

# GUIDANCE FOR APPEALS MADE UNDER SECTION 10 OF THE LAND PLANNING AND DEVELOPMENT (APPEALS) ORDINANCE, 2007 IN RESPECT OF BUILDING REGULATIONS

## *Introduction*

Unlike other appeals which can be made under the [Land Planning and Development \(Guernsey\) Law, 2005](#) (“the Law”), appeals linked to Building Regulations are determined by an independent Adjudicator who is appointed by the Committee *for the* Environment & Infrastructure (“the Committee”) based on their qualifications and experience relating to building regulations. Although the Planning Panel’s clerk provides the administrative support for the Adjudicator, the Planning Panel itself does not have any responsibility in respect of this category of appeals.

The appeal provisions are set out in Part II of the [Land Planning and Development \(Appeals\) Ordinance, 2007](#) (“the Appeals Ordinance”). Section 10 provides a right of appeal in relation to decisions or notices issued under the [Building \(Guernsey\) Regulations, 2012](#).

The appeal period is relatively short for this class of appeals and is **28 days** from the relevant decision date (see below for confirmation of the relevant decision date).

## *What building regulation decisions can be appeal?*

Section 10 of the Appeals Ordinance sets out four types of decision which may be appealed:

### *Appeals under section 10(1)*

Where the Development & Planning Authority (“the Authority”) grants an application for planning permission and under section 17(2)(b)(ii) of the 2005 Law, when approving plans, imposes any further requirement for the purpose of securing compliance with building regulations, the applicant may appeal to an Adjudicator on the ground that:

- (a) the further requirement so imposed is not reasonably necessary for that purpose, or
- (b) the requirement of the building regulations in question does not apply to the operation.

### *Appeals under section 10(2)*

Where the Authority:

- (a) rejects full plans, the person by whom or on whose behalf the plans were deposited may appeal, other than in relation to controlled work, to an Adjudicator on the ground that the plans, as deposited, were not defective and that the proposed works would not contravene the building regulations,

- (b) approves full plans with modifications or subject to conditions and grants a licence to execute works subject to those modifications or conditions, the person by whom or on whose behalf the plans were deposited may appeal to an Adjudicator on the ground that the modifications or conditions imposed were not reasonably necessary to ensure that –
  - (i) the plans were not defective, and
  - (ii) the proposed works or use to which the building is to be put would not contravene the building regulations,
- (c) gives notice that a licence to execute proposed works is no longer valid, the person to whom the licence was granted may appeal to an Adjudicator on the ground that the building works to which the licence relates –
  - (i) had not ceased for a period of more than one year, or
  - (ii) had recommenced, before the notice was issued.

*Appeals under section 10(3)*

Where the Authority, pursuant to the building regulations and in relation to work including or consisting of controlled work:

- (a) rejects plans or fixes, or refuses to extend, a period on the expiration of which a building or part of a building must be removed, then:
  - (i) where such decision is made in relation to the rejection or approval of plans, the person by whom or on whose behalf the plans were deposited, or
  - (ii) where such decision is made other than in relation to a rejection or approval of plans, the owner of the relevant building,may appeal to an Adjudicator on the ground that the work cannot reasonably be regarded as controlled work or that the period fixed for the removal of the building, or part of it, is unreasonably short,
- (b) imposes or varies conditions with respect to the use of a building or part of a building or with respect to the controlled work:
  - (i) where such conditions are imposed in approving plans, the person by whom or on whose behalf the plans were deposited, or
  - (ii) where such conditions are imposed other than on an approval of plans, the owner of the relevant building,may appeal to an Adjudicator on the ground that the work cannot reasonably be regarded as controlled work or that the condition imposed cannot reasonably be regarded as appropriate.

*Appeals under section 10(4)*

Where the Authority gives notice requiring somebody who has carried out building work to cut into, lay open or pull down building work for the purpose of ascertaining whether or not the building regulations have been contravened, the person on whom the notice was served may appeal to an Adjudicator on the ground that such action is not reasonably necessary for that purpose or is disproportionate.

## ***Appeal periods and relevant decision dates***

Where an appeal is made under section 10(1), 10(2)(a) or (b) or in the case of the approval or rejection of plans under section 10(3)(a) or (b) the appeal period is 28 days beginning with the date on which the appellant was notified, under the building regulations, of the decision of the Authority with regard to the plans.

Where an appeal is made under section 10(2)(c) the appeal period is 28 days beginning with the date on which the notice that the licence is no longer valid was served on the appellant.

Where an appeal is made in relation to a decision made other than in relation to plans under section 10(3)(a) or (b) the appeal period is 28 days beginning with the date on which the appellant was notified of the decision of the Authority with regard to the plans.

## ***Appeal process***

The appellant must complete [Form 10 – Appeal to Adjudicator in respect of Building Regulations](#).

The completed form, together with any supporting material as specified on the appeal form, should be submitted to:

The President  
Development & Planning Authority  
Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey GY1 1FH

When an appeal is received by the Authority, it will forward the appeal form and papers to the President of the Committee to enable it to appoint an Adjudicator.

The Authority must prepare a summary setting out its response to each of the grounds on which the appeal is brought. This summary document must be provided to the Committee for the Adjudicator and the appellant within 28 days of the appeal being received.

## ***Appointment of an Adjudicator***

On receipt of the appeal, the Committee will take steps to appoint an independent Adjudicator based their qualifications and experience in matters relating to the building regulations as appropriate for the hearing and determination of the appeal.

## ***Arrangements for the determination of the appeal***

Once appointed, it will be the responsibility of the Adjudicator to decide how the appeal will be determined, i.e. whether the appeal will be considered on the basis of the written

submissions or whether a hearing should be held. If a hearing is held, it will be held in public unless the Adjudicator directs otherwise.

Details of the how appeals are determined by way of written representations or at a hearing are set out in the Planning Panel's [Guide to Planning Appeals in Guernsey](#) for other types of planning appeals.

### ***Determination of appeals by the Adjudicator***

When determining an appeal, the Adjudicator must, if the appellant satisfied him/her of a ground in:

- (a) Section 10(1) - modify the decision of the Authority with regard to the plans so as to remove or amend the further requirement in question,
- (b) Section 10(2)(a) - quash the decision of the Authority with regard to the plans,
- (c) Section 10(2)(b) or 10(3)(b) - modify the decision, and any licence issued for the execution of works, to remove or amend the modifications or conditions,
- (d) Section 10(2)(c) - quash the notice.

Where the appeal is made under section 10(3)(a) or (b), if the Adjudicator is satisfied that the work cannot reasonably be regarded as controlled work, he/she must quash or modify the Authority's decision insofar as it purports to relate to such work. Further if the Adjudicator concludes that the period for the removal of a building or part of it was unreasonably short, he/she shall modify the decision and substitute such period as it appears reasonable.

Where the appeal is made under section 10(4), the Adjudicator shall quash the notice or modify it to substitute such action as he/she considers reasonably necessary and proportionate and otherwise uphold the decision or notice in question.

Where the Adjudicator quashes a decision or notice, it ceases to be of any effect but without prejudice to the Authority's powers to make another decision or issue another notice.

Where the Adjudicator modifies a decision or notice, it will take effect as if it were such a notice or decision issued by the Authority (in the modified form where appropriate) and as if served on the person on whom it was served under the building regulations on the date of the determination of the appeal.

**Date of issue: 27<sup>th</sup> May 2021**