

# **Orders of the Royal Court**

**I  
2009**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

30<sup>th</sup> day of March, 2009 before Richard John Collas, Esquire, Deputy Bailiff; present:-  
Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson,  
Michael Henry De La Mare, The Reverend Peter Gerald Lane, Esquires, Susan  
Mowbray, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones,  
Claire Helen Le Pelley and Peter Sean Trueman Girard, Jurats.

**No. 1 Order, 2009**

ENTITLED

**THE LAND PLANNING AND DEVELOPMENT (APPEALS AND  
REFERENCES) RULES, 2009**

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

**THE ROYAL COURT**, in exercise of the powers conferred on it by section 74 of the Land Planning and Development (Guernsey) Law, 2005<sup>a</sup> hereby orders:-

## **PART I APPEALS TO ROYAL COURT**

### **Notice of appeal.**

- 1.** (1) Notice of an appeal under –
  - (a) section 72(1) of the Law by a person aggrieved by a decision of the Planning Tribunal on a question of law,
  - (b) section 72(1) of the Law, as applied by section 8(6) of the Appeals Ordinance<sup>b</sup>, by a person aggrieved by a decision of the Planning Tribunal on a question of law, and
  - (c) section 72(1) of the Law, as applied by section 12(4) of the Appeals Ordinance, by a person aggrieved by a decision of an Adjudicator on a question of law,

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<sup>a</sup> Order in Council No. XVI of 2005 as amended by Ordinances Nos. XXI, XXII, XXV, XXVII and XXVIII of 2007; section 74 of the Law is also applied to certain appeals by sections 8(6) and 12(4) of Ordinance No. XXVIII of 2007.

shall be in the form set out in the Schedule and shall contain a statement of the contentions of law on which the appellant relies.

(2) Notice of an appeal shall be sent to the Secretary within a period of one month beginning with the date of the decision in respect of which the appeal is made.

**Notification of date of directions hearing.**

2. (1) The Secretary shall -

(a) transmit a copy of the notice of appeal and of the documents attached thereto -

(i) to the Greffier,

(ii) to the parties to the appeal (other than the person who has appealed in accordance with rule 1),

(iii) in the case of an appeal in relation to a decision of the Planning Tribunal -

(A) to the person who presided in the Tribunal, and

(B) to the Chairman of the Planning Panel,

**b** Ordinance No. XXVIII of 2007.

(iv) in the case of an appeal in relation to a decision of an Adjudicator, to the Adjudicator, and

(b) at the same time notify in writing -

(i) the persons referred to in subparagraph (a), and

(ii) the person who appealed in accordance with rule 1,

that a hearing shall be held at which directions shall be given as to the future conduct of the appeal and, subject to paragraph (2), of the place, date and time of that hearing.

(2) The date and time for the directions hearing to be notified under paragraph (1) shall be 10 a.m. on the first Friday (which is not a non-business day) after the expiry of a period of 14 clear days starting from the date of receipt of the notice of appeal by the Secretary under rule 1(2).

## PART II

### REFERENCE OF POINTS OF LAW TO ROYAL COURT

#### **Submission of statement of case and notification of date of directions hearing.**

3. (1) If the Appellate Body decides that -

(a) a question of law has arisen in connection with the

hearing by it of an appeal, and

(b) the question of law should be referred for decision to the Royal Court under –

(i) section 73(1) of the Law in the case of an appeal under section 68 or 70 of the Law,

(ii) section 73(1) of the Law, as applied by section 8(6) of the Appeals Ordinance, in the case of an appeal under section 18, 19 or 20 of the Special Controls Ordinance<sup>c</sup>, or

(iii) section 73(1) of the Law, as applied by section 12(4) of the Appeals Ordinance, in the case of an appeal under section 10 of the Appeals Ordinance,

the person presiding in the Planning Tribunal or the Adjudicator, as the case may be, shall, within 10 clear days of so deciding –

(i) prepare and sign a statement (the "**statement of the case**") setting out the question of law and such particulars of the appeal as are, in his opinion, relevant to the determination of the question of law by the Royal Court, and

(ii) transmit the statement of the case to the

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<sup>c</sup> Ordinance No. XXV of 2007.

Secretary.

- (2) The Secretary shall -
  - (a) transmit a copy of the statement of the case -
    - (i) to the Greffier, and
    - (ii) to the parties to the appeal, and
  - (b) at the same time notify in writing -
    - (i) the persons referred to in subparagraph (a),
    - (ii) in the case of a reference from the Planning Tribunal, the person presiding in the Tribunal, and
    - (iii) in the case of a reference from an Adjudicator, the Adjudicator,

that a hearing shall be held at which directions shall be given as to the future conduct of the reference and, subject to paragraph (3), of the place, date and time of that hearing.

(3) The date and time for the directions hearing to be notified under paragraph (2) shall be 10 a.m. on the first Friday (which is not a non-business day) after the expiry of a period of 14 clear days starting from the date of receipt of the statement of the case by the Secretary under rule 3(1).

**Further particulars to be furnished to Royal Court.**

4. The Bailiff may -

- (a) at any time, require the person presiding in the Planning Tribunal or the Adjudicator, as the case may be, to furnish to the Greffier further particulars in writing, within such time as the Bailiff may direct, with regard to any question referred to the Royal Court under this Part,
- (b) at any time prior to the fixing of the date of any further hearing of any such question -
  - (i) allow the amendment of the statement of the case prepared under rule 3(1)(i), and
  - (ii) extend the time laid down in rule 3(1) for the preparation of the statement of the case.

**Transmission of amendment to the statement of the case.**

5. Where a statement of the case is amended under the provisions of rule 4, the Secretary shall transmit any such amendment to the Greffier and the parties to the appeal.

**Determination by Royal Court without a further hearing.**

6. If the Royal Court is of the opinion, at the directions hearing held in accordance with rule 3(2) or at any time thereafter, that a question of law referred to it under this Part can properly be determined on the basis of the statement of the case and any further particulars furnished under rule 4(a), the Royal Court may

decide to dispense with any further hearing and determine the question on that basis.

PART III  
GENERAL PROVISIONS

**Representation before Royal Court.**

7. Any party to an appeal which is the subject of an appeal or reference in accordance with Part I or II may (provided that, in the case of a reference, he is called upon to do so by the Royal Court) address the Royal Court in person or by an Advocate of the Royal Court.

**Procedure before Royal Court.**

8. (1) The Royal Court may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford testimony relevant and material to any question of law to be determined by it on an appeal or reference in accordance with Part I or II.

(2) Any party to an appeal which is the subject of an appeal or reference in accordance with Part I or II may (provided that, in the case of a reference, he is authorised to do so by the Royal Court) cause a summons to be served on any person, in the same manner as a summons may be served in respect of a civil action before the Royal Court, summoning that person to attend a hearing of the Royal Court for the purpose of giving testimony or producing any document likely to assist the Royal Court in determining the question of law which is the subject of the appeal or reference.

(3) A person summoned in accordance with paragraph (2) shall be under a like obligation as to the giving of testimony and the production of documents as if he were summoned in respect of a civil action before the Royal

Court.

(4) The Royal Court may adjourn the hearing of any appeal or reference from time to time as it may think fit.

(5) If the Royal Court is satisfied that all parties to an appeal which is the subject of an appeal or reference in accordance with Part I or II have been notified of the place, date and time of the hearing thereof, and if any of the parties fails to appear, the Royal Court may proceed to determine the appeal or reference, as the case may be, in the absence of that party.

(6) Save as otherwise expressly provided in these Rules, the procedure at the hearing of an appeal or reference in accordance with Part I or II shall be such as the Royal Court may from time to time determine.

**Notification of decision of Royal Court.**

9. (1) The decision of the Royal Court on an appeal to it in accordance with Part I or on a question of law referred to it in accordance with Part II, shall be in writing, signed and sealed by the Greffier and transmitted by him to the Secretary.

(2) The Secretary shall send a copy of the decision to -

- (a) the parties to the appeal,
- (b) in the case of an appeal or reference in relation to a decision of the Planning Tribunal, the members of the Tribunal, and
- (c) in the case of an appeal or reference in relation to a

decision of an Adjudicator, the Adjudicator.

**Appeal to the Court of Appeal.**

**10.** Where an application is made under -

- (a) section 72(5) or 73(2) of the Law,
- (b) section 72(5) or section 73(2) of the Law as applied by section 8(6) or 12(4) of the Appeals Ordinance,

for leave to appeal from a decision of the Royal Court, the date on which the judgment or order of the court was pronounced shall, for the purposes of rule 3 of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964<sup>d</sup>, be deemed to be the date the Secretary sent a copy of the decision of the Royal Court to the person seeking leave to appeal in accordance with rule 9(2).

**Service of notices.**

**11.** A document to be transmitted or notified under these Rules to the Secretary or the Greffier, may be left at or sent by post to the principal offices of the Department in Guernsey or, as the case may be, the Greffe<sup>e</sup>.

**Interpretation.**

**12.** (1) In these Rules, except where the context requires otherwise -

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<sup>d</sup> Orders of the Royal Court Vol. 1 page 234 as modified by Order of the Royal Court No. 11 of 1987.

<sup>e</sup> The provisions of section 88 of the Law (service of notices) apply in relation to service to other persons by virtue of section 92(5) of the Law.

**"Adjudicator"** means a person appointed by the Policy Council under section 13 of the Appeals Ordinance to hear and determine the appeal in question under section 10 of that Ordinance,

**"Appeals Ordinance"** means the Land Planning and Development (Appeals) Ordinance, 2007,

**"Appellate Body"** means in relation to -

- (a) an appeal under –
  - (i) section 68 or 70 of the Law, or
  - (ii) section 18, 19 or 20 of the Special Controls Ordinance,

which is the subject of an appeal or reference in accordance with in Part I or II, the Planning Tribunal, and

- (b) an appeal under section 10 of the Appeals Ordinance which is the subject of an appeal or reference in accordance with Part I or II, the Adjudicator,

**"building"** shall be construed in accordance with regulation 2 of the Building Regulations, 1992<sup>f</sup>,

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<sup>f</sup> Guernsey S.I. No. 27 of 1992, as amended by No. 39 of 2006 and No. 88 of 2008.

**"Chairman of the Planning Panel"** means the person who is designated, from time to time, as the Chairman of the Planning Panel pursuant to section 86(3)(c) of the Law, or if he is unavailable the Deputy Chairman of the Planning Panel,

**"clear day"** means a period of 24 hours ending at midnight and does not include any non-business day,

**"completion notice"** means a notice issued by the Department under section 19(1) of the Law stating that a planning permission will cease to have effect at the expiry of the period specified in the notice,

**"compliance notice"** shall be construed in accordance with the provisions of section 48(1) of the Law,

**"Department"** means the States of Guernsey Environment Department,

**"Deputy Chairman of the Planning Panel"** means the person who is designated, from time to time, as the Deputy Chairman of the Planning Panel pursuant to section 86(3)(d) of the Law,

**"enactment"** includes a Law, an Ordinance and any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

**"further hearing"** means any hearing for the determination of an appeal or reference made in accordance with these Rules which is fixed at a

directions hearing for the appeal or reference in question or at any time thereafter,

**"Greffier"** means Her Majesty's Greffier,

**"hearing"** means an oral hearing,

**"interested party"** means a person who is an interested party, as defined in section 21 of the Appeals Ordinance, in relation to an appeal which is appealed or referred in accordance with Part I or II, namely -

- (a) in relation to an appeal under section 68 of the Law, any person, other than the appellant, who is the owner or occupier of the land,
- (b) in relation to an appeal made under section 70 of the Law, any person, other than the appellant, on whom a copy of the relevant completion notice or compliance notice, as the case may be, was required to be served in accordance with the Law,
- (c) in relation to an appeal made in respect of the insertion or amendment of an entry on the protected monuments list or the protected buildings list –
  - (i) any person, other than the appellant, who the Department are required to notify of the inserted or amended entry under section 4 or 5 of the Special Controls Ordinance, and

- (ii) any person or body who the Department consulted in relation to the inserted or amended entry under section 6 of the Special Controls Ordinance,
- (d) in relation to an appeal against a preservation notice –
  - (i) any person other than the appellant on whom a copy of the notice is required to be served under section 7(1) of the Special Controls Ordinance, and
  - (ii) any person or body who the Department has consulted under section 6 of the Special Controls Ordinance,
- (e) in relation to an appeal against the confirmation of a tree protection order, any person other than the appellant who the Department are required to notify of the confirmation under section 16(a) or (b) of the Special Controls Ordinance, and
- (f) in relation to an appeal under section 10 of the Appeals Ordinance, any person, other than the appellant, who is –
  - (i) the owner of the building concerned or, in the case of a proposed building, the owner of the land concerned,

- (ii) the occupier of that building or land, and
- (iii) any other person appearing to the Department to have an interest in that building or land which is materially affected by the decision or notice of the Department to which the appeal relates,

**“the Law”** means the Land Planning and Development (Guernsey) Law, 2005,

**"non-business day"** means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>g</sup>,

**"parties to the appeal"** or any related expressions means, in relation to an appeal which is appealed or referred in accordance with Part I or II, the Department, the appellant and any interested party,

**"person presiding in the Tribunal"** means -

- (a) the person designated to preside in the Planning

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<sup>g</sup> Ordres en Conseil Vol XVII, p. 384 as amended by Vol. XXIV p. 84, No. XI of 1993, No. XIV of 1994 and No. IX of 2001.

Tribunal under section 87(2) of the Law, or

- (b) where a single member of the Planning Panel constitutes the Planning Tribunal, that single member,

and related expressions shall be construed accordingly,

**"Planning Panel"** means the Panel established under section 86 of the Law,

**"Planning Tribunal"** means the Tribunal the members of which are appointed under section 87 of the Law to hear and determine the appeal in question under the Law,

**"preservation notice"** shall be construed in accordance with section 7(1) of the Special Controls Ordinance,

**"protected buildings list"** means the list of protected buildings prepared, maintained, and kept under review by the Department under section 33(1) of the Law,

**"protected monuments list"** means the list of protected monuments prepared, maintained and kept under review by the Department under section 29(1) of the Law,

**"Royal Court"** means the Royal Court sitting as an Ordinary Court,

**"the Secretary"** means –

- (a) in the case of an appeal to the Planning Tribunal which is the subject of an appeal or reference in accordance with Part I or II, the secretary to the Planning Panel, and
- (b) in the case of an appeal to an Adjudicator which is the subject of an appeal or reference in accordance with Part I or II, the secretary to the Adjudicators,

**"secretary to the Adjudicators"** means a secretary to the Adjudicators appointed under section 18 of the Appeals Ordinance,

**"secretary to the Planning Panel"** means a secretary to the Planning Panel appointed under section 18 of the Appeals Ordinance,

**"Special Controls Ordinance"** means the Land Planning and Development (Special Controls) Ordinance, 2007,

**"statement of the case"** : see rule 3(1)(i),

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

**"tree protection order"** means an order under section 43(1) of the Law for the protection of any tree, group or area of trees or woodland,

**"under the Law"** includes provisions made under the Law,

and any other expressions have the same meaning as in the Law.

(2) Any provision of these Rules imposing a duty on the Greffier or the Secretary to perform any act shall (except where a specific time limit is imposed) be construed as requiring the performance of the act as soon as is reasonably practicable.

(3) References in this Order to the person presiding in the Tribunal include, in relation to any function conferred on that person by this Order, references to any member of the Tribunal appointed by him to undertake that function.

(4) The Interpretation (Guernsey) Law, 1948<sup>h</sup> applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

(5) Except where the context requires otherwise, any reference in these Rules to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

**Citation.**

13. These Rules may be cited as the Land Planning and Development (Appeals and References) Rules, 2009.

**Commencement.**

14. These Rules shall come into force on the 6th April, 2009.

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<sup>h</sup> Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE

rule 1(1)

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

**Notice of Appeal to the Royal Court.**

To [insert address of secretary to the Planning Panel for appeals from a decision of the Planning Tribunal or address of the secretary to the Adjudicators for appeals from a decision of the Adjudicators as shown below]

I [*insert full name*]  
of [*insert full address*]

being aggrieved by a decision of [*insert appropriate one of following*]-

[the Planning Tribunal]

[the Adjudicator]

on a question of law given on the    day of                    , 20    [*insert date of decision appealed against*], in respect of [an appeal to the [Planning Tribunal/an Adjudicator] concerning an appeal [*give brief description of appeal and name of any other interested party*]

under *[insert appropriate one or more of following]* -

[section 68/70(1)/70(2)-*insert appropriate section*] of the Land Planning and Development (Guernsey) Law, 2005],

[section 18/19/20-*insert appropriate section*-of the Land Planning and Development (Special Controls) Ordinance, 2007],

[section 10 of the Land Planning and Development (Appeals) Ordinance, 2007],

hereby give notice of appeal against the said decision.

The contentions of law on which I rely in support of my appeal are set out below.

In support of this appeal the following documents are attached *[insert list of all documents sent with this application]*.

Dated this ..... day of ....., 20.....

Signature .....

(Appellant)

## CONTENTIONS OF LAW

N.B. The particulars furnished on this form and all other information and documents sent to the Secretary by or on behalf of an appellant in connection with his or her appeal will be disclosed to all other parties.

### *Address of Secretary*

*For appeals to the Planning Tribunal*

*The Secretary of the Planning Panel*

*C/O Sir Charles Frossard House,*

*La Charroterie,*

*St Peter Port, GY1 1FH*

*For appeals to the Adjudicators in relation to requirements of the Building Regulations*

*The Secretary to the Adjudicators (Building Regulation appeals)*  
*C/O Sir Charles Frossard House,*  
*La Charroterie,*  
*St Peter Port, GY1 1FH*