

Minister and Assistant Minister for the Environment
DETERMINATION OF APPEALS – Code of Conduct
The Planning and Building (Jersey) Law 2002

April 2026

1. Purpose

This code of conduct has been prepared to provide advice about the process, and expected behaviour of the Minister for the Environment, or Assistant Minister, or any other minister under delegation, during the course of the planning appeal decision making process. The code is intended to ensure the objectivity and probity of the process by which decisions are made.

2. Context

2.1 Who can appeal and against what?

The Planning and Building (Jersey) Law 2002 (hereafter referred to as the P&B Law) includes various provisions for appeals to be made in relation to planning decisions, as set out in Articles 108-110. These include, but are not limited to, decisions about the award or refusal of planning permission; the attaching of a condition to permission; the listing of a building or place; the listing of a tree; and the service of certain notices.

Appeals can be made by various parties with an interest in planning decisions. These include applicants (first party appeals); and those who have submitted representations objecting to development proposals prior to determination where they have a property interest within 50 metres of an application site (a 'third party' appeal). Owners and, where different, occupiers also have rights of appeals in relation to listing decisions and the service of notices.

2.2 Administration of the appeals process

The appeals process is prescribed by the P&B Law in Articles 112-115. The Judicial Greffe administers appeals against planning and building decisions so that cases are considered independently.

Once an appeal is received by the Judicial Greffe, it is assigned to an independent planning inspector drawn from a pool of qualified inspectors based in the UK, appointed in accordance with Article 107 of the P&B Law.

Minor appeals are often dealt with by exchange of written statements, while others might involve a hearing chaired by the inspector. Under Article 114(6) of the P&B Law, an inspector may recommend that an appeal be dealt with by a public inquiry where the issues are more properly addressed in that way, but a public inquiry may only be held if the Minister accepts that recommendation.

A hearing is a relatively informal, inspector-controlled process for exploring disputed issues between the parties, whereas a public inquiry is a more formal process used exceptionally where the issues require full public examination, structured evidence, and enhanced procedural rigour.

The inspector considers all submissions received and will travel to the island to visit the site.

Under the provisions of the Law, the inspector is required to consider an appeal, without undue delay, and following the consideration of written representations or (as the case may be) the appeal hearing, the inspector shall make a report in writing to the Minister and the report shall include –

- (a) the inspector's recommendation as to the determination of the appeal; and
- (b) the reasons for such recommendation.

The inspector's report is submitted to the Judicial Greffe, who will then forward the report to the Cabinet Office and Ministerial Office in order that the report might be considered by the relevant decision-maker.

3. Making a decision

3.1 Preliminaries: Avoiding conflict of interest and the appearance of bias

In anticipation, or upon receipt, of an inspector's report in relation to an appeal, the decision-maker should consider whether they may be conflicted.

Ministers are under an express obligation to avoid conflicts of interest as set out in the Code of Practice for Ministers and Assistant Ministers.

Determining an appeal under the 2002 Law is a quasi-judicial process, and the decision makers must ensure that they decide cases fairly, are impartial between the parties, and are seen to be fair and impartial in order to avoid any appearance of bias. Apparent bias occurs ***“where a fair minded and informed observer would conclude that there was a real possibility of bias”*** by the decision maker. What fairness requires can vary from decision to decision, and it is not safe to assume that what is fair in one decision will also be fair in another.

Decision makers should avoid predisposition e.g. expressing a general view on various types of development; and predetermination, e.g. expressing a view – whether positive or negative - about a particular development proposal in advance of being presented with the evidence about it.

Should a decision-maker consider that they are, in any way, conflicted in determining an appeal, then the decision should pass to an Assistant Minister to whom the Minister has delegated responsibility to determine such appeals. Where this is not possible, the Minister must alert the Chief Minister so that the Chief Minister may take such action as is appropriate in the circumstances under Article 27 of the States of Jersey Law 2005.

The decision-maker should declare any relevant interests or relationships prior to the commencement of any meeting at which the determination of an appeal is to be considered. If aware that there may be a real, or perceived, conflict of interest, the Minister should either delegate the decision to an authorised decision maker or should seek legal advice as to whether the decision should be delegated. This principle also applies to any other decision-maker where there may be a real or perceived conflict of interest.

3.2 Use of social media

Decision makers should take care not to declare a fixed position before a decision is taken. Use of social media is discouraged during the decision making process, and special care and attention should be taken when using platforms that allow “likes”, voting or any similar interactions that may give an impression of a favoured outcome. It is suggested that this is also applied to the post decision period to ensure support or refusal of specific schemes are not called into question.

Care should be taken to avoid private direct messages or closed messaging groups for any planning discussions, and any messages received through non-government channels or by text message should be directed to the formal channels available for submission during the appeal period.

Decision makers should take care not to express personal opinions in private social media, chat groups or through formal government channels, especially during the appeal process. Formal media interviews or similar engagement will be arranged through the relevant Private Secretaries and the communications officer.

Due to risks around data protection and privacy, it is suggested that decision makers do not livestream, record, or post images from site inspections, and any photographs or recorded material should not be stored on a personal device.

3.3 Site Inspections

Site visits by the decision maker may be made in connection with appeals to be considered so as to understand the inspector’s report and/or to contextualise uncontested physical features. Unless the site visit is unaccompanied, where a site may be viewed from a public vantage point, the Ministerial Office may make the necessary arrangements to secure access to a site.

No representations can be made by any parties to the decision maker during the course of a site inspection, and any applicants or interested parties approaching the decision maker should be informed that they will not be able to engage during the site inspection.

The agreed itinerary should be adhered to, and site safety procedures should be followed, with the details of visit recorded, including any interactions on site. On unaccompanied site visits from public viewpoints, it is preferable to keep a brief note of the time and date, any key features observed and any incidents that may occur.

The decision maker should not rely on new; material factual conclusions derived from that visit. In those circumstances, the decision maker should consider the Article 116(2)(b) power which is dealt with at 3.9 below.

3.4 Representations or approaches from interested parties

A decision maker who receives material from or on behalf of an applicant or third party in connection with a pending appeal, at any stage, should pass the material directly to the Judicial Greffe. Relevant documents submitted in connection with an application will be addressed in the Officer report to the original decision maker, and the independent inspector will consider all documents associated with an application or an appeal against notices, including statements of case submitted to the Greffe, along with any representations made during the appeal process itself. The inspector will report to the decision maker on all representations properly made.

3.5 The appeal decision

Decisions must be reached only on the basis of evidence and considerations which are relevant to the planning merits of the case. The decision maker must not take into account any evidence or considerations which are not relevant to planning, not relevant to the decision, or not before them as part of the evidence in the case.

It is not the Minister's or other decision-maker's task to re-assess the whole of the original planning application or appeal case, as the role of the inspector is to undertake the re-assessment and make a recommendation to the decision maker. There is a process available to the Minister, should further information or clarification be required (see below).

Decisions must not be fettered by pre-determined views and cases should not be judged before decision-makers have considered the evidence. Decision-makers may hold tentative views on the merits of individual cases but they should be open to persuasion and alternative points of view. They should only reach their final conclusions once they have considered all the evidence and representations.

The Minister must, therefore, approach (and be seen to approach) each decision with an open mind and must not have a predetermined view on a proposal. The Minister is entitled to have and express opinions about general planning issues not related to particular cases. The Minister must not, however, prejudge decisions, and it is important that the Minister does not make any public or private comments which could give rise to the impression that they have already made their mind up about the planning merits of a proposal.

The Minister or other decision-maker should consider whether the inspector's report and recommendations appear comprehensive, evidenced, sound and just.

Having considered the inspector's report, the Minister or decision-maker is able to refer the appeal back to the inspector for further consideration of any issues that they may specify.

This may arise, for example, but is not limited to, where new material considerations have arisen during the course of an appeal process.

The Minister may allow, or dismiss, an appeal in whole or in part, or reverse or vary any part of the original decision-maker's decision.

3.6 Making a decision that is fully compliant with the inspector's recommendations

Article 116(1) of the P&B Law requires that:

"Having considered the inspector's report ...the Minister shall determine the appeal, and in so doing shall give effect to the inspector's recommendation unless the Minister is satisfied that there are reasons not to do so."

As the Law requires the Minister to give effect to the inspector's recommendation, unless there are clear reasons not to do so, the default position should be that the Minister agrees with and determines an appeal in accord with the inspector's recommendations.

If the Minister chooses to follow the inspector's recommendations in full, then a succinct ministerial decision will be prepared to reflect this. This is because the inspector's reasons become the Minister's reasons.

3.7 Making a decision that is not fully compliant with the inspector's recommendations

The Minister is not bound by and does not have to follow the inspector's recommendation, but where they are satisfied that there are reasons not to do so, they must explain fully, in their ministerial decision, why the recommendations were not followed.

Article 116(4) of the Law imposes an obligation to give **full reasons** in the event that the inspector's recommendation is not followed.

The Royal Court has, previously, referred to a recent authoritative statement from the House of Lords of the position in England and Wales in the context of appeals against decisions by planning inspectors, and is considered relevant to the reasoning of ministerial decisions that do not follow an inspector's recommendations.

The statement confirms the reason for a decision must be intelligible and adequate, enabling the reader to understand why the decision was made as it was, and which conclusions on important issues were reached. Reasons may be briefly stated, but should not give rise to a substantial doubt as to whether the decision maker erred in law or reached a rational decision. It concludes that a legal challenge will only succeed the court is satisfied that an interested party has been substantially prejudiced by a failure to provide an adequately reasoned decision.

The Royal Court, in 2023, judged that the requirement for full reasons is so that the party whose arguments have not been accepted by the Minister understands the reasons why that is the case, expressly addressing the findings of the inspector and to set out the reasons why the Minister has reached a different conclusion.

There is nothing inherently wrong with a short decision. Brevity is an administrative virtue, and there exists no heightened obligation on the Minister to provide better reasons simply because it is a decision of a Minister instead of an Inspector. Reasons should not, however, be general; and they should be focussed and explicitly address the relevant issues.

A way to ensure that full reasons are given is to cross reference the Minister's differences to the paragraphing of the inspector's report, where the Minister or decision-maker might agree and disagree with the inspector's conclusions and recommendations; and in the case of disagreements, to say why this is so.

Any decision should also be supported by concluding remarks to demonstrate that the decision-maker has considered all material considerations and has weighed them accordingly as part of a considered and balanced planning decision.

No further appeal shall lie from the Minister's determination on this basis except to the Royal Court on a point of law. In light of previous consideration of cases by the Royal Court and others, adopting this procedure for decision-making that does not accord with the recommendations of the inspector will not remove the risk of appeal being brought but should help reduce the risk of success on the grounds of a lack of full reasons for a decision.

Article 116 makes the Minister legally responsible for the determination of an appeal, but it does not require the Minister to act in isolation or without appropriate assistance and support. The Article proceeds on the basis that the Minister will consider the inspector's report and then reach a determination, and it is entirely consistent with that structure for the Minister, where necessary, to draw on departmental, technical or legal support in order to understand the issues and to put the Minister's decision into proper form. The evaluative judgment must remain the Minister's (or other decision maker's) own.

Where the Minister (or other decision-maker) is minded not to give effect to an inspector's recommendation, in whole or in part, it may be appropriate to seek technical or legal advice before making the determination.

As a matter of good practice, that advice should be obtained from someone who has not been involved in the appeal process, or original decision that resulted in the appeal, in order to reinforce the independence of the judgment and maintain public confidence.

3.8 Imposing new or additional conditions

The addition of conditions to a planning permission can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects. The imposition of conditions should be exercised in a way that is clearly seen to be fair, reasonable and practicable. To this end, conditions should be kept to a minimum, and only used where they satisfy the following tests, adopted from the UK National Policy Framework 4 Decision Making (NPPF), such that they are:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

Often, an inspector will recommend, or suggest, that conditions be added to a permission in the event that the Minister decides that planning permission be granted on appeal. Where this is the case, then the addition of conditions, as recommended, is in accord with the provisions of the law at Article 116(1), as referred to above.

Where the decision-maker considers it prudent to attach a condition that has not been considered or recommended by the inspector, then it is evident that the applicant / appellant would not have had the opportunity to comment upon the condition and its possible impact upon them. Nor would the applicant / appellant have had the opportunity to challenge the imposing of the condition on appeal.

In such circumstances, it may be appropriate for the matter to be referred back to the inspector for further consideration and recommendation. This will depend on the circumstances of the case and require consideration of the extent to which any condition might alter the form of development to the extent that it has not been the subject of consultation; or where it is unclear why a condition has been imposed. Any such referral would afford the opportunity for the inspector to invite further comment on any proposed condition, if considered appropriate to do so.

Should the decision-maker wish to impose a condition that has not been considered by the inspector, they may refer the appeal back to the inspector for consideration and recommendation.

Where the decision-maker does not refer the appeal back to the Inspector, for example where the decision-maker considers the changes to be minor/trivial, the decision is not giving full effect to the Inspector's recommendation and so reasons should be given. The decision maker should say why, and the reason can be short but must be intelligible.

3.9 Referring an appeal back to an inspector for further information / advice

There will be occasions when the decision-maker is not comfortable making a decision based on the information before them. This may be owing to any number of reasons including:

- insufficient discussion on a particular topic,
- possible misinterpretation of policy,
- lack of sufficient information in the original submission; and
- the need to have regard to new material considerations.

In such circumstances, Article 116(2)(b) of the P&B Law allows the Minister to refer the appeal back to the inspector for further consideration of such issues as the Minister shall specify.

Any such decision to refer an appeal back to an inspector should be formally recorded in a ministerial decision requesting that the inspector prepares a supplementary report covering the issues of interest to the Minister. Depending upon the nature of the issues of interest, the ministerial decision may not be published, particularly where this might indicate the potential outcome of an appeal determination.

In the case of a referral back, the inspector's initial report would not be published until such time that the supplementary report is received, considered and the appeal determined.

4. Recording and issuing an appeal decision

The determination of an appeal is recorded by way of a ministerial decision. The wording of any ministerial decision summary will be concise and simply reflect the decision; with the ministerial decision report setting out the full reasons for the decision. A separate schedule of reasons for refusal or conditions may also be appended to the report.

Ministerial decisions are processed by the Ministerial Office for formal signature by the decision-maker. Once signed, the decision is formally registered and published on the government website. The Judicial Greffe circulates the ministerial decision and inspector's report(s) to all interested parties.

Other internal notification is also made, post-determination, for strategic and significant planning decisions in order that key Government officers and Council of Ministers are informed prior to public release of any such decision.

After the planning decision has been issued, it enters its legal challenge period, where an aggrieved party can bring a legal challenge against the decision. If the challenge is successful, the Royal court will likely quash the decision and remit it back to be retaken.

As the reasons for the decision are either in the inspector's report (where the Minister has accepted the recommendation), or set out in the ministerial decision where the Minister has decided not to accept all or part of the inspector's recommendation, the Minister and officials should not comment on the decision, summarise or interpret it. Requests for comments should be dealt with by referring the enquirer back to the Ministerial Decision and/or the inspector's report as appropriate in the circumstances.

5. Training and Continuous Improvement

All decision makers will be invited to attend training/induction shortly after appointment, including on topics such as planning ethics, probity, and policy. Decision makers should avoid making decisions until after the training has been attended.

Additional training or briefings may be provided to decision makers to update them on significant or relevant developments or changes to law, policy, design, climate, heritage, accessibility, and community engagement.

Decision makers will be provided with briefing notes and performance metrics regarding appeal decisions, legal challenges, and any additional information that may assist in improving decision making practice.

6. Post Decision Conduct

In the period following a decision, the Minister or Assistant Minister should take care not to attempt, or to be perceived to attempt, to influence officers' implementation of actions or enforcement decisions following an appeal outcome.

It is suggested that any public statements after decisions should accurately reflect outcomes and reasons and reflect factual information only, and should preferably be made via the I&E communications team.

Suggested further reading and documents referenced

- [Planning and Building \(Jersey\) Law 2002](#)
- [Standing Orders of the States of Jersey](#)
- [Code of Conduct for Elected Members](#)
- [R-31-2024.pdf](#) Codes of Conduct and Practice for Ministers and Assistant Ministers
- [National Planning Policy Framework 4; 'Decision making'](#)
- [Fauvel v Minister for Environment 21-Oct-2023 \(jerseylaw.je\)](#) [2023]JRC193

Reference to "the Minister" in the text above includes a delegated appeal decision maker