ON GROUNDS OF APPEAL

APPEAL FOLLOWS THE ROUTE OF A SIMPLE APPEAL

CHALLENGE TO AN APPEAL DECISION
DECISION
APPEAL PROCESS AS SET OUT IN SIMPLE APPEAL TIMELINE
MINISTER CONSIDERS THE REPORT AND ISSUES A DECISION ACCORDINGLY
IF THE MINISTER DOES NOT AGREE WITH THE INSPECTOR THE REASONS FOR THE DECISION ARE MADE CLEAR
AN APPEAL ON A POINT OF LAW CAN BE MADE TO THE ROYAL COURT
THE MINISTERS CASE IN THE ROYAL COURT WILL BE RESOURCED BY DEPARTMENT OF THE ENVIRONMENT OFFICERS AND LAW OFFICERS AS APPROPRIATE
ROYAL COURT DECISION
SUBJECT TO ROYAL COURT RULES AND DEADLINES