Planning Panel

A Guide to Planning Appeals in Guernsey

- **Have you had an application for planning permission refused?**

- **Have you been granted planning permission but you wish to object to one or more of the conditions attached to the permission?**

- **Have you applied for planning permission but have yet to be notified whether or not planning permission has been granted or refused?**

- **Have you been served with a Compliance Notice and you wish to object to it, e.g. because you don't think that you have done anything wrong or the period for sorting out the issue is too short?**

- **Have you received notification that a tree on your land is to be subject of a Tree Protection Order and you want to challenge that decision?**

- **Have you received notification that property has been added to the list of Guernsey's Protected Buildings and you want to challenge that decision?**

- **Have you had an application for a Certificate of Lawful Use refused[1]?**

- **Have you been issued with a Certificate of Lawful Use for a modified or substituted description of use from that described in your application?**

This guide aims to answer the questions you may have about how to appeal any of the above situations.

[1] An Ordinance enabling people to apply for a Certificate of Lawful Use will, subject to approval by the States, comes into force on 3rd June 2019

This guide must be read in conjunction with the relevant planning laws and planning policies, and in particular:

The Land Planning and Development (Guernsey) Law, 2005

The Land Planning and Development (Appeals) Ordinance, 2007

The Land Planning and Development (Exemptions) Ordinance, 2007

The Land Planning and Development (General Provisions) Ordinance, 2007

The Land Planning and Development (Special Controls) Ordinance, 2007

The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019[2]

The Land Planning and Development (Appeals) Regulations, 2008

The Land Planning and Development (Appeals and References) Rules, 2009

Copies of the planning laws and Island Development Pan and its associated Supplementary Planning Guidance and Development Frameworks can be obtained from the Authority's website – www.gov.gg/planning

This Guide represents the Law and Planning Tribunal procedures as at 6TH May 2019 and the legislation may be subject to further amendment

[2] This Ordinance, subject to approval by the States, comes into force on 3rd June 2019

INDEX

Introduction

The Planning Panel (the Panel) 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 Authority.

The Panel and Tribunal have their own Secretariat and the Panel's Secretary is independent of the Development & Planning Authority ("the Authority")[3].

The Panel aims to provide an appeals process which is accessible and affordable and offers a fair and transparent determination of the appeal.

The purpose of a planning appeal is to allow an independent Tribunal or Single Professional Member to review a planning decision of the Authority.

All planning appeals are determined on the basis of a "merits review" of the Authority's decision. A merits review involves a full reconsideration of the facts of the planning decision which is the subject of the appeal.

The Tribunal or Single Professional Member will undertake a review of all relevant material. In the case of appeals against the refusal of planning permission or in respect of conditions attached to the grant of planning permission the review is limited to such material that was before the Authority at the time of the decision. However, the Tribunal,

(a) Cannot act as a mediator between you and the Authority.

(b) Cannot consider the merits of alternative or revised plans you may have submitted to the Authority.

(c) Cannot take into account matters which are not relevant planning considerations (see section 13(1) of the Land Planning and Development (General Provisions) Ordinance, 2007 for full details).

(d) In the case of appeals made under section 68 of the Land Planning and Development (Guernsey) Law, 2005, cannot consider any events or changes in circumstances which occurred after the date on which the Authority made the decision which is the subject of your appeal.

(e) Similarly, cannot consider policies which have been introduced, revised or amended after the date of the decision planning decision.

[3] The responsibility for determining planning applications moved from the Environment Department to the Development & Planning Authority on 1st May 2016

Structure of the Guide

The guide is split into two parts:

Part One – sets out general guidance about the appeals process

Part Two – looks in a little more detail at each of the four modes of appeal

In addition to reading the guide, you are strongly encouraged to also read the Land Planning and Development (Guernsey) Law, 2005 and the related Ordinances and Regulations, the Island Development Plan and any other planning policies and guidance and advice notes published by the Authority which may be relevant to your case.

The 2005 Law and the other Ordinances and Regulations referred to in these guidance notes can be found at 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 or copies can be requested from the Authority at Sir Charles Frossard House.

This Guide represents the Law and procedures as at 6th May 2019

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 appointed by the States.

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

At least two thirds of the Panel's members must be permanently resident in the Channel Islands.

(b) What planning experience do Panel members have?

Three Panel members have been appointed to sit as Professional Members. The three Professional Members are members of either the Royal Town Planning Institute or the Royal Institute of British Architects. 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 as members of other appeal tribunals or of the planning process, e.g. as surveyors, lawyers, etc.

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

2. Categories of Planning Appeals

(a) What planning decisions can be appealed?

The following decisions of the Authority can be appealed to the Tribunal:

- A refusal of planning permission or a grant of planning permission subject to conditions; the right of appeal is under section 68 of the 2005 Law which also provides for rights of appeal in respect of other listed decisions;
- Against the refusal of a reserved matters application;
- Against the refusal of an application for the modification or discharge of a planning covenant;
- The confirmation of a Tree Protection Order (see also Part 3:1 for further details);
- The issuing of a Compliance Notice (see also Part 3:2 for further details);
- The issuing of a Completion Notice (see also Part 3:3 for further details);

- The inclusion of, or amendment to the entry relating to, a property on either the Protected Buildings or Monuments Lists (see also Part 3:4 for further details);

- The issuing of a Preservation Notice (see also Part 3:5 for further details);

- A failure to give notice of a planning decision for which there is a right of appeal under s68(2) of the 2005 Law (see also Part 3:6 for further details);

- Against the refusal of an application for a Certificate of Lawful Use (see also Part 3:7 for further details); and

- Against the issue of a Certificate of Lawful Use for a modified or substituted description of use from that described in the application (see also Part 3:7 for further details).

There is also the right of appeal to an adjudicator in relation to certain decisions under the Building Regulations. These appeals are not made to the Tribunal.

3. Who, How, When and Where to Appeal

(a) Who can appeal a planning decision?

Who can appeal a planning decision in part depends on the type of decision being appealed.

The following decisions by the Authority can only be appealed by the person whose application has been refused:

- refusal to grant planning permission;
- condition/s in the grant of planning permission;
- refusal to issue a certificate of lawful use; and
- issuing of a certificate of lawful use for a modified or substituted description of use from that described in the application.

Appeals against Compliance Notices and Completion Notices can only be made by a person who has been served with the Notice. This may include the owner of the land or building concerned, the occupier of the land or building (e.g. a tenant who is renting the property) and somebody who has an interest in the land or property which may be materially affected by the notice (e.g. the holder of a life interest (e.g. a usufruitier) in the property or a bank etc. who has an interest in the land as security for a loan/mortgage (i.e. a hypotheque).

Appeals against Tree Protection Orders can only be made by the owner or occupier of the land on which the tree is growing or somebody who has an interest in that land which may be materially affected by the order.

Appeals against the inclusion of a property on the Protected Buildings and Monuments List can be made by the owner or occupier of the protected building or monument or somebody who has an interest in that building or monument which may be materially affected by the listing.

(b) Can anybody other than the person who has applied for planning permission, or who owns, occupies or has an interest in the property appeal a planning decision?

No. The only people who can appeal planning decisions using the appeals process under the 2005 Law are those listed above i.e. the person who has made a planning application or, for certain appeals, the owner or occupier or holder of an interest in a property against which a planning notice (e.g. a Compliance Notice or Tree Protection Order) has been served.

If a third party (e.g. a neighbour to a property for which planning permission has been granted) wishes to challenge the decision they should contact an independent professional adviser, (e.g. an advocate, architect or planning consultant) or the Citizen's Advice Bureau for advice as to the remedies which may be open to them.

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

The appeal period varies depending on the type of appeal. The appeal periods for the different categories of planning appeals are:

- A planning decision listed in section 68(1) of the 2005 Law - **within six months starting with the date on which the decision** was made by the Authority;

- The non-determination of a planning application - **within three months after the date of the application** or such extended period as agreed in writing with the Authority (section 68(2) of the 2005 Law);

- The inclusion of, or amendment of the entry relating to, a property on either the Protected Buildings or Monuments Lists (section 18 and section 21 of the Special Provisions Ordinance) - **within 28 days beginning with the date of notification** to the person appealing the listing/amendment by the Authority's decision;

- The confirmation of a Tree Protection Order (section 20 and section 21 of the Special Controls Ordinance) - **within 28 days beginning with the date of notification** of the Authority's decision confirming the Tree Protection Order;

- Against a Compliance Notice (section 70 of the 2005 Law) - **within 28 days beginning with the date of service** of the Compliance Notice;

- A Completion Notice (section 70 of the 2005 Law) - **within six months beginning with the date of service** of the Completion Notice;

- A Preservation Notice (section 19 and section 21 of the Special Provisions Ordinance) - **within 28 days beginning with the date of service** of the Preservation Notice;

- A Certificate of Lawful Use (section 6 and section 7(4)(c) of the Certificates of Lawful Use Ordinance) - **within three months starting with the date on which the decision** was made by the Authority.

N.B. **The Panel Chairman has very limited discretion under the legislation to extend the appeal periods. Appeals received after the expiry of the appeal period will generally not be accepted and registered by the Panel unless there are strong and exceptional reasons for the late submission and the appeal period has only just expired. The exercise of this limited discretion will also take account of the length of the appeal period itself, i.e. the longer the appeal period the less likely the appeal period will be extended.**

(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);
- From the Authority's reception desk at Sir Charles Frossard House; and
- On request by telephoning (01481 223384 or 223447) or emailing (planningpanel@gov.gg) the Panel's Secretary).

(e) How many copies must I provide?

The number of copies required is 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, except for plans or architectural drawings which are A2 or larger. Six copies of these larger items must be provided.

It is important to read the form carefully and ensure that you have included the correct number of copies of all the additional material (e.g. copies of the decision, plans, any other planning applications related to your appeal and any other correspondence, photographs or material you intend to rely on). If material is missing or you have not included the correct number of copies your appeal cannot be registered.

If this happens and you have made your appeal just before the appeal period expires you run the risk of running out of time for making the appeal. The Panel is unable to extend the appeal deadlines where an incomplete appeal has been submitted ahead of the appeal deadline.

(f) Why doesn't the Tribunal simply look at the file the Authority holds on my property?

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.

(g) Where must the appeal form be sent?

Under the 2005 Law, the completed appeal form and supporting papers must be sent to the Chairman of the Authority and must arrive before the appeal period ends. Although the appeal is submitted to the Chairman of the Authority, he/she acts as a "post box" for receiving the appeals and sends them to the Panel Chairman.

In addition, you may email a copy of your appeal to planningpanel@gov.gg. **Please note an email does not satisfy the requirements under the 2005 Law for making an appeal**.

(h) In making an appeal, am I then prevented from negotiating with the Authority?

Submitting an appeal does not stop you from continuing to work with the Authority to try to identify a solution that would satisfy the planning legislation and policies and which would be an acceptable to you.

(i) How does the Authority respond to the appeal?

The Secretary will also forward a copy of the appeal papers you have submitted to the Authority with a request for the Planning Officer who has dealt with your case to prepare a response for the Tribunal. The Authority's response is generally prepared within four to six weeks of the appeal being registered. The Secretary will send a copy of the response to the appellant when it is received.

(j) How long does the appeal process take?

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

(k) 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 as an observer. This approach allows appellants to see a Tribunal in action and can assist them in understanding the process more clearly.

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

Forthcoming Tribunals are advertised at least seven days ahead of the date of the hearing in the foyer of the Royal Court and in the main reception area at Sir Charles Frossard House.

4. What must I include with my appeal form?

(a) What other information must I include with my appeal?

This varies depending on the nature of the decision you are appealing.

(a) The Appeal Form - in addition to completing all the relevant sections of the appeal form, you must include one copy of each of the following documents:

(b) Your grounds of appeal - a letter setting out your grounds of appeal, i.e. the reasons why you believe the Authority's decision should be overturned or altered or is otherwise wrong or unreasonable; if you or your professional representative are referring to planning case law, including previous decisions of a Planning Tribunal, the grounds of appeal must clearly explain the reason/s why the case is believed to be relevant and

highlight the paragraphs of the particular case which are to be relied on; you may also wish to refer to policies or sections from the Island Development Plan which you believe are relevant to your appeal.

N.B. where the appeal form lists the grounds of appeal, you should only tick those boxes for which you will be submitting supporting evidence or arguments when submitting your appeal. If you tick a box and do not provide any reasons to support the ground of appeal, the Tribunal may not be able to consider it.

(c) A copy of the planning decision subject of the appeal, namely where the appeal is:

- Against the refusal of planning permission or against one or more of the conditions attached to the grant of planning permission:
  - One copy of the planning application, including the application form and any supporting material, any plans, drawings (*please note – where plans or drawing are A2 or larger, six copies must be submitted*) and photographs, etc.

- In respect of a failure of the Authority to give notice of a planning decision:
  - One copy of the planning application, including the application form and any supporting material, any plans, drawings (*please note – where plans or drawing are A2 or larger, six copies must be submitted*) and photographs, etc.; and
  - Any correspondence between you and the Authority following submission of the planning application.

- Against a Compliance Notice:
  - A copy of the Notice and all related correspondence between the Authority and yourself, including any Challenge Notices which may have been served; and
  - Any planning applications, including the Authority's decision notice which relate to the alleged breach of planning controls.

- Against a Completion Notice:
  - A copy of the Notice and all related correspondence between the Authority and yourself, the planning application/s to which the Notice relates, including the Authority's decision notice; and
  - Any schedule of works which may have been prepared in respect of the development.

- Against the inclusion of or amendment to an entry on either the Protected Buildings or Protected Monuments Lists:
  - A copy of the Listing Notice and all supporting documentation received from the Authority; and
  - Any planning applications, including the Authority's decision notice, which relate to the decision to list the property.

- Against the issue of a Preservation Notice:
  - A copy of the Notice and all supporting documentation received from the Authority; and
  - Any planning applications, including the Authority's decision notice, which relate to the decision to issue the Notice.

- Against the issue of a Tree Preservation Order:
    - A copy of the Order and all supporting documentation received from the Authority, including any objections or representation made in relation to the Order and the Authority's confirmation of the Order; and
    - Any planning applications, including the Authority's decision notice, which relate to the decision to issue the Order.

(d) Copies of any documents and letters relating to the decision you are appealing against, including any professional or specialist reports you may have commissioned.

(e) Copies of any correspondence between you and the Authority relating to any efforts to resolve the matter without recourse to the Tribunal.

(f) Copies of any photographs you may wish to include to assist the Tribunal understand your submissions; all photographs must include details of when, from where and by whom they were taken and a short note explaining what the photograph is showing.

(g) An index of any other publicly available documents you may wish to rely on during the appeal hearing. The index should include the title and, where relevant, publication date, of the document, and, if available, the link to a website where the document can be found. The relevant section/s of any documents listed should be referred to in your grounds of appeal (see also note on Legal Authorities). **N.B. - there is no requirement to include a copy of these documents when submitting your appeal as the Tribunal will request copies of any documents it does not already hold.**

You must provide the above documents with your appeal form – both to comply with the requirements of the Appeals Ordinance and to enable the Panel's Secretary, the Tribunal and the other parties to the appeal to have adequate notice of the issues to be discussed at the appeal.

(b) What is meant by "grounds of appeal"?

The grounds of appeal is the term used for your reasons why you are appealing the particular planning decision. When preparing your grounds of appeal, you should consider the information set out in the planning decision you are appealing. You must explain why you disagree with the reasons for the decision. You must also include all documentary and photographic evidence you will wish to rely on when presenting your appeal.

(c) How can I evidence my "grounds of appeal"?

In most cases where planning permission is refused, the Authority will have referred to one or more areas of planning policy which, in its view, supports its reasons for rejecting your application. The decision letter will include a reference for the policy/policies referred to. It is important that you read these policies in full when preparing your appeal.

If you or your professional representative are referring to planning case law, including previous decisions of a Tribunal, the grounds of appeal must clearly explain the reason/s why the case is believed to be relevant and highlight the paragraphs of the particular case which are to be relied on; you may also wish to refer to policies or sections from the Island Development Plan which you believe are relevant to your appeal.

Where your appeal is in respect of a Compliance, Completion or Preservation Notice, the inclusion of a building on the Protected Monuments or Protected Buildings List, or the confirmation of a Tree Protection Order, the appeal form invites you to tick various boxes for the grounds of appeal set out in the relevant legislation.

If you do no more than tick the boxes you believe apply to your arguments, the Tribunal will have little evidence to consider when determining your appeal. Similarly, the Authority in responding to your appeal, will also be unable to fully consider your grounds of appeal. For these reasons you are strongly encouraged to include a letter explaining your reasons for ticking a particular box.

For example, in the case of an appeal against a Compliance Notice, if you tick the box relating to the Authority having issued the Notice after the expiry of the periods set out in section 48(4) of the 2005 Law, you must explain why the time period had expired, including photographic or documentary evidence to support your claim.

Similarly, in the case of an appeal against inclusion of a building Protected Buildings List you tick the ground that the building has no special interest, you must explain why you are arguing this point and include photographic or documentary evidence to support your arguments.

If your appeal is about a refusal to grant a Certificate of Lawful Use, section 6(1) of the Certificates of Lawful Use Ordinance provides a single ground of appeal, namely that the Authority has made a material error as to the facts of the case. Therefore, your appeal must clearly identify the material error/s and explain why you believe the Authority has made an error.

(d) What happens if I don't include evidence to support my "grounds of appeal"?

If your appeal papers do not include any arguments or evidence to support your grounds of appeal, the Authority will be limited in preparing its written response to your appeal. It will also mean that important points in support of your appeal will not be presented to the Tribunal members. The grounds of appeal are your opportunity to explain why you believe your appeal should be allowed.

Any documentary and photographic evidence you can include will help both the Tribunal and the Authority as you may be aware of important facts which the Authority was not aware of. If this happens, the Authority may review its decision and change its mind and so avoid the need for you to appear before a Tribunal to argue your case.

In addition, if supporting documentary and photographic evidence is submitted late in the appeal process, i.e. shortly before the appeal hearing, the Tribunal members may not have time to review the late evidence or to ask the Authority to respond to it. This may result in the Tribunal adjourning the hearing and setting a new date. This is inconvenient for everybody and may result in the Tribunal incurring costs, e.g. travel costs, room hire, etc.

Further, and perhaps most importantly for you, the Tribunal may make a costs order for any additional expenses incurred, unless there are exceptional reasons for not doing so.

5. What other information can be included?

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

This depends on the category of planning decision you are appealing. Where an appeal is under section 68 of the 2005 Law, i.e. it is against the refusal of planning permission; against a condition attached to the grant of planning permission; or a failure by the Authority to determine a planning application with three months of it being validated, the Tribunal may only consider facts, material or information that was before the Authority when it considered the original planning application or, in the case of non-determination appeals, the date the appeal was lodged.

In respect of appeals under the Certificates of Lawful Use Ordinance, a similar limitation applies. Therefore, on appeal you may only refer to evidence, facts and material you included with your original application for a Certificate of Lawful Use.

Where an appeal is against a Compliance, Completion or Preservation Notice, the inclusion of a building on the Protected Monuments or Protected Buildings List, or the confirmation of a Tree Protection Order, there is no such limitation on the evidence that an appellant can rely on. This means that you may include any material you believe relevant to your grounds of appeal.

(b) What may constitute new material?

New material may include:

- Something you did not include with your original planning application but which, on reflection, you now want to be taken into consideration;
- Letters of support from neighbours, etc. where these post-date the date on which the planning application was determined or were not sent to the Authority when it was considering the application;
- Decisions of the Authority which post-date the planning decision that is the subject of the appeal;
- Anything that may have changed since the planning application that is the subject of the appeal was determined; or
- A change in planning policy or an amendment to planning legislation which post-dates the planning decision that is the subject of the appeal.

This limitation does not prevent you from including material which you feel assist in explaining your grounds of appeal (e.g. photographs of the site) or information which you believe rebuts the reasons given by the Authority for its decision so long as reasons do not add new material which was not before the Authority. In all appeals there is no limitation as to the information you can submit as part of your appeal but it must relate to relevant planning considerations.

(c) Are there any documents I don't need to include when making an appeal?

Yes, there is no need to provide copies of:

- The Land Planning and Development (Guernsey) Law, 2005 or its associated Ordinances and Regulations; or
- The Development Plan, including any Supplementary Planning Guidance, under which the planning decision which is subject of the appeal has been made.

This is because all the Tribunal members have copies of and are conversant with the legislation, the relevant Development Plan/s and Supplementary Planning Guidance.

(d) 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).

(e) Can I see any letters the Authority may have received from neighbours opposing my planning application?

Yes. The Authority will, on request, provide you copies of these letters following a refusal of planning permission. Further, all letters of representation will also be included in the Authority's written response to your appeal.

6. <u>The Cost of Making a Planning Appeal</u>

(a) How much does it cost to appeal a planning decision?

An appeal fee is payable for appeals against the refusal of planning permission and a refusal of a reserved matters application made under an outline planning permission (i.e. permission requiring later approval by the Authority of specified details) or where outline planning permission is granted where an application was made for full planning permission.

In respect of appeals linked to Certificates of Lawful Use, the appeal fee is £250.

In most cases the appeal fee will be the same as the fee paid when making the original planning application. The appeal fee may be reduced in certain exceptional cases (see the Panel's *Guidance Notes on Appeal Fees*). The Secretary will send a payment notice showing the amount of the fee once the appeal has been checked and registered.

(b) What happens if the fee isn't paid?

The Tribunal is not required to take any further action in relation to the appeal until the whole amount of the fee has been paid.

7. The Appeal Process

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

The Secretary will write to acknowledge receipt of your appeal. If you are being represented by a third party this letter will be sent to your representative. 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) 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.

As a general rule, once a date for an appeal hearing has been set it will only be changed in exceptional circumstances. In such circumstances the Tribunal will require documentary evidence to support the reason for requesting a change of hearing date.

(c) 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.

For an appeal to be determined by written representations, the parties must be content for it to be dealt with in this way. The final decision rests with the Panel's Chairman.

PLEASE SEE PART TWO FOR FURTHER INFORMATION ON THE DIFFERENT MODES OF APPEAL

8. The Planning Tribunal

(a) What is the Planning Tribunal?

The Tribunal is the body of three appointed to determine your appeal. However, under section 6 of the Appeals Ordinance, a Tribunal can be a single Professional Member.

(b) Who will determine the appeal?

The Panel's Chairman will appoint a Tribunal of three members (one professional member plus two ordinary members).

A Panel member cannot, under the Appeals Ordinance, be appointed to be a member of the Tribunal if he has any prior involvement, including any financial interest, in any matter in respect of which the appeal is made.

(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 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 replacement 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 member's name.

(d) What happens if the Panel does not have the necessary technical knowledge to properly understand a particular aspect of the appeal?

The Appeals Ordinance Law allows the Panel's Chairman to appoint a Technical Advisor to assist a Tribunal with its assessment of evidence of a specialist, technical or scientific nature and she/he will take no part in making the decision on whether or not to allow the appeal. Their role will be confined to assisting the Tribunal members in assessing technical or specialist evidence.

(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 the relevant planning policies, copies of any consultation or policy documents referred to in the appeal papers and any other material the Tribunal members may have requested.

Where an appeal is dealt with as a Written Representation, 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 written response to your appeal, you may wish to submit further material. This is permitted subject to the limitations on new material set out in Section 3 – Making an Appeal.

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).

If additional material is submitted after the deadline and arrangements for any public hearing have to be changed, the Tribunal may make a costs order for any additional expenses which may have been incurred, unless there are exceptional reasons for not doing so.

9. 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 making a decision on the papers provided by the appellant and the Authority.

- Public Hearings - a Tribunal or single professional members sitting public and hearing oral evidence from and asking questions of the Authority and the appellant and any witnesses the parties may wish to call.

PLEASE SEE PART TWO FOR FURTHER INFORMATION ON THE DIFFERENT MODES OF APPEAL

10. The Site Visit

(a) Will the Tribunal visit the appeal site?

The Tribunal will usually include a site visit as part of its consideration of your appeal.

(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 and, depending on the nature of the application, to take measurements, etc.

(c) When is the site visit made?

The majority of site visits are held immediately after the public hearing. In some cases, the Tribunal will visit the vicinity of an appeal site more than once.

Additional site visits may be made to see the area at different time of the day, e.g. to assess traffic movements if one of the reasons for refusal is linked to road safety; or it may be at night, if the case relates to lighting, etc. Any additional site visits will usually be unaccompanied and the Tribunal members will restrict their visit to areas which are open to the public.

(d) Who can attend the site visit?

Where the appeal is determined at a public hearing, only the appellant (including anybody who represented or assisted him/her at the hearing), the Authority staff who gave evidence at the hearing and the Tribunal member/s may attend the site visit. The media and any third parties (e.g. neighbours) cannot attend the site visit.

(e) What happens at the site visit?

The site visit is an opportunity for the Members to understand points raised during the hearing. Therefore, as a general rule, additional evidence will not be taken during the site visit.

However, if the Tribunal believes that it will be necessary to take evidence during the site visit, it will make it clear this clear to the parties before 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

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 two Ordinary Members will make the decision as the role of the Professional Member is to advise on planning policy and its interpretation and he/she does not have an "original vote". If the two Ordinary Members reach different decisions, the Professional Member has a casting vote.

(b) What does it mean if an appeal against a refusal of planning permission is allowed?

Where a Tribunal allows an appeal against a refusal of planning permission it will usually mean that planning permission for the development has been granted.

(c) Where an appeal is allowed against a refusal of planning permission will the planning permission be unconditional?

The Tribunal may also attach any conditions it thinks fit and which it believes are reasonable, relevant, necessary, precise and enforceable. The Tribunal will, at the end of the appeal hearing, ask the Authority to indicate any planning conditions it would wish to attach should the appeal be allowed. You will have an opportunity to give reasons for objecting to a suggested condition.

The Tribunal will then come to its own view as to whether all or any of the Authority's suggested conditions should be included or modified.

(d) Is the Tribunal bound to apply any conditions suggested by the Authority?

With the exception of the three statutory conditions, the Tribunal is free to decide which, if any of the suggested conditions should be attached to its decision.

The Tribunal may also attach any other conditions it believes are reasonable, relevant to the planning application, necessary, precise and enforceable in all the circumstances.

(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 is generally issued within three weeks of the hearing and will be sent in the first instance to the appellant and the Authority and, where appropriate to any person who may have an interest in the land. If there is delay for any reason the Secretary will advise the appellants and the Authority 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 two to three weeks after being issued. They are also published on the Panel's website (www.gov.gg/planningpanel) and copies can be obtained, on request, from the Secretary.

12. Appeal Outcomes

(a) What happens if the appeal is allowed?

Where an appeal against the refusal to grant planning permission is allowed it means that planning permission has been granted.

Where an appeal against a Compliance, Completion or Preservation Notice, the inclusion of a building on the Protected Monuments or Protected Buildings List or the confirmation of a Tree Protection Order is allowed, the Notice or Order is quashed and the requirements set out in it will no longer have any effect.

(b) What happens if the appeal is dismissed?

If an appeal is dismissed, the original decision of the Authority has been confirmed.

(c) Can I Tribunal alter an original decision?

Yes, in addition to allowing or dismissing an appeal, a Tribunal may reverse or vary any part of the decision, whether or not the appeal relates to that part of it.

In certain circumstances, the Tribunal may also modify the terms of a Compliance, Completion or Preservation Notice, an entry on Protected Monuments or Protected Buildings List or a Tree Protection Order (see Appendices 1 to 5 for further details).

13. Costs Awards

(a) Can I claim costs from the 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 specially excluded.

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

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

14. Further Appeals

(a) Can decisions of the Panel be appealed?

A Tribunal's decision in respect of an appeal made under either section 68 or section 70 of the 2005 Law can be appealed to the Royal Court by either the appellant or the 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.

The time limit for making an appeal to the Royal Court is one month from the date of the Tribunal's decision.

In all other categories of appeal, a Tribunal's decision can be challenged by way of Judicial Review (see Practice Direction 3 of 2004).

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 Single Professional Member; or
- At a public hearing before a Single Professional Member.

The Planning Panel's general approach for each of the four modes of appeal is set out below. Please note that the approach may vary slightly depending on the nature of the planning decision which is being appealed. If your appeal is in relation to the confirmation of a Tree Protection Order, a Compliance Notice, a Completion Notice, the listing of a Protected Monument or Protected Building or a preservation Notice, this part of the Guidance Notes should be read in conjunction with the relevant Appendix.

All the Decision Notices of the Tribunal carry the same weight 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 members of the Panel or a Professional Member sitting alone) meeting in private and reaching its decision on the basis of the written material provided by the appellant/s and the Authority.

(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 their appeal to be dealt with by way of Written Representations, the Panel's Chairman will review the appeal papers and advise whether or not he feels there are reasons for holding a public hearing before a Tribunal.

For an appeal to be held by written representations both the appellant and the Authority must be content for it to be dealt with in that way.

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

In reaching his decision, the Chairman will be mindful of the appellant's preference but, he will need to be satisfied that:

- The appeal papers are complete and self-contained; i.e. can the Tribunal easily understand how the planning decision was reached, the appellants' reasons for appealing the decision and why the Authority is resisting the appeal?;
- The relevant planning policies and issues are clear, i.e. can the Tribunal clearly understand the issues by reading the appeal papers and visiting the site?;
- There is no an over-riding public interest;
- No third party representations objecting to the development were received by the Authority;
- There are no disputes as to the facts;
- There are no novel legal issues; or
- The planning application did not require the preparation of an Environmental Impact Assessment.

If any of the above factors are present the Chairman may refuse the request for the appeal to be dealt with by Written Representations and require that a Public Hearing be held. The Chairman will write to the appellant and the Authority setting out his reasons.

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

The Tribunal members will receive a copy of the appeal papers (the appellant's appeal form and required accompanying documents, the Authority's response and the appellant's written response to the Authority's response) and will review these papers before meeting privately to determine the appeal.

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

Yes. The Tribunal members will 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. <u>Public Hearings</u>

(a) What is meant by a Public Hearing?

At a public hearing the Tribunal will ask questions of the parties to "test" their evidence. A hearing is also an opportunity for the parties to present their case in person and to ask questions of each other.

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) What is the purpose of the Public Hearing?

The purpose of the hearing is to give the Tribunal members an opportunity to understand your application for planning permission, including why you applied for planning permission. The Tribunal will also want to understand:

- The background to and history of the planning decision;
- The grounds of appeal;
- The planning history of the property, if there have been previous planning applications;
- Where an appeal is against a condition attached to the grant of planning permission, why the condition was felt necessary and the planning objective the Authority is seeking to achieve through the condition; and
- The relevant planning policies.

(c) 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.

(d) Who will represent the Authority?

In general the Authority's case is presented by the Planning Officer who prepared the original planning report. The Planning 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) What evidence can be heard at the Public Hearing?

In the case of appeals against the refusal of planning permission or the condition/s attached to the grant of planning permission, the 2005 Law states that the Tribunal can only determine the appeal on the basis of the material, evidence and facts before the Authority when the decision was made. Where the appeal relates to another planning decision no such limitation applies and so the Tribunal may consider any material it considers relevant.

This means that neither the appellant nor the Authority can introduce new material (e.g. additional letters of support or a new expert's report). However, there may be certain situations in which the Tribunal may decide to admit material on the basis that it does amount to material, evidence or facts which were before the Authority at the application stage. In all cases, the Tribunal members will determine whether any of the material submitted by either party conforms to this legal requirement.

(f) What will happen at the Hearing?

Before the hearing, the Tribunal will prepare an agenda based on their review of the appeal papers. It will set out the matters they have identified as key or main issues and any other matters they wish to discuss. It will be sent to the parties 5 to 7 days before the hearing.

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?

After formally opening the hearing the Presiding Member will usually ask everybody to introduce themselves and explain the capacity in which they are attending, e.g. if your architect is assisting you with your appeal he/she would explain that they designed the development, etc. and, similarly, if the Authority has any witnesses who may have given specialist advice when it considered your planning application they will introduce themselves and explain what aspects of the appeal they may be giving evidence on.

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 Tribunal will then turn to the key issues they have identified from their pre-reading of the appeal papers. These will be considered in the order in the agenda. The Tribunal will look in greater detail at each issue, including reviewing the relevant planning policies, supplementary planning guidance and other published States strategies, policies and guidance.

Once each of the key or central issues the Tribunal identified has been covered, there will be an opportunity for both you and the Authority to raise any other issues.

Finally, the Tribunal will consider the planning conditions the Authority may wish to be attached to a grant of planning permission should the appeal be allowed. The Authority provides a list of suggested planning conditions on a “Without Prejudice” basis. This means that, without pre-determining the outcome of the appeal, the Authority gives advance notice of the conditions it would seek to attach to the planning application should the Tribunal allow 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 13).

(h) 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.

(i) Can I refer to other cases where planning permission has been given?

Yes. However, it is important to remember that the planning legislation and policies may have been different when permission was granted. Similarly, whilst you may think a development on another property is very similar to yours there may be important differences in planning terms which have resulted in the two different decisions.

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

As a general rule, the public cannot speak at a hearing. The legislation does not allow anyone other than the appellant and the Authority a right to appear. The Tribunal may *allow* certain specified persons to appear e.g. such as the owner or occupier of the land where he is not the appellant.

(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 would 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 is also guilty of an offence.

In general, those giving evidence to the Tribunal do not take any oath before giving their evidence although the Tribunal has a power to require evidence to be given on oath.

C. <u>Case Management Meetings</u>

(a) What is meant by a case management meeting?

A case management meeting is a pre-hearing meeting with the parties to enable the Tribunal to review an appeal before the formal appeal hearing.

A case management meeting provides the Tribunal an opportunity to identify the key issues relating to an appeal and the evidence the parties need to provide to enable it to reach an evidence-based and reasoned decision. It will also enable the Tribunal to direct that all the relevant information is submitted in good time for them to prepare for the hearing itself.

(b) When is a case management meeting arranged?

Case management meetings are generally arranged for more complex cases where the Tribunal may have to look at a number of different planning policies. The Tribunal will decide whether a case management meeting is needed after it has reviewed your appeal papers and the Authority's written response to your appeal. Arrangements for the hearing will be made by the Panel's Secretary.

(c) Who attends a case management meeting?

The meeting is chaired by the professional member of the Tribunal, usually he/she will sit alone. You must attend and may bring your professional advisor with you. The Authority is usually represented by the case officer or another member of staff who is familiar with the case.

(d) What is the purpose of a case management meeting?

The purpose of the case management meeting is to:

- Review the evidence, facts and material provided by you and the Authority;
- Clarify and confirm the grounds of appeal;
- Identify any matters on which you and the Authority are in agreement;
- Consider which policies are engaged;
- Identify the main issues for the Tribunal to determine;
- Identify whether there are any gaps in the evidence, facts or material available to the Tribunal which would constrain the Tribunal's ability to properly consider a relevant planning policy;
- Agree a list of any additional material required from each party;
- Agree any witnesses you and the Authority wish to give evidence at the hearing;
- Set a timetable for exchange of papers, etc.;
- Agree a time, date and venue for the hearing.

(e) Will the Tribunal hear any evidence during the case management meeting?

No, the only purpose of the case management meeting is to review the evidence already submitted and give directions to you and the Authority about any other evidence or supporting documents the Tribunal requires before the hearing.

(f) How long will the case management meeting take?

Generally case management meetings are fairly short and should be completed within a morning or an afternoon.

(g) What happens after the case management meeting?

The Tribunal will issue a Directions Notice within five working days of the case management hearing. The Directions Notice will set out the following matters:

- Confirmation of the grounds of appeal;
- A list of matters on which you and the Authority are in agreement;
- A list of the main issues the Tribunal will determine;
- The planning policies which the Tribunal will consider at the hearing;
- A list of any additional material or submissions each party is required to provide in advance of the hearing;
- A timetable for exchange of any additional material or submissions;
- A list of witnesses required to attend the hearing; and
- The time, date and venue for the hearing.

PART 3 – PARTICULAR CATEGORIES OF APPEAL

Introduction

The following sections cover particular categories of appeal, other than appeals against a refusal to grant planning permission and appeals against planning conditions attached to a grant of planning permission.

This part includes guidance on the following categories of appeal:

- Tree Protection Orders;
- Compliance Notices;
- Completion Notices;
- Listing of Protected Monuments and Buildings;
- Preservation Notices;
- Non-Determination of a Planning Application; and
- Certificates of Lawful Use

1. TREE PROTECTION ORDERS

What is a Tree Protection Order?

Tree Protection Orders aim to secure the protection of existing trees and the planting of new trees. They can either be made in respect of a specific tree and so give it effective protection or in respect of a group of trees in the interests of amenity.

When a Tree Protection Order likely to be used?

A Tree Protection Order is most likely to be used where a tree or group or area of trees is seen as making a particular contribution to the amenity.

Who can appeal against the confirmation of a Tree Protection Order?

The owner or occupier of the land affected by the Order and any person who has a material interest in the land which may be materially affected by the Order can make an appeal against the confirmation of an Order.

How long do I have to make an appeal against the confirmation of a Tree Protection Order?

The appeal period is 28 days. The 28 days commences on the date on which you were notified by the Authority's decision to confirm the Tree Protection Order.

On what grounds can I appeal a Tree Protection Order?

Under section 20 of the Special Controls Ordinance, a Tree Protection Order can be appealed on the ground that:

(a) It is not in the interests of amenity to provide for the protection of the tree, group or area of woodlands in question or of any tree in such group or area, or

(b) The confirmation of the order was (for any other reason) ultra vires or unreasonable.

N.B. You should only tick those boxes for which you will be submitting supporting evidence or arguments when submitting your appeal. If you tick a box and do not provide any reasons to support the ground of appeal, the Tribunal may not be able to consider it.

What decisions can the Tribunal reach?

The Tribunal may decide that the Tree Protection Order was:

- Correctly issued and is lawful, fair and proportionate and so dismiss the appeal.

- Not in the interests of amenity to provide for the protection of the tree, group or area of woodlands in question or of any tree in such group or area it may quash the Order or modify it so that the Order only relates to those trees it considers should be protected in the interests of amenity.

- For any other reason ultra vires or unreasonable it may amend or quash the Notice.

2. COMPLIANCE NOTICES

What is a Compliance Notice?

A Compliance Notice may be issued where it appears to the Authority that a breach of planning control may have occurred and which it requires to be remedied.

When a Compliance Notice likely to be used?

Under the 2005 Law there has been a breach of planning control if:

(a) Development has been carried out without planning permission as required under the 2005 Law

(b) Any term (including any condition or limitation) of any planning permission has not been complied with

(c) Any relevant requirement of the building regulations has not been complied with.

When can a Compliance Notice not be issued?

A Notice may not be issued after:

(a) Ten years beginning with the date of the alleged breach to which it relates, where the alleged breach relates to a material change of use; or

(b) Four years beginning with the date of the alleged breach to which it relates, where the alleged breach relates to operational development; or
(c) Four years beginning with the date on which the alleged breach (operational development or material change of use) were first known by the Authority,

whichever date is the sooner.

Who can appeal a Compliance Notice?

The owner or occupier of the land affected by the Notice and any person who has a material interest in the land which may be materially affected by the Notice can make an appeal the Notice.

How long do I have to make an appeal a Compliance Notice?

The appeal period is 28 days, commencing on the date on which you were served with a copy of the Notice by the Authority.

On what grounds can I appeal a Compliance Notice?

Under section 70 of the 2055 Law, a Compliance Notice can be appealed on the ground that:

(a) The breach of planning control alleged in the notice has not taken place;

(b) The matters alleged in the Notice do not constitute a breach of planning control;

(c) The Notice was issued after the expiry of the period within which a compliance notice in respect of that alleged breach was required;

(d) The measures required by the Notice to be taken exceed what is necessary for the purposes specified in section 49(1)(c) of the 2005 Law;

(e) The period specified in the Notice for taking any such measure is unreasonably short; and/or

(f) The issue of the Notice was (for any other reason) ultra vires or unreasonable.

N.B. You should only tick those boxes for which you will be submitting supporting evidence or arguments when submitting your appeal. If you tick a box and do not provide any reasons to support the ground of appeal, the Tribunal may not be able to consider it.

Can I see any letters the Authority may have received from neighbours which may have triggered the issuing of a Compliance Notice?

The Tribunal may request the Authority to release letters of complaint where they can be redacted to protect the identity of the person who has written the letter.

Can members of the public speak at a public hearing?

The Tribunal may allow somebody who is affected by the alleged breach give evidence at the hearing.

What decisions can the Tribunal reach?

The Tribunal may decide that:

- The Notice has been correctly issued and is lawful, fair and proportionate and so dismiss the appeal.
- There has been no breach of planning control and quash the Notice; i.e. there will be no requirement to undertake the "Measures to be Taken" set out in the Notice.
- The breach of planning control occurred more than ten years before the Notice was issued or the Authority had been aware of the breach for more than four years, i.e. there will be no requirement to undertake the "Measures to be Taken" set out in the Notice, an so quash the Notice.
- The measures required by the Notice to be taken exceed what is necessary to rectify the breach of planning control; the Tribunal may amend the Notice and prescribe different measure required to rectify the breach.
- The period specified in the Notice for taking any such measure is unreasonably short; the Tribunal may amend the Notice and prescribe different date by which the breach must be rectified.
- The Notice was for any other reason ultra vires or unreasonable; the Tribunal may quash the Notice. If a Notice is quashed it ceases to be of any effect.

3. COMPLETION NOTICES

What is a Completion Notice?

Where planning permission is granted the development must commence within three years of the date on which it was granted or such other shorter period as may be specified in the grant of planning permission. If the permitted development has been commenced within this time period but the Authority is of the opinion that the development will not be completed within a reasonable period, it may issue a Completion Notice.

When a Completion Notice likely to be used?

A Completion Notice is issued when development for which planning permission has been granted has been commenced but the Authority has grounds to believe that the work will not be completed within a reasonable period.

Who can appeal a Completion Notice?

The owner or occupier of the land affected by the Notice and any person who has a material interest in the land which may be materially affected by the Notice can make an appeal against the Notice.

How long do I have to make an appeal a Completion Notice?

The appeal period is 6 months beginning with the date on which the Notice is issued.

On what grounds can I appeal a Completion Notice?

Under section 70 of the 2005 Law, a Notice can be appealed on the ground that:

(a) The period specified in the notice at the expiry of which the permission will cease to have effect is unreasonably short; and/or

(b) The issue of the notice was (for any other reason) ultra vires or unreasonable.

N.B. You should only tick those boxes for which you will be submitting supporting evidence or arguments when submitting your appeal. If you tick a box and do not provide any reasons to support the ground of appeal, the Tribunal may not be able to consider it.

What decisions can the Tribunal reach?

The Tribunal may decide that:

- The Notice has been correctly issued and is lawful, fair and proportionate and so dismiss the appeal; or

- The period specified in the notice at the expiry of which the permission will cease to have effect is unreasonably short it may amend the Notice and prescribe different date by which the development must be completed; or

- The Notice was for any other reason ultra vires or unreasonable it may quash the Notice.

4. LISTING OF PROTECTED MONUMENTS AND BUILDINGS

What is a Protected Monument or Building?

The Authority can add any building or monument to the Protected Monuments and Building List (the List) which it believes merits special protection.

How are buildings selected for inclusion of the List?

The Authority as a duty under section 1(2)(b) of the 2005 Law to,

> "*To protect and enhance Guernsey's heritage of buildings, monuments and sites of historic, architectural or archaeological importance*."

Further, section 29 of the 2005 Law requires the Authority to prepare, maintain and keep under review a list of protected monuments and buildings of,

> "*Such monuments, structures, artefacts, caves, ruins or remains (whether on or below the surface of any land) as in its opinion should, as a matter of public importance, be preserved by reason of their archaeological, historic, traditional, artistic or other special interest*."

How does the Authority select building for inclusion on the List?

The Authority may add any buildings with special historic, architectural, traditional or other interest, where it is in its opinion a matter of public importance to the List.

What information does the List include?

When listing a building, the Authority must clearly state what is being listed. In addition to the actual building or monument, and it may also include feature (whether internal or external) consisting of a man-made object or structure fixed to the building or forming part of the land in the vicinity of the building. The Authority can include any land in the vicinity of the protected building which it appears necessary for the support or preservation of the monument or for the preservation of its setting.

What is the effect of a listing?

Planning consent to demolish, alteration or extension a listed building may be required, regardless of whether such work would not have been needed had the building not be listed.

For example, as a general rule, alterations to the interior of a building which is not listed do not require planning permission. This is because under sections 1 and 2 of the General Provisions Ordinance, such alterations do not come under the definition of "development". However, where a building is listed such alterations may require planning permission. Similarly, exemptions for a requirement to seek planning permission under the provisions of the Exemptions Ordinance generally do not apply to protected buildings.

How will I know if a building or monument is listed?

The Authority is required to maintain a list of buildings on the Protected Monuments and Buildings List. This list can be viewed online (www.gov.gg/planning) and can be inspected at the Authority's office in Sir Charles Frossard House. The entry will also include a map outlining the extent of the listing, i.e. the building and any land included in the listing.

Does the Authority have to publicise when it lists a building or monument?

Yes, section 4 of the Special Controls Ordinance sets out to whom, how and when the Authority must publicise adding or deleting a building from the List or amending an entry.

Who can appeal a Listing?

The owner or occupier of the protected building or monument affected by the decision and any person who has an interest in the land comprising the protected building or monument which may be materially affected by the listing.

How long do I have to make an appeal a Listing?

The appeal period is **28 days**, beginning with the date on the Authority's letter of notification advising you of the decision to add it to the List or to amend an existing listing.

On what grounds can I appeal a Listing?

Under section 18 of the Special Controls Ordinance, a decision to add a building to the List or to amend an existing entry can be appealed on the following grounds:

- The protected monument or building has no special interest;
- Land regarded as part of the protected monument or building is more than is necessary for its support or preservation or for the preservation of its setting;
- The entry is in any material respect factually incorrect; and/or
- The insertion or amendment of the entry was (for any other reason) ultra vires or unreasonable.

N.B. You should only tick those boxes for which you will be submitting supporting evidence or arguments when submitting your appeal. If you tick a box and do not provide any reasons to support the ground of appeal, the Tribunal may not be able to consider it.

What evidence can be included to support my grounds of appeal?

The Authority's Conservation Advice Note 6 *Criteria for the selection of buildings for the Protected Buildings List* includes full details the statutory criteria (i.e. the criteria set out in sections 33(2) and 34 of the 2005 Law) it must have regard to when considering whether a building merits protection, namely:

33(2) In considering whether or not to list any building, the Authority may take into account –

(a) any way in which the exterior of the building contributes to the historic, architectural, traditional or other interest of any group of buildings of which it forms part

(b) the desirability of preserving any feature of the building (whether internal or external) consisting of a man-made object or structure fixed to the building or forming part of the land in the vicinity of the building.

*34(a) to secure so far as possible that the special historic, architectural, traditional or other special characteristics of buildings listed on the protected buildings list (**"protected buildings"**) are preserved, and*

(b) in particular, in exercising its functions with respect to a protected building or any other building or land in the vicinity of a protected building, to pay special

attention to the desirability of preserving the protected building's special characteristics and setting.

Advice Note 6 also includes details of how the "special interest" of a building will be assessed (as per section 34(a) of the 2005 Law). You should read Advice Note 6 when drafting the reasons why you believe the building does not merit inclusion on the Protected Buildings List.

Are there any matters the Tribunal cannot take into account as a ground of appeal?

The following issues have variously been raised in such appeals:

- The condition of the building;
- The need to make adaptions and modifications to the building to bring it in line with current building standards, modern living conditions, etc.; and
- The need to make adaptions and modifications to the building to accommodate the needs of occupants with particular disabilities.

None of the above considerations form part of the Authority's Advice Note 6. The Panel is mindful that in the UK the condition or state of repair is expressly excluded as a relevant consideration. Whilst the 2005 Law and Advice Note 6 are both silent on this point, the Panel notes that Policy GP5 of the Island Development Plan provides a gateway for the owners protected buildings to extend or alter the building and, in limited circumstances, the demolition of a protected building, namely:

> ***Policy GP5: Protected Buildings***
> *Proposals to extend or alter a protected building will be supported where the development does not have an adverse effect on the special interest of the particular protected building or its setting or where the economic, social or other benefits of the development and, where appropriate, its contribution on to enhancing the vitality of a Main Centre outweigh the presumption on against adversely affecting that special interest. In all cases proposals must also accord with all other relevant policies of the Island Development Plan.*
>
> *There is a presumption against the demolition or partial demolition of a protected building and this will only be permitted where:*
>
> *(a) it is demonstrated that the building is structurally unsound and is technically incapable of repair; or,*
> *(b) the demolition on or partial demolition on relates to a structure which detracts from the special interest of the protected building; or,*
> *(c) it is demonstrated that the economic, social or other benefits of the proposed development and, where appropriate, its contribution to enhancing the vitality of a Main Centre outweighs the presumption against the loss or partial loss of the protected building.*

In light of the above policy gateway, the Panel's general view is that the need to undertake modifications and the condition of a building, or indeed the work that may be required to rectify defects or the cost of such work, are not a material consideration with respect to a decision concerning the inclusion of a building in the List of Protected Buildings.

What information can I include with my appeal?

In addition to the material set out at paragraph 4(c) which you must include with your appeal, you may include any information about the property you feel will assist the Tribunal in considering your appeal. This may include photographs (both current and historic ones) (*please see paragraph 5(d) for guidance on submitting photographs*), copies of conveyances or extracts from the Livres de Percharge (where these sources help show the history of the property), extracts from other historical sources, including any books in local buildings, maps, etc. In all cases, it will assist the Tribunal and the Environment if you include details of the source material.

If you have asked an historic building expert or architect to advise you or prepare a report on your property you may also include this. The report should include details of the report's author's qualifications and experience and the date when the report was prepared.

Can I call witnesses?

Yes, you can call anybody you believe may be able to assist you in presenting information about the history and the historic value of the building. If you are calling witnesses, you must advise the Panel's Secretary, in advance, and provide brief details about the evidence they will be giving.

What decisions can the Tribunal reach?

The Tribunal may decide that the Listing is lawful, fair and proportionate and so dismiss the appeal.

If the Tribunal decides:

- The monument or building specified in the Listing has no special interest (section 18(3)(a) of the Special Controls Ordinance); or
- The Listing was for any other reason ultra vires or unreasonable (section 18(3)(d) of the Special Controls Ordinance)

it will delete the entry.

If the Tribunal decides:

- The land surrounding the monument or building is more than is necessary for its support or preservation or for the preservation of its setting such land (section 18(3)(b) of the Special Controls Ordinance); or
- The entry is factually incorrect in any material respect (section 18(3)(c) of the Special Controls Ordinance)

it will either delete the entry on the Protected Building List or amend it so that the land surrounding the monument or building is more than is necessary for its support or preservation or for the preservation of its setting such land or to correct any material factual errors.

5. PRESERVATION NOTICE

What is a Preservation Notice?

The Authority may issue a Preservation Notice under section 7 of the Special Controls Ordinance where it appears that work is urgently required to:

(a) Preserve or protect a protected monument or building

(b) Prevent the deterioration of a protected monument or building

Who can appeal against a Preservation Notice?

The owner of any land on whom a Notice is served can make an appeal against the Notice.

How long do I have to make an appeal against a Preservation Notice?

The appeal period is 28 days beginning with the date on which the Notice was issued.

On what grounds can I appeal a Preservation Notice?

Under section 19 of the Special Controls Ordinance, a Notice can be appealed on the ground that:

(a) The works specified are not urgently necessary to preserve or protect, or prevent the deterioration of, the protected monument or protected building in question;
(b) The period specified in the notice for carrying out any such works is unreasonably short; and/or
(c) The issue of the notice was (for any other reason) ultra vires or unreasonable.

N.B. You should only tick those boxes for which you will be submitting supporting evidence or arguments when submitting your appeal. If you tick a box and do not provide any reasons to support the ground of appeal, the Tribunal may not be able to consider

What decisions can the Tribunal reach?

The Tribunal may decide that:

- The Notice has been correctly issued and is lawful, fair and proportionate and so dismiss the appeal;

- The works specified are not urgently necessary to preserve or protect, or prevent the deterioration of, the protected monument or protected building in question it may quash the Notice;

- The works specified are not urgently necessary to preserve or protect, or prevent the deterioration of, the protected monument or protected building in question it may amend the Notice and substitute such works as it regards as urgently necessary;

- The period specified in the notice for carrying out any such works is unreasonably short it may amend the Notice and prescribe such period as appears to the Tribunal to be reasonable for the works to be undertaken; or
- The Notice was for any other reason ultra vires or unreasonable it may quash the Notice.

6. NON-DETERMINATION OF A PLANNING APPLICATION

What is meant by the non-determination of a planning application?

Section 68(2) of the 2005 Law allows somebody who has made a planning application, three months after the date when the application was duly made or such extended period as the applicant and the Authority may agree in writing, to appeal if the Authority has not:

(a) Given notice of its decision on the application; or

(b) Given notice that it has declined to consider an application.

Who can appeal against the non-determination of a planning application?

The person whose application for planning permission has not be determined.

How long do I have to make an appeal against the non-determination of a planning application?

The appeal period is six months immediately after a period of three months after the date when the application in respect of which the Authority has failed to give notice of its decision was duly made and the Authority may agree in writing. That is, if the planning application was validated on 1 February, the three months would run until 30 April and the six month appeal period would end on 30 October.

Where an extended period is agreed in writing between the applicant and the Authority, an appeal must be made, an appeal under this part of the 2005 Law must be made within six months of the expiry of the extend period.

On what grounds can I appeal the non-determination of a planning application?

The grounds for this category of appeal are that the Authority has failed to give notice of its decision with regard to the application within three months of the date on which the application was duly made and validated as valid or such extended date as agreed in writing by the applicant and the Authority.

What should my grounds of appeal include?

In setting out your grounds of appeal, you must explain why you believe the Authority should have made a decision about your planning application within the time that has elapsed since your planning application was validated by the Authority

What supporting material must I include with my appeal?

In addition to completing all the relevant sections of the appeal for, the appeal must include the following information:

- A statement of the grounds of appeal;
- A copy of the planning application form, including copies of any other material submitted with the planning application, e.g. plans, photographs, letters, design statements, etc.;
- A copy of any pre-application advice provided by the Authority;
- A copy of any agreement(s) between the applicant and the Authority to extend the period for determining the application; and
- A copy of any other correspondence, including emails and notes of meetings, between the applicant and the Authority related to the planning application.

What evidence can a Tribunal consider?

Section 69(1) of the 2005 Law states that when considering a non-determination appeal, the Tribunal may only consider evidence, facts and material before the Authority on the date the appeal is lodged. Therefore, if you have not submitted material relevant to your appeal, you will not be able to present that evidence at the appeal. Similarly, if the Authority has not received a consultation report before the date the appeal is lodged, it will not be able to present that evidence at the appeal hearing.

However, this material may be necessary to enable the Tribunal to decide whether or not a particular policy requirement has been satisfied. For example, some policies require an applicant to demonstrate that an existing building is no longer required for its authorised use, or the proposed development would not have a significant detrimental impact on the viability of a Main or Local Centre, or that land is no longer required for agricultural purposes, etc. If your planning application engages such a planning policy and does not include the required evidence, a Tribunal will have little option but to decide that this policy requirement has not been satisfied. Therefore, it will have no option but to refuse the planning application even though you may have the information as section 69(1) prevents the Tribunal from considering evidence, for the purposes of the appeal that was not before the Authority when the appeal was made.

How does the Tribunal consider non-determination appeals?

The Tribunal's general approach to dealing with non-determination appeals differs from other appeals because of the particular nature of this category of appeals. The reason for a different approach is because of the limitation imposed by section 69(1) of the 2005 Law on the introduction of new evidence, facts and material.

The Tribunal is also mindful that this category of appeals arises because the Authority has not reached a decision in what you believe is a timely manner. In other words, these appeals are generally submitted because you want a planning decision.

The Tribunal's approach is to arrange a case management meeting as soon as possible after the appeal has been lodged. Ideally, subject to your availability and that of the planning officers dealing with case, it will be held within ten working days of the date the appeal is lodged.

What is the purpose of the case management meeting?

The purpose of the case management meeting is to:

- Establish what material is before the Authority as of the date of appeal;
- Consider which policies are engaged;
- Identify whether there are any gaps in the evidence, facts or material available which would constrain the Tribunal's ability to properly consider a relevant planning policy;
- Agree a list of the material required from each party;
- Set a timetable for exchange of papers, etc.;
- Agree a date for the appeal to be heard.

In addition, the Tribunal will invite the Authority to indicate when it may have been able to determine the planning application had the appeal not been lodged.

What happens if the Tribunal decides there are gaps in evidence available to it?

In these circumstances, the Tribunal will explain to the parties the issues which may arise for its decision making and how these may impact on the decision it can properly reach. The Tribunal will outline the possible options open to you.

If there are gaps in the key evidence can I withdraw my appeal and submit new material to the Authority?

Yes, you can withdraw the appeal. However, you cannot, at a later date, make a new appeal for non-determination of the same planning application.

What decisions can the Tribunal reach?

If the Tribunal concludes the Authority has not acted unreasonably in progressing the planning application, it may dismiss the appeal. The Authority would then continue to be responsible for determining the application.

If the Tribunal allows the appeal, i.e. decides that the Authority has failed to determine the planning application in a reasonable time, it may determine the planning application as if it were the Authority dealing with the application in the first instance.

If the Tribunal determines the planning application and refuses it, can I appeal the refusal of planning permission?

In these circumstances, you cannot appeal the refusal of planning permission to another Tribunal. However, you may appeal to the Royal Court on a question of law (see section 14 – Further Appeals for further information).

7. CERTIFICATES OF LAWFUL USE

What is meant by a Certificate of Lawful Use?

The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019[4] enables property owners to apply to the Authority to regularise unlawful changes of use, where:

(a) A compliance notice cannot be issued in respect of that unlawful change of use under that Law[5], and

(b) The use does not amount to a contravention of a compliance notice in force at the time of the application, including provision for a right of appeal against the refusal of a certificate and other procedural provisions including the making of applications and revocations and provision for fees.

A certificate of lawful use certifies that, on the date of the application, the use/s described in respect of the area of land specified therein was/were lawful within the meaning of section 22(3) and (4) of the 2005 Law. The lawfulness of any use, at the time of the application, for which a certificate is in force is therefore conclusively presumed. In other words, these certificates provide a means for land owners to regularise longstanding unlawful uses in respect of which no enforcement action can be taken under the 2005 Law.

What happens if an application is refused?

Where the Authority refuses an application for a certificate, whether in whole or in part, or when it issues a certificate with a modified or substituted description of the use from that described in the application, the applicant may appeal the decision on the ground that the Authority has made a material error as to the facts of the case.

Who can appeal against a refusal to grant a Certificate of Lawful Use?

The person whose application for a Certificate of Lawful Use has been refused or issued for a modified or substituted description of use from that described in the application.

How long do I have to make an appeal against a refusal to grant a Certificate of Lawful Use?

The appeal period is three months, beginning with the date on which the Authority made its decision.

On what grounds can I appeal a refusal to grant a Certificate of Lawful Use?

[4] This Ordinance, subject to approval by the States, comes into force on 3rd June 2019

[5] A Compliance Notice may not be issued under the 2005 Law in respect of the use, because either:
- the time for issuing of a Compliance Notice has expired, or
- the unlawful material change of use occurred before the date of commencement of the 2005 Law, and

the use neither constitutes a contravention of any measures required by a Compliance Notice or Interim Compliance Notice then in force, nor is the subject of any proceedings instituted under the repealed enactments which preceded the 2005 Law.

The grounds for these appeals are set out in section 6(1) of the Certificates of Lawful Use Ordinance and are limited to the ground that the Authority made a material error as to the facts of the case.

What decisions can the Tribunal reach?

If the Tribunal concludes the Authority has not made a material error as to the facts, the original decision stands. That is, if the application was refused, no certificate will be issued and, where a modified certificate was issued, the description set out in the certificate issued by the Authority is confirmed.

If the Tribunal allows the appeal, i.e. decides that the Authority has made a material error as to the facts of the case, it may issue a certificate or modify the description in the certificate subject of the appeal.

The Tribunal has the same powers as the Authority (see section 3 of the Certificates of Lawful Use Ordinance). Therefore the Tribunal may modify or substitute the use described and/or specify all or part of the land set out in the original application.

What material will the Tribunal consider when determining an appeal?

The Tribunal may only consider material, evidence and facts that were before the Authority when it reached its decision on the application subject of the appeal. Therefore, if the Authority has refused to issue a certificate because you had failed to provide sufficient evidence to support your application, the Tribunal cannot consider any new or additional evidence. In these circumstances, you would need to speak with the Authority about making a new application.

Appendices

1. Determination of an Appeal by a Single Professional Member

When deciding whether application should be made to the Committee *for the* Environment & Infrastructure to seek its approval that an appeal should be determined by a Single Professional Member, the Panel Chairman will consider the following factors:

- *Are the appeal papers complete and self-contained?* In other words, can the Tribunal easily understand how the planning decision was reached, the appellants' reasons for appealing the decision and why the Authority is resisting the appeal?
- *Are the relevant planning policies and issues clear?* In other words, can the Tribunal clearly understand the issues by reading the appeal papers and visiting the site?
- *Is there an over-riding public interest?* Examples of appeals which may have an over-riding public interest will include large scale developments, developments in areas of particular environmental or historic sensitivity or where the policy issues are unclear. In other words, is there likely to be significant public interest in the development or have the policy issues linked to the appeal ones which are the subject of wider debate so that it is appropriate for a hearing to be held.
- *Were any third party representations objecting to the development received by the Authority?*
- *Are there significant disputes as to the facts?*
- *Are there any novel legal issues?*

2. Determination on an Appeal by Written Representation by either a Single Professional Member or by a Full Tribunal

When deciding if an Appeal should be determined by Written Representations by a Single Professional Member, the Panel Chairman will consider the factors referred to above in addition to those below relating to determination by a full Tribunal:

- *Does the appeal involve a planning application of Island-wide significance or concern development where an environmental statement has or may be required, as specified under section 6(2)(a) and (b) of the Land Planning and Development (Appeals) Ordinance, 2007?*
- *Is the matter appealed fairly minor and uncomplicated?*
- *Is the evidence self-explanatory and complete?*
- *Were there any third party representations received by the Authority; how many and from whom?*

3. General Procedure for Determining Compliance and Completion Notices and the Confirmation of Tree Protection Order

When deciding whether an appeal against the issue of a Compliance Notice or the Confirmation of a Tree Protection Order should be determined by a Hearing or by written representations by either a Single Professional Member or by a full Tribunal, the Panel Chairman's general presumption is that the appeal should be heard by way of public hearing.

This general presumption is because these types of appeal are likely to be of wider public interest and, in some cases, the issues are likely to be more complex, and so require the Tribunal to hear evidence from a number of parties, other than the person making the appeal and the Authority.

4. General Procedure for Site Visits

When determining an appeal the Tribunal or Single Professional Member will always visit the appeal site. As a general rule, where an appeal is determined at a public hearing the site visit will take place at the end of the hearing. However, the Tribunal or Single Professional Member may direct that the site visit should take place at the start of a hearing or part way through a hearing. Such decisions will be determined on a case-by-case basis and the Tribunal or Single Professional Member will explain its decision.

These site visits will require the attendance of the appellants and/or his representative and the Authority's representative/s. All parties must be present throughout the site visit and should remain in close proximity to the Tribunal Members to ensure that they can hear any questions that Members may ask and the answers given.

Where an appeal is determined by written representations the site visit will generally be made privately, i.e. the attendance of the appellants and/or his representative and the Authority's representative/s will not be required. However, where the Tribunal Members need to gain access to a building or cannot view the appeal site without entering privately owned land the site visit will be conducted in the presence of the appellants and/or his representative and the Authority's representative/s.

For all accompanied site visits the appellant must ensure he brings any keys which may be needed to afford Tribunal Members access to any locked buildings, sheds, etc. on the appeal site.

5. General Procedure for Handling Post-Hearing Correspondence with the Parties

As a general rule, the Tribunal or Single Professional Member will not enter into any post-hearing correspondence with the parties. However, from time to time this may be necessary, e.g. to clarify a point made in evidence by either party or to seek both parties' comments on the wording of a non-standard planning condition.

Where it is necessary for a Tribunal or Single Professional Member to open such correspondence copies of any letters or email communications will be sent to all parties, together with the replies received from each party.

6. General Procedure for Determining Linked Appeals, e.g. against the refusal of planning permission and against a Compliance Notice

As a general rule the Panel will endeavour to prioritise appeals against Compliance Notices.

This general rule will be modified where retrospective planning permission has been refused and the Authority has commenced enforcement measures before the appeal period for the refusal of planning permission has expired.

The Panel's general policy for dealing with appeals against both the refusal of planning permission and a Compliance Notice seeks to ensure that the party's rights under section 68 of the 2005 Law to appeal a decision refusing planning permission are not interfered with and that the Authority's endeavours to deal with any breaches of the Island's development controls are not frustrated. The Panel's normal procedure will be to defer setting a date for determining an appeal against a Compliance Notice until after the expiry of the appeal period for the refusal of retrospective planning permission where the appellant advises the Panel of the intention to appeal both matters.

7. Supplementary Guidance for Appeals under Section 68(1) of the Land Planning and Development (Guernsey) Law, 2005

This supplementary guidance has been prepared to assist anybody attending a planning appeal, especially where they have made a written representation to the Authority about the planning application which is the subject of the planning appeal. This guidance should be read in conjunction with the Planning Panel's *Guide to Planning Appeals in Guernsey*.

Appeal Bundles

In all cases, the appellant will submit his/her appeal papers, including the grounds for the appeal, to the Tribunal and the Authority will be invited to prepare a written response to the appeal. These documents form the core of the written evidence the Tribunal will have read and carefully considered prior to any appeal hearing.

In some cases, the Tribunal will request the parties (the appellant and the Authority) to submit additional information in order to clarify a particular point or where it appears there is a gap in the information. In doing so, the Tribunal will always be mindful that such requests must not introduce new evidence that was not before the Authority when the planning application was determined. Further, any additional information requested, will be copied to the other party to the appeal and they will also have an opportunity to make any written response.

The parties will each receive a full copy of the appeal papers prior to the appeal hearing.

Further, a copy of the appeal papers will be made available for inspection, on request, at Sir Charles Frossard House by any person who may have submitted a representation in respect of the planning application or otherwise have an interest in the appeal.

Limitations on Evidence

Where a Tribunal is convened to hear an appeal made under section 68(1) of the 2005 Law, i.e. an appeal against the refusal of planning permission, section 69(1) of the 2005 Law places a statutory limitation on the evidence a Tribunal may take into consideration when reaching its decision. Section 69(1) states:

> *"An appeal under section 68 shall be determined by the Planning Tribunal on the basis of the materials, evidence and facts which were before the Department in the case of an appeal under section 68(1), when it made the decision appealed against."*

Therefore, the Tribunal cannot consider any evidence, facts or material which was not considered by the Authority when it reached its decision on the planning application. The only exception to this limitation is where the Tribunal is aware or it is directed towards a published document which, in the Tribunal's opinion, a reasonably competent planning authority should have taken into consideration when determining the planning application.

Further, a Planning Tribunal may only take into account considerations material to planning, in particular those within the terms of the 2005 Law and its associated Ordinances, and may not take into account any matter which is not material to planning. Matters which are not normally planning considerations and which, therefore, cannot normally be taken into account include:

- Effect on land or property values
- The character or identity of the applicant or objectors
- Boundary or property disputes
- How the application affects a private view (as opposed to the wider effect on public amenity which may include the effect on public views)
- Issues of commercial competition
- The status of property under other legislation (e.g. the Housing Control Laws)
- Moral or ethical issues or judgements
- Weight of numbers of public opposition or support in itself (as opposed to relevant planning basis for such views).

Who may address a Planning Tribunal?

The procedure for the determination of an appeal by the Tribunal is set out in Regulation 5 of the Land Planning and Development (Appeals) Regulations, 2008.

Regulation 5(b) limits those parties who have a right to make representations to the Tribunal to the principal parties, i.e. the appellant and/or his/her representative/s and the Authority, and the occupier of the appeal site, if not the appellant. Therefore, other interested parties, including anybody who may have made a written representation of the Authority as part of the planning process, neighbours to the appeal site, etc., do not have a right to make representations, written or oral, to the Tribunal.

Regulation 5(h) allows the Tribunal to examine such persons as appear likely to afford evidence which is relevant and material to any question to be determined.

A Tribunal may, having carefully considered all the written submissions from the parties, request additional persons to attend the appeal hearing to give evidence in person, including answering questions from the Tribunal members and the parties, or to provide a written response to specific questions. Examples of who may be called under this Regulation include:

(a) The author of any expert report which was submitted as part of the planning application;
(b) The appellant's architect, design consultant, etc.;
(c) Any party, including other States' Committees or service areas, who may have provided a consultation report for the Authority as part of its assessment of the planning application; and
(d) Any other party, who the Tribunal may be able to assist in answering any question to be determined.

This last group may include somebody who made a written representation to the Authority when the planning application was advertised for consultation.

The decision about who may be called to give evidence rests with the Tribunal.

Structure for Appeal Hearings

Where an appeal is determined at a public hearing, the Tribunal will, in most cases, issue an agenda which sets out the issues which the Tribunal members have identified as requiring further inquiry through questions.

A Tribunal issues the agenda to the parties five to seven working days before the hearing. It also makes copies of the agenda available at the hearing to anybody attending in person.

The hearing will take the form of a structured discussion led by the Tribunal members, including asking questions of the parties and any witnesses. There is no formal recital of the case by the parties as this should have all been included in their written submission.

The parties will have the opportunity to ask questions of each other and any witnesses. These questions must be asked through the presiding member of the Tribunal.

The Tribunal hearings are not recorded. The individual members of the Tribunal make their own notes of the proceedings and rely on these when reaching their decision and drafting their written Decision Notice. These notes are not available to any other parties.

Procedure for Site Visits

As part of the appeal process, the Tribunal will undertake an accompanied site visit to assist the members in understanding the physical context of the appeal site and proposed development and its setting which are part of the material considerations in the case.

As a general rule, the site visit will be confined to the appeal site and any neighbouring public areas of land. The Tribunal may request to visit a neighbouring property if it believes this would assist it in understanding the impact of the proposed development. In such cases, the land owner will have the right to decline the request. If the landowner is willing to allow the Tribunal members onto his/her property but refuses access to one of the principal parties, the Tribunal members will not be able to undertake this aspect of the site visit.

This site visit will generally take place at the end of the appeal hearing. It will involve the Tribunal members, representatives of the principal parties and any third parties the Tribunal may expressly invite. Other interested parties, neighbours and members of the public will not be permitted to attend the site visit. Similarly, canvassing and lobbying of Tribunal members or presentation of new material during site visits will not be permitted.

No photographs may be taken during the site visit without the permission of the Tribunal.

Conduct at an Appeal Hearing

The appeal hearing is a judicial process and therefore the rules which apply in the Magistrate's and Royal Courts apply to the hearing.

Members of the public, neighbours and anybody interested in the appeal and representatives of the media may attend an appeal hearing. No photography or recording of the proceedings is allowed. Those attending the hearing, including representatives of the media, are not permitted to speak with the Tribunal members. Any questions or queries must be directed to the Panel's Secretary who will be in attendance throughout the proceedings.

Representatives of the media are asked to note that, interviews with the appellant or their representatives, or with any member of the public present, are not permitted within the room designated for the appeal hearing.

Mobile phones must be turned off or set to silent.

Those attending an appeal hearing are expected to behave appropriately and not to interrupt or otherwise disrupt the proceedings. Those attending the hearing are requested not to speak amongst themselves as this may prevent the Tribunal members or the parties from hearing questions or the answers to them.

Appeal Decision

The Tribunal will not issue its decision on the day of the hearing. A formal written Decision Notice setting out the Tribunal's decision and its reasons will be issued to the parties following the hearing and this is generally issued within three weeks of the hearing.

A copy of the written decision will be sent to all those who made a written representation when the planning application was under consideration by the Authority. The Decision Notice is also published on the notice boards at Sir Charles Frossard House and the Royal Court.