



Planning Tribunal

# **A Guide to Appeals Under the High Hedges (Guernsey) Law, 2016**

**Are you the owner or occupier of a property who has been served a Notice by the Development & Planning Authority in respect of a high hedge on your property which is affecting a neighbour's reasonable enjoyment of their property?**

**Are you a person who, having made a complaint alleging that your reasonable enjoyment of your domestic or residential property<sup>1</sup> is being adversely affected by the height of a high hedge on your neighbour's land, has been advised by the Development & Planning Authority that no action is being taken under the High Hedges (Guernsey) Law, 2016?**

**If so, this guide aims to answer the questions you may have about how to appeal in any of the above situations.**

**The guide should be read in conjunction with:**

**The High Hedges (Guernsey) Law, 2016**

**Provisions relating to appeals in and under the Land Planning and Development (Guernsey) Law, 2005<sup>2</sup>**

**This Guide represents the Law and Tribunal procedures as at September 2017 and the legislation may be subject to further amendment.**

***These guidance notes are issued by the Planning Panel to assist understanding of the appeal provisions of the High Hedges legislation. It represents the Panel's interpretation of the appeal provisions of the legislation and is not intended to be exhaustive or a substitute for the full text of the legislation copies of which are available from the Greffe. Electronic copies are also available at [www.guernseylegalresources.gg](http://www.guernseylegalresources.gg)***

***Substantive queries concerning the legislation should be addressed to the Panel at [planningpanel@gov.gg](mailto:planningpanel@gov.gg). The Panel does not accept any liability for loss or expense arising out of the provision of, or reliance on, any advice given.***

***You are recommended to seek advice from an independent professional advisor where appropriate.***

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<sup>1</sup> A residential property means properties which are not dwellings which are used for residential purposes such as care homes or holiday homes and gardens used with them.

<sup>2</sup> Certain appeals provisions under the 2005 Law apply to High Hedge appeals under paragraph 13 of the Schedule to the High Hedges Law.

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## **Introduction**

The Planning Tribunal (the Tribunal) is an independent appeal body established in April 2009, under the Land Planning and Development (Guernsey) Law, 2005 (“the 2005 Law”) to determine appeals against planning decisions made by the Development & Planning Authority.

The Planning Panel is a Panel also establishment under the 2005 Law from which Planning Tribunal members are appointed. The Panel and Tribunal have their own Secretariat and the Panel’s Secretary is independent of the Development & Planning Authority (“the Authority”).

The High Hedges (Guernsey) Law, 2016 (“the High Hedges Law”) comes into effect on Monday 2<sup>nd</sup> October 2017. This guidance is a summary of the Panel’s interpretation of the legal provisions for guidance purposes and is not intended to be exhaustive or a substitute for the full text of the legislation.

Under section 13 of the High Hedges Law, there is a right of appeal against decisions of the Authority under sections 8, 10 and 12. The Panel aims to provide an appeals process which is accessible and affordable and offers a fair and transparent determination of the appeals.

The purpose of a planning appeal is to allow an independent Tribunal of 3 or a Tribunal consisting of a Single Professional Member to review a decision relating to a complaint about a high hedge made by the Authority.

In addition to reading the guide, you should also read the High Hedges Law and any other guidance and advice notes published by the Authority which may be relevant to your case.

The High Hedges Law can be found at [www.guernseylegalresources.gg](http://www.guernseylegalresources.gg) and the relevant planning policies and guidance and advice notes published by the Authority can be found at [www.gov.gg/planning](http://www.gov.gg/planning) or copies can be requested from the Development & Planning Authority at Sir Charles Frossard House.

**This Guide represents the Law and procedures as at September 2017**

**The legislation may be subject to further amendment**

# PART ONE – GENERAL GUIDANCE

## 1. The Planning Panel

### **(a) *Who are the Planning Panel?***

The Planning Panel (the Panel) is made up of nine members who are elected by the States of Deliberation.

The Panel's members are wholly independent of the Authority or any other States Committee.

### **(b) *What experience do Panel members have?***

Three Panel members have been appointed to sit as Professional Members. They are Chartered Town Planners and members of the Royal Town Planning Institute. They have a wide experience in planning matters in Jersey and the UK and have previously worked for the UK Planning Inspectorate.

The remaining Panel members are Ordinary Members and come from a range of backgrounds but all have some experience of the planning process, e.g. as surveyors, lawyers, etc.

The work of the Panel is overseen by the Panel Chairman.

## 2. Categories of Appeals

### **(a) *What decisions can be appealed?***

The following decisions can be appealed to the Tribunal:

- (i) Where you have made a complaint as the owner or occupier of a domestic property alleging that your reasonable enjoyment of your property for domestic purposes is being adversely affected by the height of a high hedge on land owned or occupied by another person that a high hedge: or
- (ii) Where you have made a complaint as the owner or occupier of a residential property<sup>3</sup> alleging that your reasonable use of the property for a residential purpose is being adversely affected by the height of a high hedge on land owned or occupied by another person that a high hedge:
  - High Hedges Law where the Authority decides that under section 8(5)(a) the complaint is not justified; and

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<sup>3</sup> A residential property means properties which are not dwellings which are used for residential purposes such as care homes or holiday homes and gardens used with them.

- High Hedges Law where the Authority decides that under section 8(5)(b) no action should be taken;
- (iii) By the Complainant or by the owner or occupier of a property on whom the Authority has served a High Hedge Notice under section 10(1)(a) of the High Hedges Law or has amended or withdrawn one under section 12 of the High Hedges Law.

You may only appeal against the withdrawal or amendment of a High Hedge Notice where it was amended or withdrawn without your agreement and, in the case of a withdrawal, where a further high hedge notice has not replaced the original notice.

### **3. Making an Appeal**

#### ***(a) Who can appeal a high hedge decision?***

The following persons may make an appeal under the High Hedges Law:

- (i) The owner or occupier of the neighbouring land on which the high hedge is situated
- (ii) The complainant.

#### ***(b) Can anybody other than these person appeal a high hedge decision?***

No, only those persons listed in section 13(1) and (3) of the High Hedges Law have a right of appeal.

#### ***(c) How long does somebody have to make their appeal?***

An appeal made under section 13 of the High Hedges Law must be made **within 28 days** starting from:

- (i) where the appeal is made under section 13(1) by the complainant, the date of the notification of the decision was given to the appellant by the Authority;
- (ii) where the appeal is made under section 13(2)(a) by the complainant or the owner or occupier of the land on which the hedge is situated, the date on which a copy of the High Hedge Notice and notification were given to the appellant by the Authority; and
- (iii) where the appeal is made under section 13(2)(b), the date on which the appellant was notified by the Authority of its decision to withdraw a High Hedge Notice under section 12(2); or
- (iv) where the appeal is made under section 13(2)(b), the date on which the appellant was notified by the Authority of its decision to amend a High Hedge Notice under section 12(5).

#### ***(d) How is an appeal made?***

All appeals must be in writing using the appropriate form. The forms are available:

- On the States website ([www.gov.gg/planningpanel](http://www.gov.gg/planningpanel))

- From the Authority's reception desk at Sir Charles Frossard House
- On request from the Panel's Secretary by telephoning (01481 717284) or emailing ([planningpanel@gov.gg](mailto:planningpanel@gov.gg)).

**(e) What information must I include with my appeal?**

Paragraph 1(1)(b) of the Schedule to the High Hedges Law sets out that your appeal form should be accompanied by copies of the supporting documents which are listed on the appeal form.

The required supporting documents include:

- (i) Your grounds of appeal - a letter setting out your grounds of appeal, i.e. the reasons why you believe the Development & Planning Authority's decision should be overturned or altered or is otherwise wrong or unreasonable;
- (ii) A copy of the High Hedge Notice or notification of decision which is subject of the appeal;
- (iii) Copies of any documents and letters relating to the decision you are appealing against, including any professional or specialist reports you may have commissioned.
- (iv) Copies of any correspondence between you and the Development & Planning Authority relating to any efforts to resolve the matter without an appeal to the Tribunal; and
- (v) Copies of any photographs you may wish to include to assist the Planning Tribunal in understanding your submissions; all photographs should include details of when, from where and by whom they were taken and a short note explaining what the photograph is showing.

In addition, you must include a cheque for £350 to cover the appeal fee (see Section 4 below for more details on the payment of the appeal fee); and

**(f) What is meant by "grounds of appeal"?**

The grounds of appeal are set out in section 14 of the High Hedges Law and vary depending on the category of decision you are appealing.

If your appeal is made under:

Section **13(1)(a)** of the High Hedges Law your grounds of appeal should address why you believe the Authority could not reasonably have decided that your complaint was not justified.

Section **13(1)(b)** of the High Hedges Law your grounds of appeal should address why you believe the Authority, having concluded that your complaint was not justified, could not have reasonably concluded that no action should be taken with a view to remedying the adverse effect of the high hedge or preventing its recurrence.

Section **13(2)(a)** of the High Hedges Law against the issue of a High Hedge Notice, your appeal can be on any or all of the following grounds:

- (a) Where you are the owner or occupier of neighbouring land:
  - (i) the height of the high hedge specified in the High Hedge Notice is not causing the adverse effect alleged,
  - (ii) that any action specified in the High Hedge Notice exceeds what is necessary or appropriate to remedy the adverse effect or prevent its recurrence, or
  - (iii) that the period specified in the High Hedge Notice for taking any action specified falls short of what should reasonably be allowed, or
- (b) Where you are the complainant any action specified in the high hedge notice is insufficient to remedy the adverse effect of the high hedge or to prevent its recurrence.

Section **13(2)(b)** of the High Hedges Law against the withdrawal of or amendment to a High Hedge Notice, your appeal can be on the grounds that there has been no material change in circumstances since the High Hedge Notice was issued to justify the decision to withdraw or amend the Notice.

Section **13(2)(b)** of the High Hedges Law against an amendment to a High Hedge Notice, you may also appeal be on the grounds that:

- (a) Where you are the complainant, the amendments mean that the amended Notice is insufficient to remedy the adverse effect of the high hedge or to prevent its recurrence; or
- (b) Where you are the owner or occupier of the neighbouring land on which the hedge is situated, that:
  - (ii) any requirements in the amended Notice exceed what is necessary or appropriate to remedy the adverse effect of the high hedge or prevent its recurrence, or
  - (iii) the period specified in the amended Notice for taking any action falls short of what should reasonably be allowed.

**It is important to read the High Hedges (Guernsey) Law, 2016 and any supporting policy or guidance the Development & Planning Authority may have issued when preparing your grounds of appeal.**

***(g) Can I submit new information when appealing a decision?***

There is no limitation in the High Hedges Law regarding the submission of new information with an appeal. It is accepted that circumstances may change between the Authority's decision and your appeal being determined. Given that anybody who believes their reasonable enjoyment of their property is adversely affected by a neighbour's high hedge has to take certain steps before making a complaint to the Authority.



If these steps have been followed, it would be less likely that there would be new information ahead of appeal unless something has changed since the Authority's decision which has an impact on or is relevant to the appeal was made.

After an appeal has been made there are time limits explained below for submitting representations and the Tribunal may disregard information received after these periods. However, the Tribunal has a power to take into account further representations received before or during a hearing providing that a person discloses it at the hearing so that other parties have the opportunity to comment on it.

***(h) Can I include photographs?***

Yes. All photographs must be clearly labelled and include the date of the photograph and a map showing from where the photograph was taken. This is to assist the Tribunal members (who may be unfamiliar with your property) when reviewing the appeal papers. This is particularly important if the photograph has been taken away from the immediate vicinity of the appeal site.

If you are including photographs of other properties you must provide details of the full address of the property and a map showing the location of the property (a suitably marked copy of the relevant page from e.g. the Perry's Guide will suffice).

***(i) How many copies must I provide?***

The number of copies required are set out on the appeal form and, as a general rule, you must provide one copy of all the material listed on the appeal form.

The Tribunal may decline to determine an appeal if it considers that the notice of appeal has not been duly made and served in any way in accordance with the High Hedges Law.

***(j) Why doesn't the Tribunal simply look at the Development & Planning Authority's files?***

Both the Panel and Tribunal are entirely independent from the Authority and so do not have access to their files, although they can request any information which may be relevant to the appeal. This is why it is so important that you include any paperwork (letters, notes of meeting and phone calls, emails, etc.) relevant to your appeal.

***(k) Where must the appeal form be sent?***

The appeal form, together with all the accompanying documents, letters, photographs, etc. should be sent to:

The Secretary  
Planning Panel  
Sir Charles Frossard House  
St. Peter Port  
Guernsey GY1 1FH

At the same time, you must send a copy of the notice of appeal (i.e. the appeal form) and all the accompanying documents to:

The Director of Planning  
Development & Planning Authority  
Sir Charles Frossard House  
St. Peter Port  
Guernsey GY1 1FH

#### **4. The Cost of Making a Planning Appeal**

##### ***(a) How much does it cost to appeal a high hedge decision?***

An appeal fee of £350 is payable for any appeal under the High Hedges Law. Where two or more appeals are submitted together by two or more parties occupying separate properties but in relation to the same high hedge, the fee is £150 per appeal subject to a minimum total fee of £350 shared equally between all the appellants.

The appeal fee may be reduced or waived in certain exceptional cases (see the Panel's *Guidance Notes on Appeal Fees*).

##### ***(b) How and when must the payment to made***

The appeal fee must be included with the appeal form and any accompanying papers. Cheques should be made payable to the "States of Guernsey".

##### ***(c) What happens if the fee isn't paid?***

If the appeal fee is not included when the appeal is submitted, the appeal may not be lodged until the appeal fee has been paid. In the event that the appeal fee is not paid before the end of the appeal period, the Panel Chairman may direct that the appeal has not been properly lodged unless you can show good reason for the delay in making the payment.

#### **5. The Appeal Process**

##### ***(a) What happens when an appeal is received by the Panel?***

The Secretary will write to acknowledge receipt of your appeal. This letter is generally sent within a few days of you submitting your appeal. However, as the Secretary is the Panel's only member of staff, there may be a delay if the Secretary is on leave.

##### ***(b) Can I choose how my appeal is dealt with?***

The appeal form asks for an indication of the preferred mode of appeal. There are four options:

- Written Representations to a Tribunal
- Public Hearing before a Tribunal

- Written Representations to a Tribunal consisting of a Single Professional Member
- Public Hearing before a Tribunal consisting of a Single Professional Member.

The final decision as to the mode of appeal rests with the Chairman of the Planning Panel but he must have regard to various matters in making his decision including the views of appellant and the Authority.

**(c) What does the Authority do when it receives a copy of my appeal?**

On receipt of a copy of a notice of appeal, the Authority must provide the Panel’s Secretary with the name and address of every person, other than the appellant, who is a complainant or an owner or occupier of the land on which the high hedge is located.

**(d) Can the Tribunal decline to determine my appeal?**

Yes, the Planning Tribunal may decline to determine an appeal if it considers that:

- (i) the notice of appeal has not been duly made and served as required under the High Hedges Law; or
- (ii) the appeal appears to be frivolous or vexatious.

but must notify the parties as soon as possible if it makes this decision.

**(e) When is the Tribunal appointed?**

The Tribunal will be appointed as soon as practicable after an appeal is lodged. Once appointed, it will write to all the parties (i.e. yourself; the owners/occupiers of the land on which the high hedge is located; any other neighbours who may have also complained about the hedge that is subject of the appeal; and the Authority) and the letter will include the following information:

- (i) the appeal reference number;
- (ii) the address to which all written submissions in relation to the appeal must be sent; and
- (iii) whether the appeal will be determined at a hearing or on the basis of written representations.

In addition, the Planning Tribunal will request the Authority to complete a Questionnaire (see Appendix 1 for a copy of the Questionnaire template).

**(f) What is the significance of the “starting date”?**

The starting date is the date which sets the timetable for the determination of the appeal. Once the Tribunal is satisfied that it has sufficient information to enable it to consider the appeal, it will also notify the parties of the “starting date”. This date will then determine when different actions needed to be completed (see section 6 Exchange of Information).

***(g) Will I get to see the Authority's questionnaire and when?***

Yes, the Authority must send a copy of the completed questionnaire to each of the other parties. The Tribunal will set the date by which the Authority must submit the completed questionnaire and must give the Authority at least 21 days to provide it.

***(h) Who else can make representations on the appeal?***

Any of the parties can make written representations on an appeal. The parties are the appellant, the Authority, any person other than the appellant who was a complainant and any person who is an owner or occupier of the land on which the high hedge is situated. If any party wishes to make a representation, he/she must send three copies to the Tribunal within 6 weeks of the starting date. The Tribunal will then send a copy of the representation/s to all the parties.

***(i) Who can comment on these representations?***

Any of the parties can comment on any written representations on an appeals. If any party wishes to make a representation, he/she must send three copies to the Tribunal within 9 weeks of the starting date. The Tribunal will then send a copy of the representation/s to all the parties.

***(j) Will the Tribunal accept any late representations?***

The Tribunal may disregard any information submitted by parties that is received more than 9 weeks after the starting date.

***(k) How much choice do I have about the date for my appeal to be heard?***

The procedure for setting the date for the appeal hearing rests with the Tribunal. This is because the appeal process is a judicial one. The Tribunal will take note of dates when the appellants or the Authority staff are unable to attend. It is important that you let the Secretary know any dates when you are unable to attend as soon as possible.

The Tribunal will give you and all other parties at least 4 weeks' notice of the time, date and venue for the appeal hearing.

## **PLEASE SEE PART TWO FOR FURTHER INFORMATION ON THE APPEAL PROCEDURES**

***(l) How long does the appeal process take?***

It is difficult to give an exact timescale but as a general rule, the Panel endeavours to ensure that appeals are held within three months of the appeal being submitted. Appeals determined by Written Representations are generally concluded more quickly.

**(m) How can I find out more about of the appeal process?**

One way for prospective appellants to find out more about the appeal process is by attending a Tribunal. This approach allows appellants to see a Tribunal in action and can assist them in understanding the process more clearly.

**(n) How can I find out about forthcoming Tribunal hearings?**

Forthcoming Tribunals are advertised in the foyer of the Royal Court and in the main reception area at Sir Charles Frossard House.

**6. Exchange of Evidence**

**(a) How will I know what the Development & Planning Authority's position is?**

Once an appeal is lodged, the Tribunal will require the Authority to prepare a questionnaire setting out its response to the appeal. The Authority will send a copy of its completed questionnaire to the Tribunal and each of the other parties to the appeal.

**(b) Will I have an opportunity to respond to the Authority's questionnaire?**

Yes, any party to the appeal may make any representations on the appeal. If you wish to do so, you must provide three copies of your representations, including any supporting documents and photographs, to the Tribunal.

You have 6 weeks from the Starting Date (*see paragraph 5(f)*) in which to make your representations. The Tribunal will ensure that a copy of any representations are sent to each of the other parties.

**(c) Who else can comment on the representations?**

Any party to the appeal may comment on any representations to the appeal. If you wish to do so, you must provide three copies of your representations, including any supporting documents and photographs, to the Tribunal. You have 9 weeks from the Starting Date (*see paragraph 5(f)*) in which to make your representations. The Tribunal will ensure that a copy of any representations are sent to each of the other parties.

**(d) What happens if representations are received more than 9 weeks after the Starting Date?**

The Tribunal may disregard information received from any party if it is not received within the 9 week period commencing from the Starting Date.

## **7. The Tribunal**

### **(a) *What is the Tribunal?***

The Tribunal is the Panel members appointed to determine your appeal. Under paragraph 3 of the Schedule to the High Hedges Law a Tribunal can consist of a single Professional Member.

### **(b) *Who will determine the appeal?***

The Panel's Chairman will appoint a Tribunal. Before confirming the appointment, all Panel members will have been asked to indicate whether there are any reasons why they should not be appointed to determine the appeal.

### **(c) *What happens if I know one of the Panel members appointed to hear my appeal?***

Once the Tribunal has been selected, the appellant and the Development & Planning Authority will be notified in writing. Both may object to a particular member sitting, giving reasons for doing so. The Chairman will decide whether or not a new member should be appointed to avoid any perception of bias or conflict of interest and advise all parties of his decision and, if a different member has been appointed, the name of the new member.

### **(e) *What papers will the Panel Members have when considering an appeal?***

In all cases, an appeal bundle will be prepared by the Secretary and a copy is sent to the Tribunal members, the appellant and the Authority approximately two to three weeks before a public hearing. The appeal bundle will include your appeal papers, the Authority's written response to your appeal, copies of any relevant policies, copies of any expert reports referred to in the appeal papers and any other material the Tribunal members may have requested.

Where an appeal is dealt with by Written Representations, both the appellant and the Authority are given an opportunity to make written comments on each other's submissions. Each party will also receive a copy of these written responses.

### **(f) *Can I submit additional material?***

The Tribunal appreciates that once you have read the Authority's completed Questionnaire or any representations by other parties, you may wish to submit further material. This is permitted subject to meeting the time limits for making additional representations i.e. within 9 weeks of the starting date as the Tribunal may disregard material which is not received during this period.

When the Panel's Secretary sends you a copy of the Authority's written response, you will be advised of the latest date for submitting additional material. It is important that you make your submissions by this date. Late submissions may result in delays, particular in respect of the arrangements for the appeal to be heard (if you have requested a public hearing).

Despite the time limits, the Tribunal has a *power* to take into account further representations received before or during a hearing providing that a person discloses it at the hearing so that other parties have the opportunity to comment on it.

## 8. The Appeal Hearing

### ***(a) How will the appeal be determined?***

The procedure for determining the appeal will vary depending on the mode of appeal.

- Written Representations – a Tribunal or single professional members sitting in private and reaching their decision on the written material provided by the appellant, the Development & Planning Authority and any other party.
- Public Hearings - a Tribunal or single professional members sitting in public and hearing oral evidence from and asking questions of the Authority, the appellant, any other party and any witnesses the parties may wish to call.

### **PLEASE SEE PART TWO FOR FURTHER INFORMATION ON THE APPEAL PROCEDURES FOR WRITTEN REPRESENTATIONS AND PUBLIC HEARINGS**

## 9. The Site Visit

### ***(a) Will the Tribunal visit the appeal site?***

The Tribunal will decide whether a site visit is necessary. In most cases, a site visit will be part of the appeal process regardless of the mode of appeal (i.e. whether your appeal is determined by means of written representations or at a hearing).

### ***(b) What is the purpose of the site visit?***

The site visit is to assist the Tribunal members in understanding the issues raised during the appeal in situ, including taking measurements, etc.

### ***(c) When is the site visit made?***

The majority of site visits are held immediately after the public hearing (where relevant).

### ***(d) Who can attend the site visit?***

The Tribunal will decide who may attend and this will generally include all parties to the appeal. The media and any other third parties who are not parties to the appeal will not be permitted to attend the site visit.

### ***(e) What happens at the site visit?***

The site visit is an opportunity for the Tribunal to understand points raised during the hearing. Therefore, as a general rule, no additional evidence will be taken during the site visit. The Tribunal may ask the appellant or the Authority to clarify certain aspects of the evidence during the site visit.

***(f) How long does the site visit take?***

The site visits are generally fairly short and typically last between 15 to 30 minutes.

**10. Appeal Outcomes**

***(a) What decisions can a Tribunal reach?***

Where an appeal is made under section 13(1) of the High Hedges Law, the Tribunal may:

- Confirm the decision to which the appeal relates; or
- Quash the decision the Authority made under section 8(5)(a) of (b), with or without issuing a High Hedge Notice.

Where an appeal is made under section 13(2) of the High Hedges Law, the Tribunal may:

- Confirm the High Hedge Notice or decision to which the appeal relates;
- Quash the High Hedge Notice or decision to which the appeal relates; or
- Amend the High Hedge Notice issued under section 10(1) or, as the case may be, section 10(1) or 12(5)(a).

***(b) What happens if a High Hedge Notice is confirmed?***

Where a Tribunal confirms or amends a High Hedge Notice, the notice takes effect from the date of the Tribunal's decision or any later date specified by the Tribunal in its decision. Where a notice is confirmed or amended, the periods for taking the action required in the notice will run from that effective date (see section 16(7) of the High Hedges Law).

***(c) On what date does a confirmed or amended Notice take effect***

As set out above where a High Hedge Notice is confirmed or amended, it will take effect on the date of the Tribunal's decision or such later date as the Tribunal may specify in its decision.

***(d) What happens if a High Hedge Notice is quashed?***

Where a Tribunal quashes a High Hedge Notice, the requirements set out in the original Notice issued by the Authority in respect of high hedge shall cease to have any effect. The owner or occupier of the land on which the high hedge is located will not have to carry out either the initial action or any preventative action.

**11. The Appeal Decision**

***(a) How is the decision whether or not to allow an appeal made?***

The Tribunal will always make its decisions in private. Where an appeal is determined by a Tribunal of three (either at a public hearing or by written representations) the decision generally rests with the two Ordinary Members.



The Professional Member assists and advises the other members on the application of the High Hedges Law and its interpretation and he/she does not have an “original vote” except where the two ordinary members disagree and then he/she has a casting vote.

**(e) How is the Tribunal’s decision issued?**

All appeal decisions are written decisions and include the Tribunal’s Member/s reasons.

**(f) When is the Tribunal’s decision issued?**

The Decision Notice will be issued by the Tribunal as soon as is reasonably practicable after determining the appeal. In general, the Tribunal will issue its Decision Notice within three weeks of the hearing. A copy will be sent to each of the parties to the appeal. If there is delayed for any reason the Secretary will advise the appellants, the Authority and any other parties and give a revised time scale.

**(g) Is the decision made public?**

Yes. All Decision Notices are made publically available. They are displayed in the main reception of Sir Charles Frossard House and in the foyer of the Royal Court for one to two weeks after being issued.

All Decision Notices are published on the States website ([www.gov.gg/planningpanel](http://www.gov.gg/planningpanel)) and copies can be obtained, on request, from the Secretary. Decisions on an appeal must also be recorded on the public Register of High Hedge Notices kept by the Authority under section 29 of the High Hedges Law.

## **12. Cost Awards**

**(a) Can I claim costs from the Development & Planning Authority if an appeal is allowed?**

As a general rule costs are not awarded. The Tribunal does have limited discretionary powers to award costs in some cases. In deciding an application for costs the Tribunal will look very closely at the conduct of the two parties. Where costs are awarded the legislation sets maximum amounts for certain costs such as loss of earnings and the cost of legal advice and representations are specifically excluded.

**(b) If I lose my appeal can the Development & Planning Authority claim costs from me?**

The Tribunal may consider a costs application from the Authority where it provided evidence that you had acted dishonestly or vexatiously in relation to your appeal.

### **13. Further Appeals**

#### ***(a) Can decisions of the Tribunal be appealed?***

A Tribunal's decision can be appealed to the Royal Court by either the appellant or the Development & Planning Authority on a point of law. Both the appellant and the Authority have this right of appeal, regardless of whether the appeal is allowed or dismissed.

# PART TWO – GUIDANCE ON APPEAL HEARINGS

## Introduction

Appeals can be considered in one of four ways:

- By way of written representations to a Tribunal.
- At a public hearing before a Tribunal
- By way of written representations to a Tribunal consisting of a Single Professional Member
- At a public hearing before a Tribunal consisting of a Single Professional Member

The general approach for each of the four modes of appeal is set out below.

**All the Decision Notices of the Tribunal have the same status regardless of the mode of appeal.**

### **A. Written Representations**

#### ***(a) What is meant by Written Representations?***

An appeal determined on the basis of Written Representations normally involves the appeal being considered by a Tribunal (comprising either a Professional Member sitting with two other Panel members or a Professional Member sitting alone) in private and reaching its decision on the basis of the written material provided by the appellant/s, the Authority and the parties.

#### ***(b) Who decides whether an appeal is dealt with as by Written Representations or at a Public Hearing?***

Where an appellant indicates a preference for the appeal to be dealt with by way of Written Representations, the Chairman of the Panel will review the appeal papers and advise whether or not he or she believes there are reasons for holding a public hearing before a Tribunal.

#### ***(c) What things are taken into consideration when making this decision?***

In reaching his or her decision, the Chairman of the Panel must take into account the following matters as set out in paragraph 2 of the Schedule to the High Hedges Law:

- (a) the nature and complexity of the issues raised,
- (b) the questions of law (if any) involved,
- (c) the extent to which any matter of public interest may arise in the proceedings,
- (d) the views of the appellant and the Authority made, respectively, on the appeal form and in the preliminary information, and
- (e) any other circumstances of the appeal.

**(d) What is the procedure for an appeal determined by Written Representations?**

The Tribunal members will receive a copy of the appeal papers (i.e. the appellant's appeal form and required accompanying documents, the Authority's completed Questionnaire and other written representations from the parties) and will review these papers before meeting privately to determine the appeal. The relevant time limits for exchanging evidence/making representations must have expired and the Tribunal must have given notice to the appellant and the Authority before it proceeds to its decision.

**(e) Will the Tribunal members visit the appeal site?**

The Tribunal members may visit the site. Where they can view the appeal site without needing to access the property itself this site visit will not involve the appellant or the Authority. If it is not possible to do so, the visit will take place in the presence of the appellant and the Authority but no evidence will be taken.

**(f) Is there any difference in status between the decisions made by Written Representations when compared with those following a public appeal hearing?**

No. There is no difference in status between decisions made through the written representation approach or after a public hearing.

**B. Public Hearings**

**(a) What is meant by a Public Hearing?**

A public hearing allows the Tribunal to identify the main issues and to ask questions of the parties and so obtain further information on those issues which the Tribunal considers require further explanation. It also gives parties an opportunity to present their case in person and to ask questions of each other but generally not to carry out formal cross-examination.

At least four weeks' notice of the hearing must be given to the parties to the Appeal.

Public hearings are open to the public and the media. The time, date and venue for public hearings are advertised (on the notice boards in the main reception at Sir Charles Frossard House and the Royal Court foyer) at least seven days before the hearing.

**(b) Do I need to use an advocate or can I represent myself?**

No, you are not required or expected to be represented by an Advocate. The appeals procedure has been designed to enable appellants to present their own case if they chose to do so.

**(c) Who will represent the Development & Planning Authority?**

In general, the Authority's case is presented by the officer who dealt with the complaint. The officer may be accompanied by other members of the Authority's staff whose advice or expert knowledge was sought as part of the Authority's decision making process.

**(e) How will evidence be heard at the Public Hearing?**

The hearing will take the form of a structured discussion led by the Tribunal's Chairman. There will be no cross-examination of witnesses by the parties unless the person presiding considers it is necessary to ensure proper examination of the issues relevant to the appeal.

**(f) What will happen at the Hearing?**

Prior to the hearing, the Panel's Secretary will send you an agenda for the hearing. The agenda is prepared by the Tribunal members and is based on their review of the appeal papers. It is set out what they have identified as the key issues for the hearing and other matters they wish to discuss.

Whilst the agenda sets the matters to be discussed, you will have the chance to explain your case and to ask questions of the Authority.

**(g) What will be the format for the Hearing?**

The procedure to be adopted at appeal hearings is set out in paragraph 10 of the Schedule to the High Hedges Law.

After formally opening the hearing the Presiding Member will usually ask everybody to introduce themselves and explain the capacity in which they are attending.

The Presiding Member will then check that everybody has all the relevant papers, including a copy of the appeal bundle and any additional papers that may have been submitted or requested following the appeal bundle being sent out to everybody. The Presiding Member will also address any other matters needing clarification prior to hearing the appeal itself.

The hearing will take the form of a discussion led by the person presiding. Cross-examination will not be permitted unless the person presiding considers it is necessary to ensure the proper examination of the issues relevant to the appeal.

The Tribunal will then turn to the main issues they have identified from their pre-reading of the appeal papers. These will be considered in the order set out on the agenda. Once each of the main issues the Tribunal identified has been covered, there will be an opportunity for both you, the Authority and any other party to raise any other issues.

There will then be an opportunity for any of the parties to refer to other issues, not identified by the person presiding, they consider relevant to the appeal.

Before closing the hearing, the Presiding Member will give both you and the Authority any opportunity to sum up. As a general rule, the Authority will be invited to sum up first and then you will be asked to sum up your reasons for making the appeal.

Finally, arrangements will be made for the site visit (*see Section 11*).

**(h) How will the Tribunal manage the order in which the evidence is heard?**

In most cases, the Tribunal will issue an agenda a few days before the hearing and it will identify the order in which the Tribunal wishes to hear the evidence.

**(i) Can I raise matters which are not on the agenda?**

Yes. The agenda is not meant to limit the matters which either you or the Authority may wish to raise during the appeal. Rather, the agenda is prepared to ensure that the issues the Tribunal has identified as requiring further questioning are not overlooked.

**(j) Can members of the public speak at a public hearing?**

As a general rule, the public cannot speak at a hearing. The High Hedges Law sets out which parties have a right to appear and give evidence at an appeal hearing. The Tribunal may also allow other persons who, in its opinion, should be afforded a right to give evidence to appear.

**(k) Are the hearings similar to Court proceedings?**

The appeals process is a judicial one but the approach at the hearings is less formal than may be the case in a court setting. For example, when presenting their case the parties are not required to stand up. The approach is formal in that the parties are not referred to by first names and any requests are made through the Tribunal Chairman.

The hearings are conducted in accordance with the rules of evidence which apply in any court. This means that anything said or done before the Tribunal which, if said or done before the Royal Court, would be regarded as a contempt of court, and is an offence under the legislation.

Similarly, any person who obstructs or stops the Tribunal or a Tribunal member from deciding an appeal may be guilty of an offence.

**Further Information**

For further information please contact:

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## Development & Planning Authority Questionnaire in response to appeals under section 13 of the High Hedges (Guernsey) Law, 2016

The below questionnaire is to be completed by the Development & Planning Authority in response to an appeal [*insert appeal reference number*] made under section 13 of the High Hedges (Guernsey) Law, 2016 (“the High Hedges Law”) lodge by [*insert appellant’s details*] on [*insert appeal date*].

The Development & Planning Authority is requested to complete the Questionnaire as soon as possible and in any case to send a copy of the completed Questionnaire to the Secretary to the Planning Tribunal and the parties to the appeal within 28 days of [*insert date of issue of Questionnaire*]

<b>Appellant Details</b>	<i>[Tribunal Secretary to insert the appellant’s details, including address to whom completed questionnaire to be send]</i>
<b>List of Parties to whom the completed Questionnaire must be sent</b>	<i>[Tribunal Secretary to insert details of the other parties, including address to whom completed questionnaire to be send]</i>
<b>Address of appeal site</b>	<i>[Tribunal Secretary to insert the address and Cadastre Number of the land on which the hedge is located]</i>
<b>Chronology</b>	DPA to provide a chronology of relevant events, actions, etc.
<b>Appeal Site &amp; Its Surroundings</b>	Description of appeal site (complainant’s/s’ property and site on which the high hedge is located); a site plan showing the location of the hedge subject of the appeal and the properties of the parties should be attached to the questionnaire
<b>Background to the Appeal</b>	Narrative report setting out the DPA’s involvement in the complaint from first contact from the complainant/s
<b>Actions by Development &amp; Planning Authority</b>	Narrative report setting out the actions of the DPA under Part II of the High Hedges Law
<b>The Hedge</b>	DPA to provide details of the type and species of the high hedge, age, condition and height; explanation of the methodology used to calculate the height of the high hedge

<b>The Decision</b>	Narrative explanation of the DPA’s decision on the complaint
<b>Amplification for the Reasons for the Decision</b>	Narrative response from the DPA
<b>Comments on the Appellants’ Grounds of Appeal</b>	Narrative response from the DPA

**Date of Submission by Development & Planning Authority of Questionnaire to Planning Tribunal:** *[insert date]*

**Notes to the Questionnaire**

The Development & Planning Authority must submit a completed Questionnaire to the Planning Tribunal, copied to each of the other parties to the appeal. The parties to the appeal are the appellant and every other complainant and owner or occupier of the land where the hedge is situated.

Where relevant, this must be done within any period specified in writing by the Planning Tribunal under paragraph 5 of the Schedule to the High Hedges (Guernsey) Law, 2016. If a period is specified it must not be less than 21 days beginning with the date the Questionnaire is supplied by the Tribunal to the Development & Planning Authority.