

Orders of the Royal Court

1
2018

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

15th day of January, 2018 before Sir Richard Collas, Bailiff; present:- Stephen Murray Jones, David Percy Langley Hodgetts LVO, Niall David McCathie, Esquires, Margaret Ann Spaargaren, David Allan Grut, Jonathan Grenfell Hooley, David James Mortimer, Alan Stevenson Boyle, Peter Francis Gill, Esquires, Jurats.

No. 1 Order, 2018

ENTITLED

**THE ROYAL COURT HIGH HEDGES (APPEALS AND REFERENCES) RULES,
2018**

The High Hedges (Appeals and References) Rules, 2018

THE ROYAL COURT, in exercise of the powers conferred on it by section 74 of the Land Planning and Development (Guernsey) Law, 2005^a, as applied by paragraph 13(2) of the Schedule to the High Hedges (Guernsey) Law, 2016^b and all other powers enabling it in that behalf, hereby orders:-

PART I

APPEALS TO ROYAL COURT

Notice of appeal.

1. (1) Notice of an appeal on a question of law under section 72(1) of the Land Planning Law (as applied by paragraph 13(1)(b) of the Schedule to the High Hedges Law) by a person aggrieved by a decision of the Planning Tribunal on an appeal under section 13 of the High Hedges Law, shall –

- (a) be in the form set out in the Schedule to these Rules, and
- (b) 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.

^a Order in Council No. XVI of 2005 to which there are amendments not relevant to these Rules.

^b Order in Council No. IV of 2017.

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, to -

(i) the Greffier,

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

(iii) the person who presided in the Tribunal, and

(iv) the Chairman of the Planning Panel, 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 Planning Tribunal decides that -
 - (a) a question of law has arisen in connection with the hearing by it of an appeal made to it under section 13 of the High Hedges Law, and
 - (b) the question of law should be referred for decision to the Royal Court under section 73(1) of the Land Planning Law, as applied by paragraph 13(1)(b) of the Schedule to the High Hedges Law,

the person presiding in the Planning Tribunal 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 that person's opinion, relevant to the determination of the question of law by the Royal Court, and

- (ii) transmit the statement of the case to the 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),
and

(ii) the person presiding in the Tribunal,

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 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, the party 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 that person 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 the Greffier to the Secretary.

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

(a) the parties to the appeal, and

(b) the members of the Tribunal.

Appeal to the Court of Appeal.

10. Where an application is made under section 72(5) or 73(2) of the Land

Planning Law, as applied by paragraph 13(1)(b) of the High Hedges Law, 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^c, be deemed to be the date on which the Secretary sent a copy of the decision of the Royal Court, in accordance with rule 9(2), to the person seeking leave to appeal.

Service of notices.

11. A document to be transmitted or notified under these Rules may, in the case of transmission or notification to –

- (a) the Secretary, be addressed to the Secretary and left at or sent by post to Sir Charles Frossard House, La Charroterie, St. Peter Port, Guernsey GY1 1FH,
- (b) the Greffier, be left at or sent by post to the Greffe, or
- (c) any other person, be transmitted or notified in any way in which a document may be served on that person under section 32 of the High Hedges Law (service of documents); and, for the avoidance of doubt, for the purposes of this rule those provisions apply to the transmission or notification of a copy of a notice of appeal as required under these Rules.

^c Orders of the Royal Court Vol. 1, page 234 as modified by Order of the Royal Court No. 11 of 1987.

Interpretation.

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

"**Authority**" means the States of Guernsey Development & Planning Authority,

"**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 Land Planning 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,

"**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 Land Planning Law,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes 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,

"**High Hedges Law**" means the High Hedges (Guernsey) Law, 2016,

"**the Land Planning 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^d,

"**parties to the appeal**" means every person who is one of the "**parties**" in relation to an appeal, as defined in paragraph 15 of the Schedule to the High Hedges Law, namely –

- (a) the appellant, in relation to the original appeal which is appealed or referred in accordance with Part I or II of these Rules,
- (b) the Authority, and

^d Ordres en Conseil Vol XVII, p. 384 as amended by Vol. XXIV p. 84, Vol. XXXIV, p. 504, Vol. XXXV(1), p. 367.

- (c) every person who is –
 - (i) a complainant, or
 - (ii) the owner or occupier of the land where the high hedge is situated,

within the meaning of the High Hedges Law,

"person presiding in the Tribunal" means -

- (a) the person designated to preside in the Planning Tribunal under section 87(2) of the Land Planning Law as applied by paragraph 13(1)(c) of the High Hedges 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 Land Planning Law,

"Planning Tribunal" means the Tribunal the members of which are appointed under section 87 of the Land Planning Law, as applied by paragraph 13(1)(c) of the High Hedges Law, to hear and determine the appeal in question under the High Hedges Law,

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

"the Secretary" means a secretary to the Planning Panel appointed under section 18 of the Land Planning and Development (Appeals) Ordinance, 2007^e,

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

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

and any other expressions, unless the context requires otherwise, have the same meaning as in the High Hedges 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 the person presiding to undertake that function.

^e Ordinance No. XXVII of 2007 as amended by Ordinance No. IX of 2016; there are other amendments not relevant to these Rules.

(4) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

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

Citation.

13. These Rules may be cited as the High Hedges (Appeals and References) Rules, 2018.

Commencement.

14. These Rules shall come into force on the 15th January, 2018.

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

SCHEDULE

rule 1(1)

The High Hedges (Appeals and References) Rules, 2018

Notice of Appeal to the Royal Court.

*To the Secretary to the Planning Panel, c/o Sir Charles Frossard House, La
Charroterie, St Peter Port, GY1 1FH*

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

being aggrieved by a decision of the Planning Tribunal, 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 concerning an appeal *[give brief description of appeal
and name of any other party other than the Authority]*

under section 13 of the High Hedges (Guernsey) Law, 2016 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.