



Planning permissions & appeals process

 **VIBERTS**

Topics to cover

- Do you need to obtain planning permission?
- The application process
- Appealing against a decision

Development in Jersey

- Regulated by the Planning and Building (Jersey) Law 2002 in order to protect the character and beauty of the island
- Legislation supported by various regulations and orders including exemptions
- Jersey has a 'plan-led' planning system
- Latest Island Plan was adopted in June 2011
 - It strives to meet the island's needs for housing and economic development, without large scale rezoning of green fields for the next 10 years
- The law requires the Minister to take into account "all material considerations"
- All permissions granted shall be in accordance with the Island Plan (unless the Minister is satisfied that there is sufficient justification for deviating from it)
- To understand the Jersey planning process one must be familiar with both the Island Plan and its interaction with various legislation

Do you need planning permission?

- As a general rule, permission will be required
- Definition of development is very wide
- Always assume that permission will be required unless relevant exemption exists

- Under Planning and Building (General Development) (Jersey) Order 2011 permission for certain “permitted developments” is granted automatically* for some classes of development e.g.
 - Gates, fences, walls and other means of enclosure
 - Conversion of roof space for habitable use
 - Painting
 - Vents, flues etc.
 - Placing items of private ways/footpaths
 - Creating and replacing doors and windows (including blocking up windows)

* Subject to conditions. You are advised to seek advice in each case

- **It is an offence, punishable by a fine or even by imprisonment to carry out development without permission**

Listed properties

- Between 2010 and 2013 heritage value of approximately 4,500 sites in Jersey was assessed to see if their special interest warranted recognition and protection
- Buildings classified as Grade 1 to Grade 4, or as sites of special interest
- Listing affects what development is permitted

Is my property listed?

- The Planning Department maintains a register of listed buildings, which can be checked on www.gov.je
- Details of the historic interest, as well as any relevant documentation can be found on this register


Listed properties

How will listing affect me?

- Many see it as a blessing and a curse
- Enhanced protection – Island Plan policies specifically seek to protect the historic environment of listed buildings and their settings
- Greater scrutiny of development/restriction on development
- Very limited permitted development rights, even for repairs – seek advice!
- Works to interior of listed building will require permission where it affects surviving historic features
- Remember that development without permission is an offence
- Application fee is waived for works which require permission only because building is listed

Planning application process

Timeline

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- A large, dark purple arrow pointing downwards, spanning the height of the list. The word "Start" is written vertically in white at the top of the arrow, and the word "Finish" is written vertically in white at the bottom of the arrow.
- Pre-application advice
 - Registering the planning application and appropriate fee
 - Site notices must be displayed on site for 21 days and applications must be listed in the Jersey Gazette
 - 21 days for neighbours and islanders to respond to planning proposals
 - Application assessed, plans and all correspondence received
 - Planning application determined
 - (If relevant) planning obligation agreement put in place
 - Appeal?

Appeals – the old process

- Appeals heard in Royal Court
- Complex history of jurisprudence
- An appellant had to show that the decision was not merely wrong but that it was *unreasonable*
- Minister was given a “margin of appreciation”

Problems with the old system

- Daunting – simple appeals could be heard on paper but more complex appeals often required full hearing before Inferior Number of Royal Court
- Lack of democratic accountability – ultimate decision to determine appeal was taken by unelected judiciary
- Inequality – Minister would be represented by States’ Advocates while inexperienced appellants needed to instruct a lawyer
- Complex law – Island Plan and various legislation not easy to get to grips with
- Unrecoverable costs – estimated £10,000 to instruct a lawyer to represent at appeal but many legal bills exceeded £30,000

Appeals – the new process

- Came into force on 10 March 2015
- Brought in to offer Islanders a cheaper, quicker and less complex way of dealing with grievances
- Appeals now considered by independent inspector
- Inspector will assess matter on its merits and make a recommendation to Minister

You can appeal if you:

- Have been refused planning or building permission
- Disagree with a condition attached to a planning or building permission
- Have an interest in land within 50m of the application site *and* you have made a written representation about the application
- Have had an enforcement notice served upon you
- Own or occupy a building or land where a building, place or tree had been listed, or the delisting of such objects has been refused

Appeals – the new process

How to appeal

- Applications should be made to the Judicial Greffier, who now administers appeals

Why appeal?

- A failure of the decision on its merits – the reasonableness test no longer applies

When to appeal

- **28 days** from decision which is being appealed – strict deadline

Appeals – the new process

Key features

- Appeals submitted to Judicial Greffier, who will allocate an independent inspector
- Inspectors chosen from panel of qualified and experienced inspectors recruited by Judicial Appointments Committee
- Inspector chooses format – written submissions or by convening hearing for interested parties
- Inspector's recommendation not binding
- Minister's role has been changed – no longer participates in first tier decision making in planning applications
- Minister is the ultimate decision maker on planning appeals and must give explanation if he does not follow recommendation

Timescale

- Targeted 10 week turnaround on appeals

Appeals – the new process

Costs

- All parties expected to bear their own costs – no provisions to award costs
- In case of refusals to grant or vary planning permission:
 - £300 for major development
 - £100 for minor development
- Third party appeals - £300
- All other appeals - £100

Is it working?

- Certainly more accessible:
 - 55 appeals lodged since new system introduced compared to roughly 1 appeal per month for previous 3 years
 - Some relate to high profile developments e.g. Gas Place, Esplanade, La Collette
- Minister has yet to go against the recommendation of the independent planning inspector

Case studies

The Cedars, St Brelade

- Appeal against grant of planning permission

Belmont, St Helier

- Appeal against refusal to grant planning permission

Priors, St Saviour

- Appeal against listing



What next?

- Developers must be aware of greater likelihood that their applications will be challenged
- Judicial review remains available if party aggrieved by Minister's decision - Wednesbury unreasonableness
- Fees to rise?
 - Recent suggestion that prices would rise to £1,200 for some appeals - withdrawn

If you have any questions on planning permissions and appeals, please contact our litigation team:

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