

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

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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 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 report, 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

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

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

£539,000

(Additional States 5 FTE)