

GUERNSEY STATUTORY INSTRUMENT

2008 No. 8

**The Land Planning and Development (Appeals)
Regulations, 2008**

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<i>Made</i>	<i>January</i>	<i>30th</i>	<i>2008</i>
<i>Coming into operation</i>		<i>on the same date as the</i>	
		<i>Law</i>	
<i>Laid before the States</i>		<i>,</i>	<i>2008</i>

THE ENVIRONMENT DEPARTMENT, in exercise of the powers conferred on it by sections 17 and 89 of the Land Planning and Development (Guernsey) Law, 2005^a and section 19 of the Land Planning and Development (Appeals) Ordinance, 2007^b and of all other powers enabling it in that behalf, hereby makes the following Regulations:-

PART I
REFUSAL TO HEAR APPEALS

Refusal by Appellate Body to hear appeals.

1. The Appellate Body may decline to determine an appeal –

^a Order in Council No. XVI of 2005.

^b Approved by resolution of the States on 26th September, 2007.

- (a) if it considers that the notice of appeal has not, in any respect, been duly made and served –
 - (i) with respect to an appeal under section 68 or 70 of the Law, in accordance with the Law and the Appeals Ordinance,
 - (ii) with respect to an appeal under section 18, 19 or 20 of the Special Controls Ordinance^c, in accordance with that Ordinance and the Appeals Ordinance, or
 - (iii) with respect to an appeal under section 10 of the Appeals Ordinance, in accordance with that Ordinance, or
- (b) if the appeal appears to it to be frivolous or vexatious,

and it shall notify the parties of such a decision and, where the Appellate Body is the Planning Tribunal, the Chairman of the Planning Panel, as soon as practicable thereafter.

PART II

PROVISIONS RELATING TO APPEALS UNDER SECTION 68 OF THE LAW

Decision by Planning Tribunal as to exercise of its discretion under section 69(4) of the Law.

^c Approved by resolution of the States on 26th September, 2007.

2. Where, in respect of an appeal in relation to an application for planning permission under section 68 of the Law, the Planning Tribunal –

- (a) forms the opinion set out in section 69(4) of the Law,
and
- (b) it decides to decline to either –
 - (i) determine the appeal, or
 - (ii) proceed with the determination,

then it shall notify the Chairman of the Planning Panel and the parties accordingly as soon as practicable thereafter.

Appeals under section 68 of the Law to be determined on the basis of materials, evidence and facts before the Department.

3. For the avoidance of doubt, the following provisions of these Regulations apply subject to section 69(1) of the Law (which states that an appeal under section 68 of the Law shall be determined by the Planning Tribunal on the basis of the materials, evidence and facts which were before the Department at the time set out in section 69(1) of the Law) except insofar as other materials, evidence and facts must be taken into account pursuant to –

- (a) section 5(1)(d) of the EIA Ordinance^d (prohibition on granting planning permission without consideration of environmental information), or

^d Approved by resolution of the States on 26th September, 2007.

- (b) paragraph 1(d) of Schedule 1.

Publicity for Environmental Impact Assessment.

4. Schedule 1 shall have effect.

PART III

PROCEDURE FOR DETERMINATION OF APPEALS BY APPELLATE BODY

Procedure in relation to the determination of an appeal by the Appellate Body.

5. Where the Appellate Body is appointed to determine an appeal –

- (a) it shall afford the principal parties a reasonable opportunity of appearing and being heard or, if all the principal parties so elect, of submitting written representations to the Appellate Body,
- (b) where a hearing is held the principal parties are entitled to appear and the Appellate Body may also permit –
 - (i) any interested party, and
 - (ii) in relation to an appeal against a compliance notice, any other person who in the opinion of the Appellate Body is affected by the breach of planning control which is alleged in the compliance notice,

to appear,

- (c) the Appellate Body may admit any evidence given for the purposes of the determination of the appeal notwithstanding, subject to regulation 3, any rule of law relating to hearsay or otherwise as to the admissibility of evidence,
- (d) a party may be represented at a hearing by any person, whether or not legally qualified, except that if in a particular case the Appellate Body is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified, to represent the party,
- (e) the Appellate Body shall afford the parties a reasonable opportunity of replying to representations made by another party, either by appearing and being heard in person or (if the original representations were made in writing) by written representations,
- (f) the Appellate Body shall have regard to all representations and replies submitted to it by the parties in accordance with any requirement under these Regulations and the Appeals Ordinance,
- (g) the Appellate Body may at any time require any party to furnish further particulars in writing within such time as it may direct with regard to any question referred to it and shall afford any other party a reasonable opportunity of replying in writing,

- (h) the Appellate Body may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the Appellate Body,
- (i) the principal parties may, if authorised to do so by the Appellate Body, cause a summons to be served on any person, in the same manner as that in which a summons may be served in a civil action before the Royal Court, summoning that person to attend any hearing of or before the Appellate Body to give evidence or produce any document likely to assist the Appellate Body in determining any question before it, and a person so summoned is under a like obligation as to the giving of any evidence or the production of any document as if he were summoned to give the evidence or produce the document in a civil action before the Royal Court,
- (j) the Appellate Body may adjourn any hearing from time to time as it thinks fit,
- (k) if it is proved to the satisfaction of the Appellate Body that the parties have been notified of the place, date and time of a hearing and one of those parties fails to appear at the hearing, the Appellate Body may proceed to determine any matter in dispute in the absence of that party,

- (l) the decision of the Appellate Body shall be in writing, signed, where relevant, by the person chairing the Appellate Body and transmitted as soon as reasonably practicable to the parties,
- (m) the Appellate Body shall cause a notice of its decision to be displayed in the Royal Court House for a period of seven days,
- (n) the Appellate Body may, subject to the provisions of the Law, these Regulations and the Appeals Ordinance-
 - (i) determine its own procedure, and
 - (ii) give such directions, subject to such terms and conditions, as it thinks fit for the purposes of the hearing or determination of the appeal.

Powers of the Appellate Body as to summoning witnesses, etc.

6. (1) The Appellate Body has, for the purposes of hearing and determining an appeal, the same powers as the Royal Court in respect of -

- (a) the attendance and examination of witnesses,
- (b) the administration of oaths or affirmations to witnesses,
- (c) the production of documents and exhibits,

and a summons in relation to any of these matters signed by the person chairing the Appellate Body is equivalent to a formal process issued in that behalf in an action before the Royal Court.

(2) Schedule 2 (which makes further provision in relation to the summoning of witnesses by the Appellate Body to give testimony or to produce documents) shall have effect.

Allowances and expenses of members of the Appellate Body.

7. The Adjudicator or the members of the Planning Tribunal appointed to hear and determine an appeal –

- (a) shall be entitled to receive such allowances in respect of his or their services as the Policy Council may from time to time recommend, and
- (b) may, at the discretion of the Policy Council, be reimbursed in respect of his or their reasonable expenses, if any.

Costs.

8. (1) The Appellate Body may, subject to paragraph (4) and Schedule 3, order that the whole or any part of the costs of a hearing shall be paid by one or more of the parties in such amount or proportion and on such basis as the Appellate Body may direct.

(2) An order for costs under paragraph (1) –

- (a) is enforceable as a judgment debt by the person in whose favour the order was made, and

- (b) carries interest at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985^e from the date of the order until the order is satisfied, and the interest may be recovered by the person in whose favour the order was made as part of the award of costs.

(3) The expression "**costs of a hearing**" (without prejudice to the generality of the expression) includes -

- (a) any costs, fees and expenses reasonably incurred by any party in the preparation or presentation of his case, including witness costs,
- (b) any costs, fees and expenses of, or incidental or preliminary to, the holding and conduct of the hearing and the determination of the appeal incurred by the States (other than as a party to the hearing), and
- (c) the costs, fees, expenses and allowances of the Appellate Body and any members thereof,

and, for the avoidance of doubt, includes any such costs arising where the appeal is determined on the basis of written representations.

- (4) The Appellate Body may not order -

^e Ordres en Conseil Vol. XXIX, p. 135, amended by Order of the Royal Court No. I of 1996.

- (a) the payment of costs on a full or partial indemnity basis,
- (b) the giving of security for costs,
- (c) the taxation of costs, or
- (d) the payment of the costs of legal representation of any of the parties,

except in accordance with the provisions of Schedule 3.

(5) The provisions of this regulation do not apply in relation to the Royal Court and are accordingly without prejudice to the powers of the Royal Court in relation to the costs of an appeal or reference to it under the Law.

(6) Schedule 3 (which makes further provision in relation to the payment and recovery of costs) shall have effect.

PART IV GENERAL PROVISIONS

Interpretation.

9. (1) In these Regulations, unless the context requires otherwise –

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

"appeal" means -

- (a) in relation to an appeal made to the Planning Tribunal, an appeal made under section 68 or 70 of the Law or section 18, 19 or 20 of the Special Controls Ordinance, or
- (b) in relation to an appeal made to an Adjudicator, an appeal made under section 10 of the Appeals Ordinance,

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

"Appellate Body" means in relation to an appeal made under -

- (a) section 68 or 70 of the Law or section 18, 19 or 20 of the Special Controls Ordinance, the Planning Tribunal, and
- (b) section 10 of the Appeals Ordinance, an Adjudicator,

"building", other than in the definition of **"protected building"**, shall be construed in accordance with regulation 2 of the Building Regulations, 1992^f,

"Chairman of the Planning Panel" means the person who is designated, from time to time, as the Chairman of the Planning Panel

^f Guernsey S.I. No.27 of 1992, as amended by G.S.I. No 39 of 2006.

pursuant to section 86(3)(c) of the Law and related expressions shall be construed accordingly,

"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 Document" shall be construed in accordance with section 10(2) of the EIA Ordinance,

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

"costs of a hearing" shall be construed in accordance with regulation 8(3) and related expressions shall be construed accordingly,

"Department" means the States of Guernsey Environment Department,

"development" shall be construed in accordance with section 13(1) of the Law and Part I of the General Ordinance^g,

"EIA development" shall be construed in accordance with section 2 of the EIA Ordinance,

"EIA Ordinance" means the Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007,

^g Approved by resolution of the States on 26th September, 2007.

"Environmental Statement" shall have the meaning in section 13(1) of the EIA Ordinance,

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

"interested party" means –

- (a) in relation to an appeal made 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 made 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, or

- (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,

"notice" means notice in writing,

"notice of appeal" means a notice of appeal made under –

- (a) section 68(5) or 70(3)(b) of the Law,
- (b) section 21 of the Special Controls Ordinance,
or
- (c) section 11 of the Appeals Ordinance,

"notify" means notify in writing,

"parties" means the Department, the appellant and any interested party and for the purposes of regulations 5(d), (g), (k) and (l) and 8 and Schedule 3 includes a person falling within regulation 5(b)(ii),

"person chairing the Appellate Body" means –

- (a) where the Appellate Body is the Planning Tribunal –

- (i) the member of the Planning Tribunal designated to preside in the Planning Tribunal under section 87(2) of the Law, or
 - (ii) where a single member of the Planning Panel constitutes the Planning Tribunal, that single member, or
- (b) where the Appellate Body is an Adjudicator, that Adjudicator,

"planning application of island wide significance" means a planning application for development of such a nature that it is likely to be of significance for the whole of, or a significant part of, Guernsey or which is very significant to Guernsey in any other way,

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

"planning permission" means the permission which is required under section 14 of the Law for the carrying out of any development of land,

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

"Policy Council" means the States of Guernsey Policy Council,

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

"principal parties" means the Department and the appellant,

"protected building" means a building, or any part of a building, which is of special historic, architectural, traditional or other interest and which is listed on the protected buildings list,

"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 monument" means a monument, structure, artefact, cave, ruin or remains which are of archaeological, historic, traditional, artistic or other special interest and which is listed on the protected monuments list,

"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,

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

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

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

and other terms used in these Regulations which are not defined in it but are defined in the Law shall have the same meaning as in the Law.

(2) The Interpretation (Guernsey) Law, 1948^h applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Amendment of the Building Regulations, 1992.

10. (1) The Building Regulations, 1992 shall be amended as follows.

(2) In regulations 17(2) and (3), for the words "Chief Building Control Officer" substitute "Department".

(3) For the heading to Part V substitute the following heading -

"APPEALS AND MISCELLANEOUS PROVISIONS".

(4) In Part V, before regulation 18 insert the following regulation-

"Appeals.

17A. Part II of the Land Planning and Development (Appeals) Ordinance, 2007 makes provision for appeals to an Adjudicator in relation to decisions under these Regulations and the requirements of these Regulations."

^h Ordres en Conseil Vol. XIII, p. 355.

Citation and commencement.

11. These Regulations may be cited as the Land Planning and Development (Appeals) Regulations, 2008 and shall come into force on the same date as the Law.

Dated this 30th day of January, 2008

David De Lisle

DAVID DE LISLE

Minister of the States Environment Department

For and on behalf of the Department

SCHEDULE 1

Regulation 4

PUBLICITY FOR ENVIRONMENTAL IMPACT ASSESSMENT

1. Where the appellant is required to send an Environmental Statement and, where relevant, a Compliance Document to the Planning Tribunal pursuant to section 10 of the EIA Ordinance as applied by section 12 of that Ordinance -

- (a) upon receipt of the Environmental Statement and, where relevant, the Compliance Document, the Planning Tribunal must, as soon as reasonably practicable, send a site notice to the appellant which shall be accompanied by –
 - (i) a notice setting out the action that the appellant is required to take pursuant to this paragraph, and
 - (ii) a receipt form,
- (b) sections 10(4) to (6) of the General Ordinance (steps to be taken upon receipt of, and offences in relation to, site notices) shall apply in relation to a site notice sent by the Planning Tribunal to the appellant under this paragraph as they apply in relation to a site notice sent by the Department to an applicant for planning permission under that section 10,
- (c) where the Planning Tribunal considers that the application to which the appeal relates is a planning

application of island wide significance, it shall publicise the Environmental Statement and, where relevant, the Compliance Document and the time limit for making written representations in relation to such documents, as required under section 10(7) of the General Ordinance (publicity for development of island wide significance),

(d) section 10(8)(a) of the General Ordinance (period during which applications may not be determined and duty to take into account representations) shall apply in relation to –

(i) the determination by the Planning Tribunal of a planning application relating to an appeal, and

(ii) the publicising of an Environmental Statement and any Compliance Document under this Schedule,

as it applies in relation to the determination of an application for planning permission by the Department and the publicising of that application under that section 10.

2. In this schedule –

(a) "**receipt form**" means a form supplied by the Planning Tribunal with a site notice for the appellant to sign both to acknowledge receipt of the site notice and to

confirm that he has put the site notice on display as required,

- (b) **"site notice"** means a notice setting out –
- (i) the details relating to the application to which the appeal relates which are contained on the register of planning applications pursuant to section 9(1)(a) to (d) of the General Ordinance,
 - (ii) that the appeal relates to an application for EIA development and that an Environmental Statement and, where relevant, a Compliance Document have been submitted by the appellant, and
 - (iii) how representations concerning the Environmental Statement and, where relevant, the Compliance Document may be made to the Planning Tribunal.

SCHEDULE 2

Regulation 6(2)

SUMMONSING OF WITNESSES AND DOCUMENTS

Summonsing of witnesses.

1. The Appellate Body may summons any person to appear before it as a witness.

Summonsing of documents.

2. The Appellate Body may also summons any person to appear before it and to produce before it any document, exhibit or other relevant item or material in his possession, custody or power.

Parties may require issue of summons.

3. The Appellate Body shall not, pursuant to regulation 5(i) authorise any party to cause a summons to be served on any person to give evidence or produce any document if -

- (a) the evidence to be given by the witness in question would be irrelevant or, as the case may be,
- (b) the document in question would be irrelevant.

Administration of oath.

4. The Appellate Body may require any witness appearing before it to take the oath or affirmation, which the person chairing the Appellate Body may administer.

Form of summons.

5. Every summons shall be in writing and shall contain the following

information -

- (a) the names of the parties to the proceedings,
- (b) the place where the proceedings are to be heard,
- (c) the date upon which and the time at which the witness is to appear,
- (d) the descriptions of any document, exhibit or other relevant item or material or any class thereof which the witness is to produce, and
- (e) where the witness is summonsed to appear on the request of any party to the proceedings, the name of that party.

Issue and service of summons.

7. Every summons shall be issued under the hand of the person chairing the Appellate Body and shall be served on the witness -

- (a) by being delivered to him or by being left at, or sent by registered post or recorded delivery service to, his usual or last known place of abode or employment, or
- (b) in any manner in which a document may be served under Part II of the Royal Court Civil Rules, 2007ⁱ.

ⁱ Orders of the Royal Court, No. IV of 2007.

SCHEDULE 3

Regulation 8(6)

PAYMENT AND RECOVERY OF COSTS

Maximum costs which may be awarded by Appellate Body.

1. Where the Appellate Body orders that the whole or any part of the costs of a hearing shall be paid by one or more of the parties, the maximum amount of costs which may be recovered by the person in whose favour the order was made shall be determined in accordance with the following provisions of this Schedule.

Witness costs.

2. (1) The maximum costs which may be recovered by a party in respect of the costs, fees and expenses of a witness -

- (a) in the case of a witness necessarily absent from his place of residence overnight in order to attend as a witness, shall be a night allowance not exceeding the expenses actually and reasonably incurred for board and lodging for that night,
- (b) in the case of a witness necessarily incurring expenses in travelling to and from the place of the hearing for the purpose of attending to give evidence, shall be an allowance not exceeding the expenses actually and reasonably incurred,
- (c) for loss of earnings, shall be as necessarily incurred but not exceeding £100 per day,
- (d) where the witness is an expert witness, shall be -

- (i) £60 per hour, for attending to give expert evidence, and
- (ii) £600, for work in connection with the preparation of such evidence.

(2) For the purposes of this paragraph a party giving evidence shall not be deemed to be a witness.

Summons costs.

3. The costs which may be recovered by the States of Guernsey in respect of the issue of each witness summons shall be £20.

Parties' costs.

4. The maximum costs which may be recovered by a party shall be -

- (a) in respect of his costs, fees and expenses reasonably incurred in the preparation or presentation of his case, £100,
- (b) where he is necessarily absent from his place of residence overnight in order to attend the hearing, a night allowance not exceeding the expenses actually and reasonably incurred for board and lodging for that night,
- (c) where he necessarily incurs expenses in travelling to and from the place of the hearing for the purpose of attending the hearing, an allowance not exceeding the

expenses actually and reasonably incurred.

Administrative costs.

5. The maximum costs which may be recovered by the States of Guernsey in respect of the costs, fees and expenses of the holding or conduct of the hearing (other than the costs, fees, expenses and allowances of the Appellate Body and any members thereof) shall be £100 per day.

Costs of Appellate Body.

6. The maximum costs which may be recovered by the States of Guernsey in respect of the costs, fees, expenses and allowances of the Appellate Body and any members thereof shall be £100 per day.

No costs for legal representation.

7. No costs may be recovered by a party in respect of the costs, fees and expenses of his Advocate or other legal adviser.

Order for costs to specify amount.

8. Where the Appellate Body orders that the whole or any part of the costs of a hearing shall be paid by one or more of the parties, its order shall specify -

- (a) the amount to be paid under the order, and
- (b) the basis on which the amount is calculated.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to appeals –

- (a) against planning decisions and the failure to take such decisions,
- (b) against compliance (made in relation to breaches of planning control) and completion notices (made in respect of development which the Environment Department considers is not being completed within a reasonable time),
- (c) made in respect of inserted or amended entries on the protected monuments list or the protected buildings list,
- (d) against preservation notices (made where urgent works are required to protected buildings or monuments),
- (e) against the confirmation of tree protection orders, and
- (f) in respect of certain decisions and notices under building regulations.

They provide for the procedure for the determination of appeals by the relevant Appellate Body, the powers of that body in relation to the summoning of witnesses and in relation to the making of orders as to costs. The relevant Appellate Body for appeals falling within paragraphs (a) to (e) is the Planning Tribunal and in respect of the building regulations, an Adjudicator.

There is further provision in Schedules 2 and 3 in relation to the summoning of witnesses to appear at hearings to give testimony or to produce documents and in relation to the maximum amounts of costs which may be awarded by the Appellate Body.

They also make provision in relation to the refusal by the Appellate Body to hear appeals or to proceed with their determination, the basis on which appeals under section 68 (appeals against planning decisions or the failure to take such decisions) of the Land Planning and Development (Guernsey) Law, 2005 are to be determined and the publicity for Environmental Impact Assessment where this is required to be carried out at the appeal stage pursuant to the Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007.