

Legal Review



PLANNING- YOUR RIGHT OF APPEAL

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About the author

Jason Green is a partner at Collas Day and heads the Property department. Jason's experience centres on property, ranging from the property matters of individual clients to major commercial transactions. He was part of the Collas Day team that advised on the transfer of control of Herm. His work on residential property has led him to deal extensively with matters of inheritance and the structuring of individual and family assets.

Since 6 April 2009 a new planning law and supporting legislation has been in force which has drastically changed the appeals procedure.

Under the old regime appeals against planning decisions were made to the Royal Court on the somewhat limited basis that a decision made by the Environment Department was beyond the scope of their power or was unreasonable. The onus was on the Environment Department to show that their decision was a reasonable one.

Under the new law, appeals are made to an independent planning tribunal, through the Environment Department, rather than the Royal Court of Guernsey. Importantly, the onus is now on the applicant to demonstrate to the tribunal the Environment Department's decision was unreasonable.

The tribunal can consist of up to nine independent people, of which at least two must be professional members who are experienced in planning matters. To ensure the applicant's appeal receives an impartial hearing and the tribunal retains its independence, States members, Environment Department Employees, members of the Strategic Land Planning Group and those appointed to any judicial office in Guernsey are precluded from sitting on the tribunal. Furthermore, any member of the tribunal who has had any prior interest or involvement in a planning application or its appeal cannot sit on the tribunal for that particular matter.

While the burden of proof may have shifted, appeals can now be made on a much wider basis. Appeals can be made against:

- planning decisions,
- conditions in a planning permission, and
- decisions made in respect of protected buildings, preservation notices and tree protection orders.

However, the applicant's job is now potentially more difficult as the appeal needs to be more detailed and be sufficiently supported by comprehensive plans and drawings. Consequently, it is important to consult your surveyor or architect at an early stage to ensure your appeal is as thorough as possible.

The basis of an appeal must meet certain criteria. For example, in respect of a Tree Protection Order, the decision can be revisited if an applicant can show that either

(1) the Order 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

(2) the confirmation of the Order was outside the scope of the Department's authority or was unreasonable.

Depending on the outcome of the appeal, the Order could be quashed, amended or upheld.

There is also a new process in relation to appeals regarding building regulations. When the department has approved an application for planning permission but imposed certain building regulations, an applicant is now able to appeal against those building regulations to an Adjudicator on the basis that the building regulation imposed is not required or is not reasonably necessary amongst other grounds.

It should be noted that under the new regime, if an appeal is successful in overturning a Department decision it leaves the Department free to make another decision or issue another notice. Whereas, if a Department decision is modified, it takes effect as if it were the Department's original decision. While it is still possible to make an appeal to the Royal Court, it can only be on a question of law where the applicant believes they have been aggrieved by the Planning Tribunal or the Adjudicator.

On first glance, the new regime appears to make the appeals process much more straight forward, but it remains to be seen whether the Planning Tribunal and the Adjudicator will be more receptive when considering peoples' concerns regarding decisions made by the Environment Department. Following enquiries with the Department, it is clear that not even the law makers are certain how to apply the new laws and regulations and, indeed, whether the different facets are compatible.

Although the process may appear more user-friendly, the success rate of appeals under the new regime is yet to be seen. The new law is still in its infancy and yet to be fully tested. With the burden of proof shifting from the Environment Department to the applicant, applicants may find that they have a harder job proving their case albeit in what may prove to be a more straightforward process.

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