



Cabinet
Office

Planning services reform **Planning appeals review: consultation**

SUMMER 2025

Government of Jersey

Subject of this consultation:	This consultation seeks views on Jersey's planning appeals process.
Scope of this consultation:	This review considers existing rights to appeal against a planning decision; the procedures that currently operate to administer the appeals process; and the way in which appeals are determined.
Who should read this:	We would like to hear comments from all islanders, particularly those who have experience of using the planning appeals system. We would particularly like to hear the views of planning agents, architects, developers, businesses, landowners and other stakeholders who have an interest in the efficient and effective operation of the island's planning service.
Duration:	The consultation will run for eight weeks from 15 July to 09 September 2025.
Lead official:	Kevin Pilley, Head of Place and Spatial Planning, Cabinet Office
How to respond:	<p>You may respond in a variety of ways.</p> <ul style="list-style-type: none">• by completing the online survey: planning appeals review• by email to islandplan@gov.je• by post to Place and Spatial Planning, Cabinet Office, Government of Jersey, Union Street, St Helier, JE4 8PF
Next steps:	<p>All consultations responses will be reviewed and assessed. A summary of the responses and the key issues raised by them will be presented to the Minister for the Environment in order that the Minister might consider the potential for changes to the island's planning appeals process.</p> <p>In the event of the Minister wishing to pursue specific changes, the Minister may undertake further consultation. This may require change to the Planning and Building (Jersey) Law, which would need to be lodged and debated by the States Assembly in the first quarter of 2026.</p>

Contents

1. Introduction	4
2. Background	4
2.1 Introduction	4
2.2 Principles.....	4
2.3 Scope of appeals and reviews	5
2.4 Number of appeals.....	5
2.5 Outcome of appeals	6
2.6 Cost of appeals.....	7
3. Review.....	8
Part 1: Aggrieved parties and rights of appeal.....	9
a) First-party rights of appeal: comprehensiveness.....	9
b) Third-party rights of appeal: the principle.....	10
c) Limited third-party rights of appeal: extent of right	12
d) Third-party rights of appeal: limitation of decisions against which an appeal can be made....	12
(i) Appeals against other operations, activities and conditions.....	13
(ii) Appeals against notices: listing	13
Part 2: Appeals process and procedures.....	15
a) Conduct of appeals by independent inspectors.....	15
b) Administration by Judicial Greffe.....	15
c) Appeals out of time.....	16
d) Cost of appeals.....	16
e) Time for determination.....	17
f) Hearings and written representations.....	19
g) Amended or late plans and papers	20
h) Enforcement appeals: ground (h) the award of planning permission.....	21
i) Power to decline to determine respective planning permission.....	21
Part 3: Reviews and determinations.....	23
a) Review of a planning decision by the Planning Committee: the principle	23
b) Review requests: new information	25
c) Determination by the Minister: the principle.....	25
d) Determination by the Minister or a panel	26
4. How to respond.....	26
5. Questions	27

1. Introduction

The Government has committed to reform the island's planning service.

This consultation seeks your views on possible changes that could be made to the scope and operation of the island's planning appeals system.

As part of this work the Minister for the Environment wants to explore whether changes to the planning appeals process might provide opportunities for beneficial change. The ability to appeal against a planning decision is an integral part of the planning application process and this review considers the scope of planning appeals; the appeals process and procedures; and the making of planning appeal decisions.

2. Background

2.1 Introduction

The current appeals process came into effect on 10 March 2015¹. This established a new process for the consideration of appeals against decisions made or actions taken under the Planning and Building (Jersey) Law 2002 ("the 2002 Law").

The introduction of this new process had been the result of an extensive period of deliberation, going back to 2001 and the establishment of the new Planning and Building (Jersey) Law².

Jersey's planning system embraces first, second and third parties in the appeals process where: the 'first-party' is usually the applicant (for permission) or owner; and the 'second party' is the 'regulator', usually represented by the Planning Committee or the Chief Officer of Infrastructure and Environment (Regulation) in the form of a delegate (often referred to as 'the planning department'). 'Third parties' are anyone else with a view on a planning matter, whether they have a direct interest (e.g. as owner of the land on which the application is submitted) or a personal interest (e.g. as a neighbour) or a wider interest (e.g. as a consultee or an interest group).

Jersey's current appeals process has not been reviewed since its introduction in 2015.

2.2 Principles

The key principles that underpin Jersey's appeal system are as follows:

- Parties who are aggrieved at decisions taken under the 2002 Law can request an independent inspector to consider the merits of their case.
- The Judicial Greffe administer the process, and appeals are considered either by written submissions or by the interested parties appearing at a hearing chaired by the inspector.
- The inspector makes a recommendation to the Minister, and the Minister makes a decision in light of the inspector's recommendation. The Minister is not bound by any recommendation but has to justify any variation from it.

¹ This was brought about by [Planning and Building \(Amendment No. 6\) \(Jersey\) Law 2014 \(Appointed Day\) Act 201- \(JR\) FINAL P.7-2015](#).

² The evolution of the appeals process, where many variations were considered, is set out in [P.094-2014 Draft Planning and Building \(Amendment No. 6\) \(Jersey\) Law 201- \(JR\)\[MinP&E\] #INC.CORRIGENDUM#](#).

2.3 Scope of appeals and reviews

The following decisions are currently embraced by the island's planning appeal process –

- i. The refusal to grant planning permission.
- ii. The grant or refusal of permission in relation to matters reserved for further approval
- iii. The refusal to approve or amend an application for planning permission for development which has already taken place.
- iv. The refusal to vary a previously approved application for planning permission so as to remove or vary a condition.
- v. A decision to revoke or modify planning permission on the grounds of misleading information
- vi. The refusal to grant a certificate of completion (confirming a development has taken place in accordance with a previously approved planning permission).
- vii. The refusal to grant permission to undertake particular activities on/in/under a site of special interest or a protected tree.
- viii. The refusal to grant permission for the importation or use of a caravan in Jersey.
- ix. The service of notices requiring actions, defining development or terminating planning permission.
- x. The inclusion of buildings, places or trees on relevant lists for their protection.
- xi. The refusal to remove a building, place or tree from the list
- xii. The granting of planning permission – appeal by a third-party (where a third-party is defined as a person who has an interest in or is resident on land which lies within 50 metres of an application site; and has made a representation prior to determination).

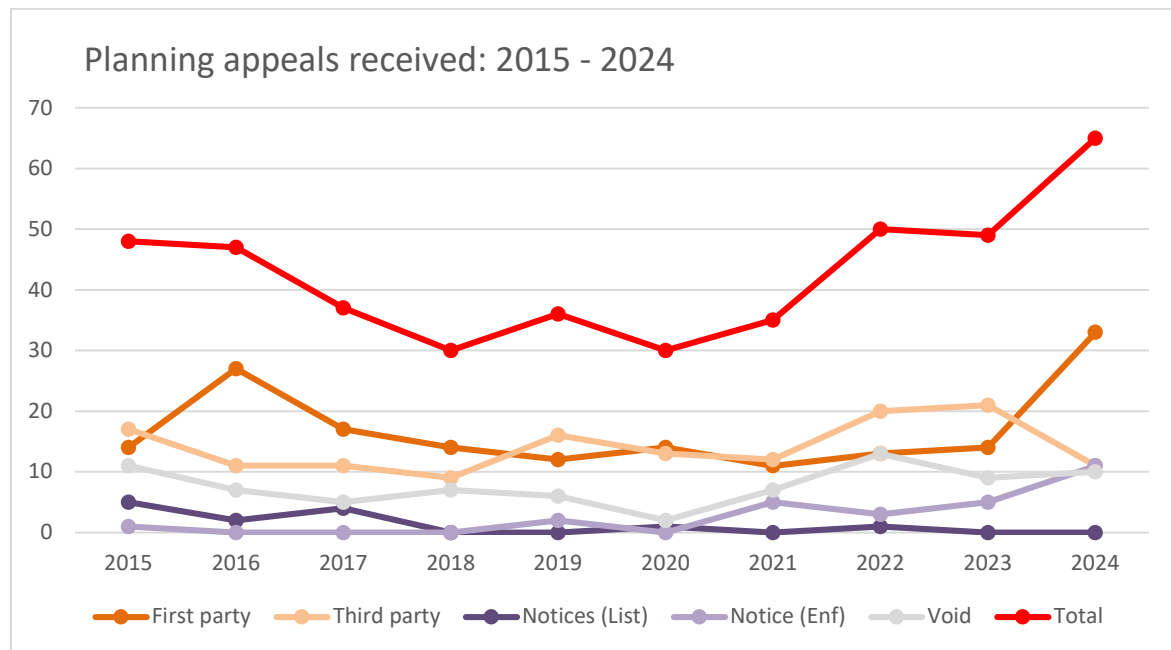
The change to the law made in 2015 also formalised the practice whereby applicants who had received a refusal of planning permission determined by officers could ask the Planning Applications Committee (now the Planning Committee) to review the decision (known as 'reviews')³.

2.4 Number of appeals

The original assumption about the number of appeals that might be made under the new process considered that this might be in the region of up to 200 appeals a year.

The actual number of appeal decisions, to date, has been considerably less, as follows:

³ This was formalised on the basis of an amendment ([P.087-2013 Amd.\(2\)\[LeHerissier\]](#))

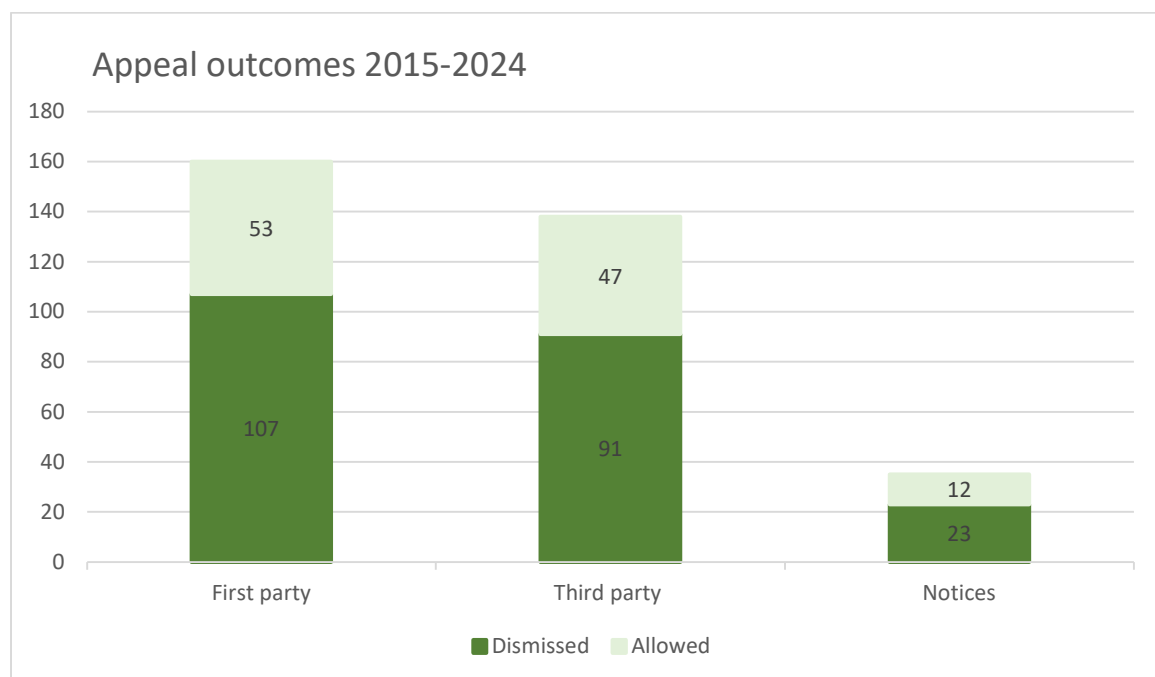


2.5 Outcome of appeals

Just under one third (c.32%) of all appeals - including appeals against the refusal and grant of planning permission, and the service of notices for breaches of planning control and listing notices - are upheld.

The specific breakdown of appeals is set out below and are all similar in terms of the proportions dismissed (at c. 66%); and allowed (at c.33%).

In terms of appeals against the service of notices, this includes both enforcement and listing notices. Only one listing notice appeal (of 13) has been upheld.



2.6 Cost of appeals

The proposition that introduced the island's planning appeals system identified the requirement of £148,000 to cover inspectors' fees and expenses. Added to this were the requirements of the Judicial Greffe to administer the process, estimated at £44,200 – 0.5 FTE administrative post, 0.2 FTE of a managerial oversight, and a contribution to the rental paid for the premises where the Tribunals currently sit.

It was stated that there would be a fee income to offset the costs, but it would not be full cost recovery, probably 25%. It was acknowledged that this may change in the future depending on the level of take-up of appeals.

As such, the predicted cost of the process was set at £192,000 minus fee income (25%).

The actual outturn costs for the running of the service in 2024, based on 1.0 FTE to administer the process and a 0.25% general overhead cost; together with the cost of planning inspector fees, totalled approximately £192,000 and fee income of approximately £58,000 (amounting to 30% of gross cost). The net cost of running the planning appeals service, as it is currently constituted, stands at approximately £135,000.

Any change to the scope of the appeals process, therefore, has the potential to affect the cost of this service.

The Minister can charge fees, payable by appellants, for the submission of appeals, and these are set out in the [Planning and Building \(Fees\) \(Jersey\) Order 2008](#). Current fees for planning appeals are essentially set in three bands, as follows:

Type of appeal	Fee (£)
Appeal against refusal of planning permission (i.e. first-party): major development	1,948.50
Appeal against refusal of planning permission (i.e. first-party): minor development Appeal against refusal of other permissions, conditions (i.e. first-party): Appeal against grant of planning permission (i.e. third-party) Appeal against service of an enforcement notice	609.40
Appeal against listing notice or revocation of permission	121.30

3. Review

Since the introduction of the current appeals process, a number of issues have arisen as a consequence of challenge to and operation of the existing provisions. The review of planning services, identified as a strategic priority by ministers, affords an opportunity for these matters to be examined.

Against the context of the government's focus on the efficiency and effectiveness of the island's planning system, of which the appeals process forms an intrinsic part, it is also considered appropriate to revisit, and to review, the key principles which provide the foundation of the appeals system as it is today. We should consider if it is performing as all parts of the island community would wish and expect; and if it is cost efficient.

The scope of this review is outlined below and framed loosely around the original three principles which underscored its introduction. There may be other issues to address, to be identified during consultation.

Part 1: Aggrieved parties and rights of appeal

- a) First-party rights of appeal: comprehensiveness
- b) Third-party rights of appeal: the principle
- c) Third-party rights of appeal: extent of limitation
- d) Third-party rights of appeal: limitation of decisions against which an appeal can be made
 - (i) other operations, activities and conditions
 - (ii) appeals against notices: listing

Part 2: Appeals process and procedures

- a) Conduct of appeals by independent inspectors
- b) Administration by Judicial Greffe
- c) Appeals out of time
- d) Cost of appeals
- e) Time for determination of appeals
- f) Hearings and written representations
- g) Amended or late plans and papers
- h) Enforcement appeals: ground (h) the award of planning permission
- i) Power to decline to determine respective planning permission

Part 3: Reviews and determinations

- a) Review of a decision by the Planning Committee: the principle
- b) Review requests: new information
- c) Determination by the Minister: the principle
- d) Determination by the Minister or a panel

Part 1: Aggrieved parties and rights of appeal

a) First-party rights of appeal: comprehensiveness

It has become clear over time that the existing appeals provisions do not include a right of appeal for other operations and activities, which are not defined as development, but which are specifically regulated by means of an order created under the auspices of the Planning and Building (Jersey) Law 2002⁴. This includes the control of advertisements⁵; and the control of moveable structures⁶.

A recent Complaints Panel case⁷ has served to highlight the fact that there is no right of appeal specifically in respect of moveable structures.

The Complaints Panel Board was of the view that this case identified a significant weakness within the Planning and Building (Jersey) Law 2002, and, in particular, Part 7, Article 108 of the Law, which set out the right to appeal against certain decisions which did not include moveable structures.

The Board recommended that the Minister review the legislative position to address this omission. The Board considered the omission contrary to the accepted principles of natural justice. The omission was also viewed as oppressive and improperly discriminatory and appeared to have arisen as a result of an administrative oversight.

Most of the rights of appeal within the Planning and Building (Jersey) Law are vested in applicants, owners and occupiers (i.e. first parties). Third-party rights of appeal are limited to a decision to grant planning permission (under Article 19(3) or (4)); and a decision under Article 19(6) to grant or to refuse permission in relation to matters reserved for further approval.

The issue highlighted by the Panel's findings is that there is currently no right of appeal for any party generally (i.e. first and third parties) for the regulation of other operations and activities, such as the display of advertisements; and the reception and use of movable structures, where the need for permission is managed by order.

The exception to this is the importation of caravans, regulated by [Planning and Building \(Caravans\) \(Jersey\) Order 2023](#); provisions are already in place for a first-party appeal to be made for a refusal to grant permission to import or use a caravan under Article 108(2)(n).

The Panel was specifically commenting on a case brought by a complainant, who was a third-party, and thus its comments need to be considered in this respect. This particular matter is considered further below.

⁴ Set out under Part 6; Additional controls

⁵ under Article 76 of the Planning and Building (Jersey) Law 2002 and Planning and Building (Display of Advertisements) (Jersey) Order 2006

⁶ under Article 81 of the Planning and Building (Jersey) Law 2002 and [Planning and Building \(Moveable Structures\) \(Jersey\) Order 2006](#)

⁷ See: [r.143-2024.pdf](#)

b) Third-party rights of appeal: the principle

Third-party rights of appeal, against the award of planning permission, is an unusual aspect of Jersey's planning system relative to other administrations that are based on a British system of planning: third-party rights of appeal in relation to planning decisions also exist in the Isle of Man's and the Republic of Ireland's planning systems.

They were introduced in Jersey in 2001, by way of an amendment⁸ to what became the Planning and Building (Jersey) Law 2002 on the basis that they represented a '*common sense extension*' to planning legislation.

The original proposition to create the new law had given serious consideration to the introduction of third-party appeals but did not include them on a number of grounds.

Part of the concern of allowing such appeals was the potential effect it would have on the recipient of a planning permission and the rights of a landowner to realise the potential of their land. The ownership of property gives no immediate rights to neighbours over another's property except through legal covenants. The law, indeed the whole planning system, is geared to work in the interests of the community as a whole and is not intended to confer rights on an individual property in lieu of legal rights. On this basis, the then Planning and Environment Committee was of the view that the applicant, as opposed to the objector, had a greater entitlement to an appeal given the fundamental basis of the law which limits, in the community interest, the previously enjoyed rights to do what one wished with one's own property.

It was also considered that there is a natural tendency for objectors to feel that their representation has been ignored when planning permission is granted. It was contended that what is often difficult to convey is that objectors' views have been taken into account but that the content was not such as to modify or reject the reasonable expectations of the applicants for their own property. The Committee was of the view that the 'opening up' of the planning process proposed by the 2002 law would address these concerns.

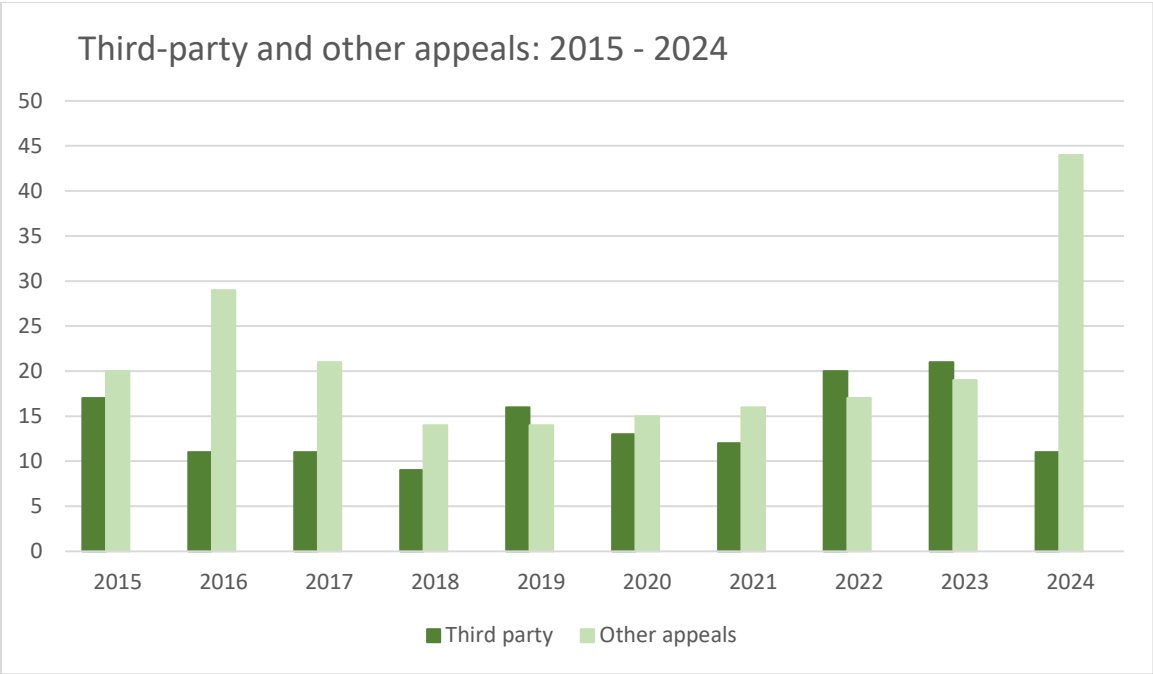
There was further concern that this would also lead to vexatious appeals lodged merely to delay the application process or the development itself. This, in turn would lead to increased costs of running an appeals process.

The matter of delay and increased costs for applicants was also acknowledged. At the time it was suggested that there might need to be '*probably a month, for objectors to lodge an appeal*' and that '*if an appeal is made it could take three or four months ... before the permission becomes effective. Clearly this would have the effect of delaying applicants in carrying out their work and would increase costs. It is important for members to bear in mind that this situation is just as likely to occur when one neighbour objects to another's proposal for a small extension, for example, as it will for more substantial developments.*'

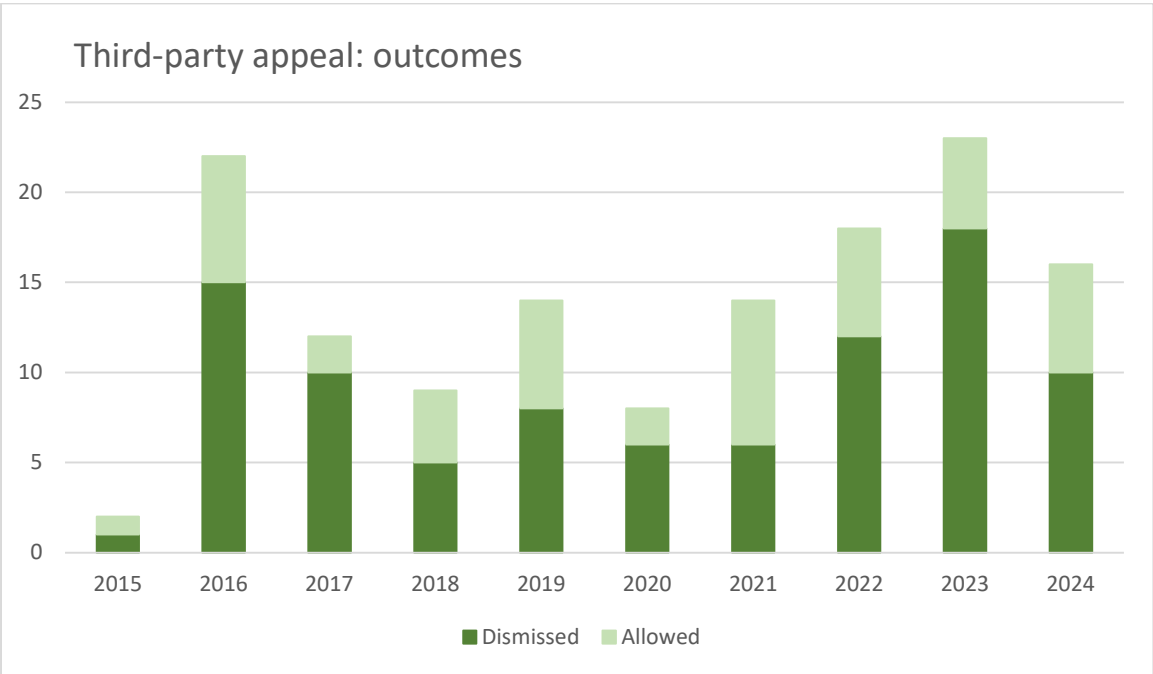
The amendment sponsoring the introduction of third-party appeals, which was supported by the Assembly, recognised that there would be '*minor*' administrative financial and manpower implications, but it was considered that these could be justified in order that '*the right of appeal is extended to all who feel aggrieved by a planning decision*'.

⁸ [States Assembly | P-50-2001\(Amd\)\(3\)](#)

It is evident that third-party appeals now represent a significant proportion of appeals in Jersey. In some years, they have formed a greater or the same proportion of appeals than all others. On average, they represent nearly 40% of the annual total of all appeals; or just over 40% of all appeals.



In terms of outcomes, of the 138 third-party appeals determined between 2015 and the end of 2024, just over a third (34%) have been upheld or partly upheld.



The determination time for third-party appeals, from formal receipt and lodging of an appeal to its determination, is an average of 25 weeks, with a median time of 22 weeks. This does not include the period, of up to 28-days, after the decision to award planning permission is made.

Third-party rights of appeal have existed in Jersey's planning system since 2001; and they were incorporated in to a fundamental review of the planning appeals system in 2015.

c) Limited third-party rights of appeal: extent of right

In Jersey, third-party rights of appeal are limited where a third-party is defined as a person who has an interest in or is resident on land which lies within 50 metres of an application site; and has made a representation prior to determination.

In the Republic of Ireland third-party appeals can be made where a third-party has made a representation in connection with the original application, without limitation.

In the Isle of Man, third parties who can make an appeal against the granting of a permission are generally limited to individuals who are directly affected by a proposed development within 20 metres (except where an EIA would be required) but can also include the local authorities, government departments, Manx utilities and Manx National Heritage (without limitation), where development would affect their functions.

The principle of third-party appeals was considered as part of the introduction of the 2002 law and the limitations imposed in the appeals system sought to ensure that these rights were vested in those islanders most likely to be directly impacted by a development: these are essentially 'neighbour' rights of appeal. This was considered to be a proportionate and appropriate balance at the time of the introduction of the new appeals system in Jersey.

Instances have arisen where third parties have considered themselves to be affected by development proposals but have lived further than 50m away from the application site.

It is also evident that there have been issues in determining whether or not a third-party right to appeal is engaged in relation to an accurate determination of where and how the planning application site boundary is defined, and whether or not a party has an interest in or is resident on land which lies within 50 metres of it.

It is not just neighbours who are affected by planning decisions: decisions about development affects islanders' experience of living and working in Jersey; and in shaping the island's character and appearance. Consideration might be given to widening the rights of appeal for third parties to remove the limitation about having an interest within 50 metres of an application site.

d) Third-party rights of appeal: limitation of decisions against which an appeal can be made

As set out above, the forms of development against which third-party rights can be exercised are currently limited to

- a decision to grant planning permission (under Article 19(3) or (4)); and
- a decision under Article 19(6) to grant or to refuse permission in relation to matters reserved for further approval.

This section of the report considers whether third-party rights should be extended to other decisions made under the Planning and Building (Jersey) Law, in accord with one of the principles of the introduction of the current appeals process, which is that *'parties who are aggrieved at decisions taken under the 2002 Law can request an independent inspector to consider the merits of their case'*.

(i) Appeals against other operations, activities and conditions

In light of the findings of a recent Complaints Panel case⁹, the Minister has already signalled his intention to amend legislation to enable third-party rights to appeal decisions made in relation to moveable structures¹⁰

There are also, however, other activities (such as the display of advertisements) and other operations (such as the importation and use of caravans), which are similarly regulated by order, where there is currently no third-party right of appeal.

The law, at Article 21, allows for applications to be made to vary or remove conditions that were attached to the award of planning permission. These applications can be determined by officers, under delegated powers; or the Planning Committee.

There is a right of appeal, for first parties, where an application to amend planning permission, by removal or variation of a condition, is refused. This appeal right does not currently extend to third parties.

The addition of a building, place or site on to the list of sites of special interest provides a greater level of regulation in relation to operations which, whilst not amounting to development, might affect the special interest of that building, place or site.

Similarly, in the case of trees which are added to the list of protected trees, there is an ability to manage any change to that tree.

Provision exists within the law for appeals to be made in respect of decisions to refuse permission for operations or activities to be undertaken by an owner and (where different) the occupier of the land on which the listed building, place, site or tree is situated. There is, however, currently no right of appeal for third parties in relation to these decisions.

(ii) Appeals against notices: listing

The listing process – be that for buildings and places and sites of special interest – is undertaken - where these assets are deemed to have ‘public importance’. Trees can be added to the list of protected trees where it is in the ‘interests of the amenity of Jersey’.

The assessment of value and public importance is considered by the Chief Officer, who may seek the advice of any person considered to have a particular knowledge of or interest of a building, place, site or tree; and notice is required to be served on the owner and/or occupier of the land.

Whilst the criteria for designation of assets including buildings and places, ecological and geological sites and trees may, of themselves, be the subject of public consultation, the process of listing is not a public one; and does not engage the public, despite the process being required to designate assets on the basis of their ‘public importance’ and ‘public amenity’ value.

At present, the rights of appeal of a decision to include or not, or to remove an asset from a list is vested only in the owner or occupier.

It is, of course, important to recognise that the listing of a building, place, site or tree does not mean that these assets will not be the subject of proposals for change where decisions about

⁹ See: [r.143-2024.pdf](#)

¹⁰ See: [States Assembly | R.143/2024 Res.](#)

works which amount to development requiring planning permission will themselves be subject to third-party rights of appeal.

The listing of an asset does, however, impose additional regulatory control over works to protected assets and gives greater weight to their protection through the planning process. In this respect, therefore, it is perhaps decisions taken not to include buildings, places, sites or trees on a list which might warrant public transparency and access to an appeal mechanism. Without this, there is no clear, public process of the decision-making to consider whether or not a building, place, site, or tree is of sufficient public value to warrant addition to a list.

Part 2: Appeals process and procedures

a) Conduct of appeals by independent inspectors

In developing the model adopted for Jersey's planning appeals system that was adopted in 2015, a significant amount of work, and much detailed consideration was given to alternative models¹¹. These included the following:

- appeals determined by a tribunal with full decision-making powers, chaired by an appropriate planning professional.
- appeals determined by a single inspector with full decision-making powers.
- appeals considered by an independent planning inspector who then makes a recommendation to the Minister, who then makes a decision on the basis of the inspector's findings.

It is the third of these options – consideration of appeals by independent planning inspectors who then make a recommendation to the Minister, to determine the appeal – that was adopted, and has operated since 2015.

Inspectors are required to consider appeals on their merits and then produce a report that highlights the determinative factors of a recommendation. Inspectors present their report to the Minister for the Environment (or, in situations where the Minister is conflicted, the Assistant Minister), who will take the decision on the appeal. Whilst the Minister is not bound to follow the recommendation of the inspector, the law is framed on the basis that they should do so, unless they have a clear and justifiable reason(s) to do otherwise. In such circumstances, it is exceptional for the decision-maker to defer from the inspector's recommendation.

Planning inspectors, currently all from outside of the island, are appointed by the Minister for the Environment, following recommendations from the Jersey Appointments Commission, and their caseload is administered independently by the Planning Tribunal service of the Judicial Greffe¹².

b) Administration by Judicial Greffe

The Planning Tribunal within the Judicial Greffe fulfils an important and independent role of managing the planning appeal process. The Greffe is independent of, and separate to, the 'planning department' (I&E (Regulation)), which is engaged in the appeal process as the 'second party'.

The Greffe is responsible for the receipt and initial registration of appeals, and the management of the appeal caseload of planning inspectors. It will engage an inspector to review a planning appeal case, managing documentation deadlines and ensuring all interested parties – first, second and third – are provided with an opportunity to have their opinions and views considered, whether by exchange of statements of case and/or hearings.

They are responsible for communication and engagement with all parties throughout the appeal process.

¹¹ See P.87/2013 Planning appeals: revised system

¹² see: <https://www.courts.je/tribunals/planning-appeals/planning>

c) Appeals out of time

Under the provisions of the law currently, there is a need for appeals to be made within 28 days of the date of a decision or service of notice, depending on the type of appeal to be made.

The Greffier does have power to provide an extension of time, so that people may have more time to lodge an appeal if particular circumstances have prevented them from doing so within the 28 days; however, the law is currently framed that any such request to extend the deadline must be made within 28 days, and does not, on the face of the law, allow any discretion where an appeal or a request for an extension is made 'out of time'.

It is very rare that a request for more time is made within the time allowed for an appeal to be lodged.

There is established case law that where there is potential for civil rights to be affected that there is potential for discretion to be exercised to enable an extension of time¹³. Some legislation specifically provides such discretion on the face of the legislation, where it is considered to be '*just and equitable to do so*'¹⁴.

d) Cost of appeals

The consultation undertaken to introduce a new appeal system in Jersey showed support for the introduction of a fee. It was considered that a fee contributes to the cost of the service with user pays a well-established principle. Payment of a fee can also deter frivolous appeals from any of the parties concerned.

Part of the justification for the new appeals system was to make the appeals system accessible to more islanders who may not otherwise have been able to afford the previous method of appealing against a decision in the Royal Court, even under modified procedures. There was considered, therefore, to be a need to strike a balance of not being prohibitively expensive but equally to make a meaningful contribution to the costs of the process.

It was also considered necessary to recognise that in the case of applications for planning permission applicants (first-party appellants) will have already paid a fee; and that third-party appellants will not.

There is currently a range of fee payable depending on the nature of the appeal being made.

¹³ See para 13 - [Heath v Minister for the Environment 23-Oct-2023](#) [2023]JRC196

¹⁴ See Article 11 (3) [Employment and Discrimination Tribunal \(Procedure\) \(Jersey\) Order 2016](#)

Type of appeal	Fee (£)
Appeal against refusal of planning permission (i.e. first-party): major development	1,948.50
Appeal against refusal of planning permission (i.e. first-party): minor development	609.40
Appeal against refusal of other permissions, conditions (i.e. first-party):	
Appeal against grant of planning permission (i.e. third-party)	
Appeal against service of an enforcement notice	
Appeal against listing notice or revocation of permission	121.30

e) Time for determination

At the time of the introduction of Jersey's new appeals system, it was envisaged that a simple appeal might take in the region of 10-12 weeks to determine once an appeal has been lodged (i.e. 28 days post-decision).

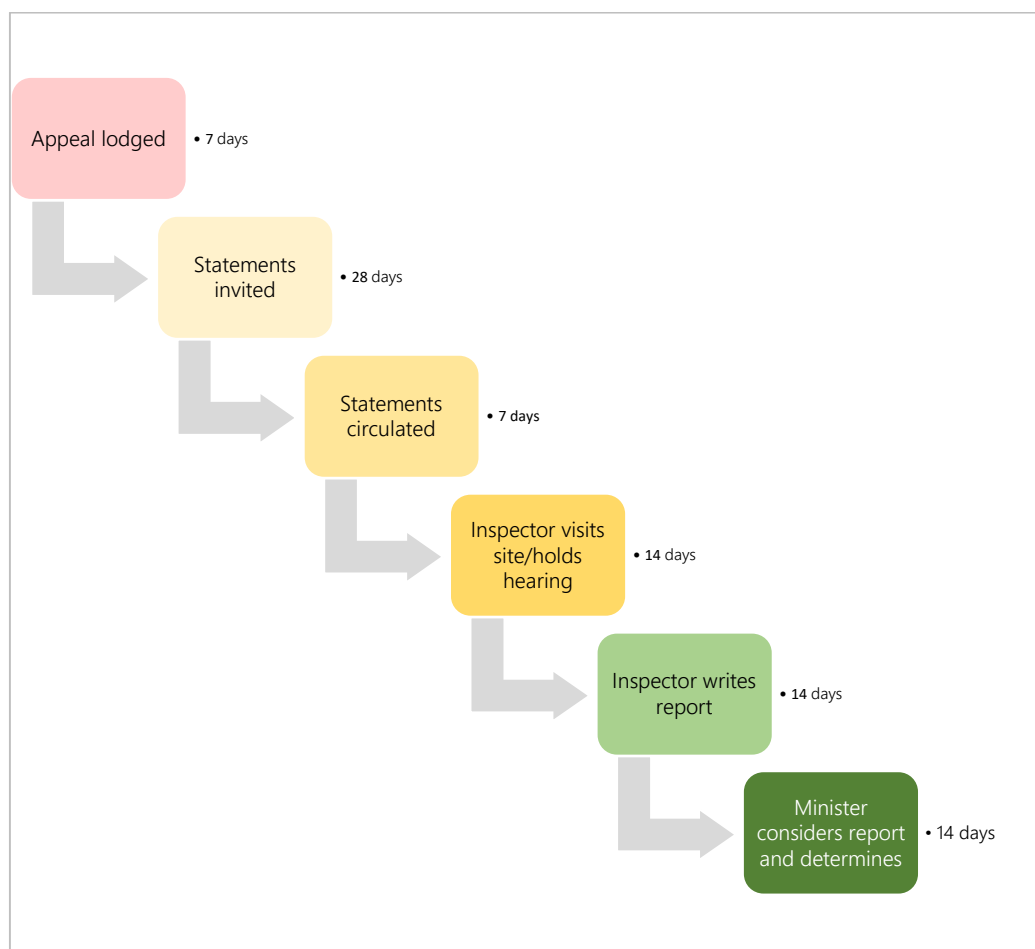
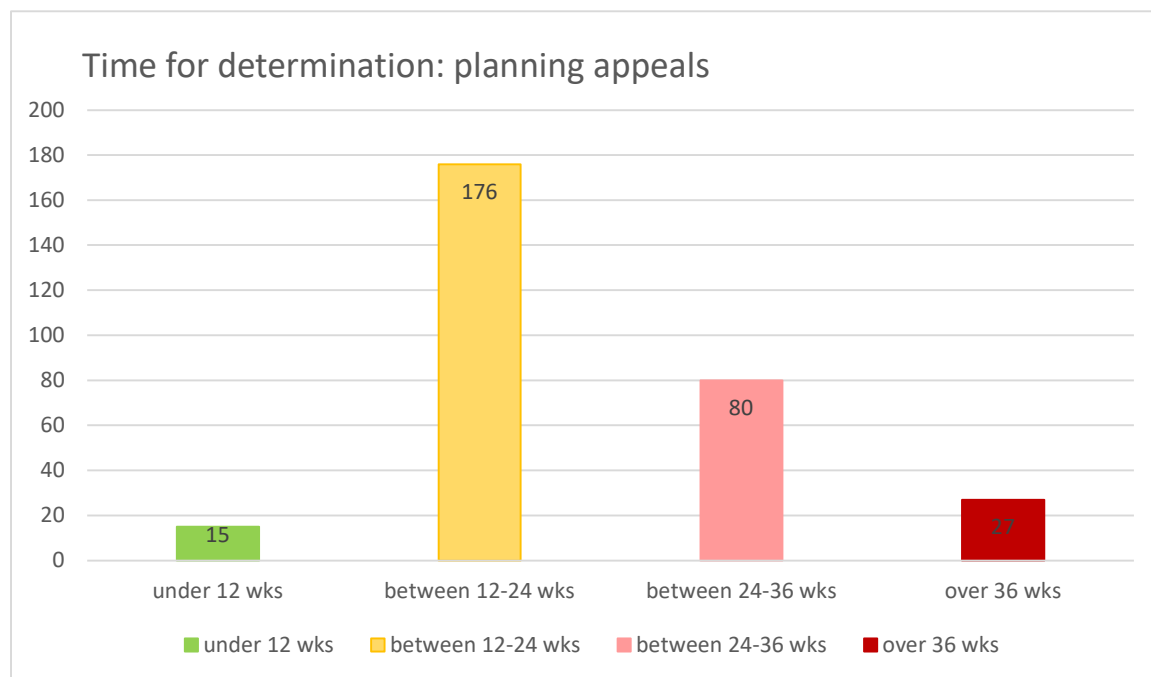


Figure: simple appeal process and timeline envisaged

The actual time taken to review planning appeals (excluding appeals against notices for listing and enforcement) for the period 2015- end 2024 is set out below. This relates to the time taken from the acknowledged lodging of an appeal, and includes the time taken for parties to be invited to submit appeal statements; the advertisement of the appeal; and the consideration of the matter by an inspector, which might include a hearing and a site visit, culminating in a report and recommendation to the Minister or Assistant Minister, to the point of determination. It does not include the 28-day period after the determination of an application within which time an appeal might be made.



The range of time for determination is significant, ranging from six weeks to 122 weeks in one particular case¹⁵.

The average time for determination of all planning appeals (excluding notices) is at 23 weeks; with the median at 21 weeks. This is the same for first-party appeals.

The determination time for third-party appeals is an average of 25 weeks, with a median time of 22 weeks.

The department has adopted performance targets for the determination of planning applications. It aims to determine 85% of applications within eight weeks for minor applications and 13 weeks for major applications, or within an agreed timeframe, if unable to determine the application within the target times.

The Republic Ireland's National Planning Board (an independent body established to determine appeals) has a statutory target of 18 weeks for the determination of most appeal types.

¹⁵ A third-party appeal in relation to P/2015/0978 Egypt Farm, La Rue d'Egypte, Trinity

f) Hearings and written representations

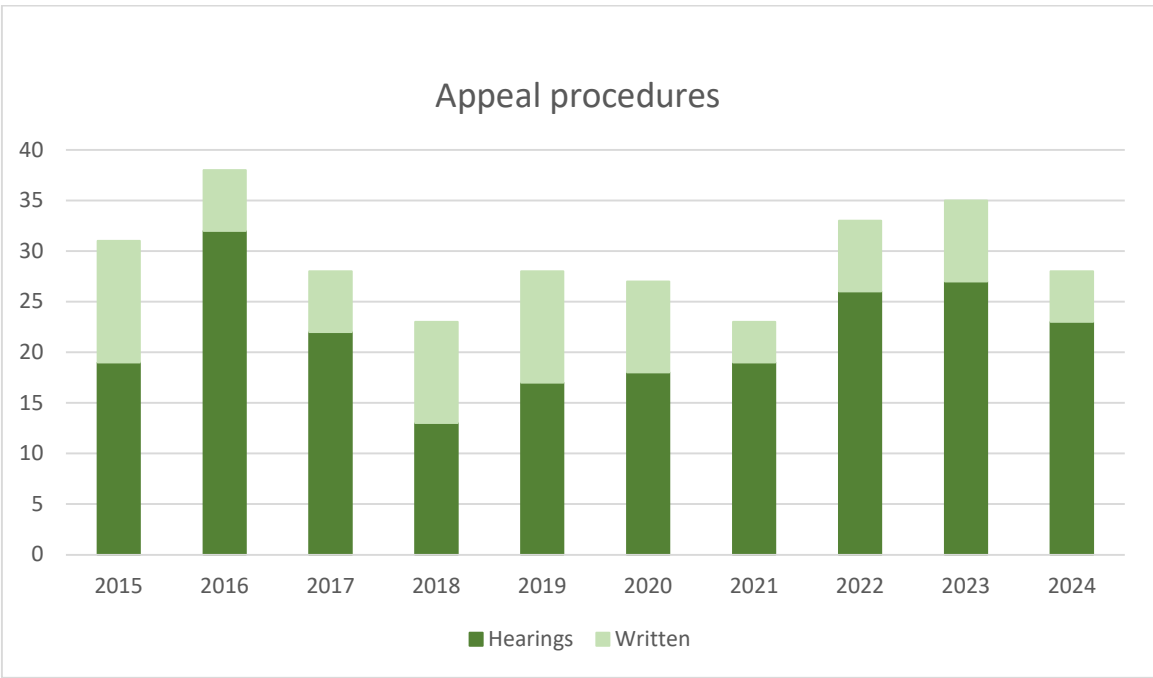
In order to provide an effective and efficient appeals process, when the appeals system was introduced, it was envisaged that there would be two distinct routes for an appeal that would be proportionate to the complexity of the issues raised. In all cases, parties would be invited to submit statements of case, setting out the basis of their arguments either for or against the matter the subject of the appeal.

It was envisaged that appeals would be considered by inspectors on the basis of written representations for minor appeals and appeals of a technical nature; householder applications where there has been little or no public comment; and minor applications subject to third-party appeal where there have been few other representations.

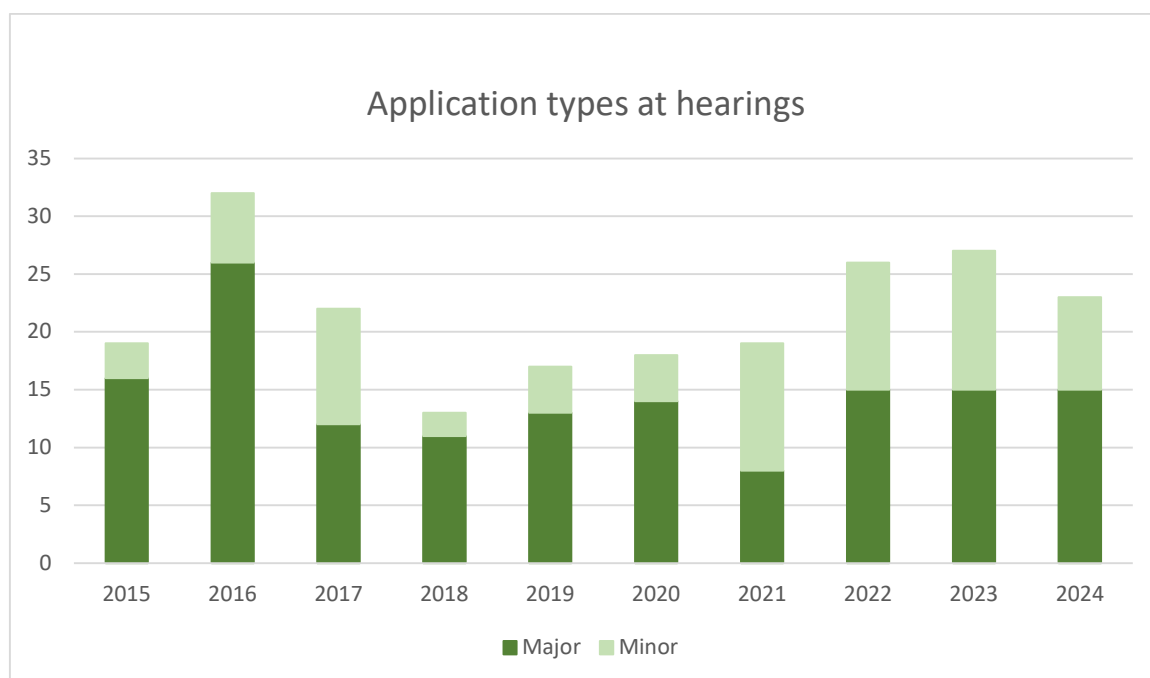
Appeal hearings would only be convened for more complex issues. It was envisaged that planning applications with significant representations; and major applications or appeals against the service of an enforcement notice would be better considered in the context of an appeal hearing.

In all cases, any party may apply to the inspector to request a hearing, subject to consultation with all other parties.

Rather than being exceptional, it is apparent that, on average, over 70% of appeals are the subject of an appeal hearing.



On average, over 30% of appeal hearings deal with what are considered to be minor matters. The proportion of hearings dealing with minor matters has increased since 2020, with nearly 40% of appeal hearings being for minor matters.



Appeals that are the subject of an appeal hearing take a marginally longer time to be determined, at 24 weeks. Appeals dealt with by written representations take on average, slightly less time, at 23 weeks.

In the Republic of Ireland, a charge is made (of €50) where a party requests a hearing.

g) Amended or late plans and papers

For all appeals, in the interests of fairness, it is important that what is considered by the decision-maker - and by all interested parties at the application stage - is essentially the same development proposal that was the subject of the decision against which an appeal is made. The appeal process should not be a means to progress alternatives to a scheme that has been refused or a chance to amend a scheme so as to overcome the reasons for refusal. In the first instance materially changed schemes should be re-submitted as a fresh planning application.

There may, however, be occasions where amendments could, by exception, be made to a scheme without prejudice to the delivery of a fair and more efficient system.

This issue has been raised and considered within the context of the English planning appeals system and has been the subject of legal deliberation.¹⁶ This has established two key tests which might be considered, by planning inspectors, in deciding whether to accept amendments to a development proposal, by exception, through the appeals process. The tests are as follows:

- **the substantive test** – whether the proposed amendment(s) involves a substantial difference or a fundamental change to the proposal.
- **the procedural test** – whether, if accepted, the proposed amendment(s) would cause procedural unfairness to anyone involved in the appeal. The change need not be substantive

¹⁶ *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the “Wheatcroft principles” set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982)

or fundamental to require re-consultation and, even potentially beneficial change may need to be subject to re-consultation and may not pass the procedural test.

There are appeals cases in Jersey where planning inspectors have made reference to and applied these tests in considering planning appeals¹⁷. Where amended proposals have been judged to satisfy them, this has meant that these applications have been determined, on appeal, without a fresh application having to be made.

The basis upon which amended plans may have been accepted as part of the consideration and determination of planning appeals has been based on assessment by individual inspectors on a case-by-case basis.

h) Enforcement appeals: ground (h) the award of planning permission

Appeals made in respect of the service of an enforcement notice can seek, as part of the basis of the appeal, to secure planning permission (this is known as a 'deemed planning application') under the auspices of Article 109(2)(h). This process provides a route by which the alleged breach of planning control can be tested, through a public and transparent route of a planning application.

This affords the applicant an opportunity to set out the benefit of their development; for all interested parties to comment; and for it to be assessed against the policies of the island plan. In the event that planning permission is awarded (with or without conditions), this enables a breach to be regularised; and a refusal of permission clarifies that the development is unacceptable and results in the requirement for the breach of planning control to be addressed by compliance with the terms of the enforcement notice.

The legislative requirements for such an appeal are set out in Article 109(4) and simply require the payment of the prescribed fee (set at double the normal fee on the basis that any such application is retrospective) and, where the appellant is not the owner of the land in question, the appropriate ownership certification.

It is relevant to note that in some administrations e.g. Scotland, the ability to obtain planning permission through an appeal against an enforcement notice i.e. the deemed planning application route, has been repealed. This has been done to enhance planning enforcement by limiting the ability of developers to delay compliance with planning regulations through appeals against enforcement notices, so that using appeals to delay enforcement becomes a less attractive proposition.

i) Power to decline to determine respective planning permission

In the event that the A109(2)(h) right of appeal is retained - enabling the submission of a retrospective planning application in order to regularise an alleged breach of planning control - it may also be beneficial for consideration to be given to the introduction of a mechanism for the planning authority to be able to decline to determine any subsequent planning application for the development of any land where any such permission might relate to matters raised in an enforcement notice, and where an application is submitted outwith the enforcement notice appeal process.

¹⁷ See, for example, inspectors' report for P/2023/0723: Le Cotil d'Argile, Le Mont de la Rocque, St. Brelade; and P/2022/1619: South Hill Offices, South Hill, St. Helier

This might serve to ensure that the ability to deal with an alleged breach of planning control remains focused within the bounds of an appeals process and is not subject to further protraction and delay. A similar provision exists within the English planning system.¹⁸

¹⁸ See 70C: Power to decline to determine retrospective application [Town and Country Planning Act 1990](#)

Part 3: Reviews and determinations

a) Review of a planning decision by the Planning Committee: the principle

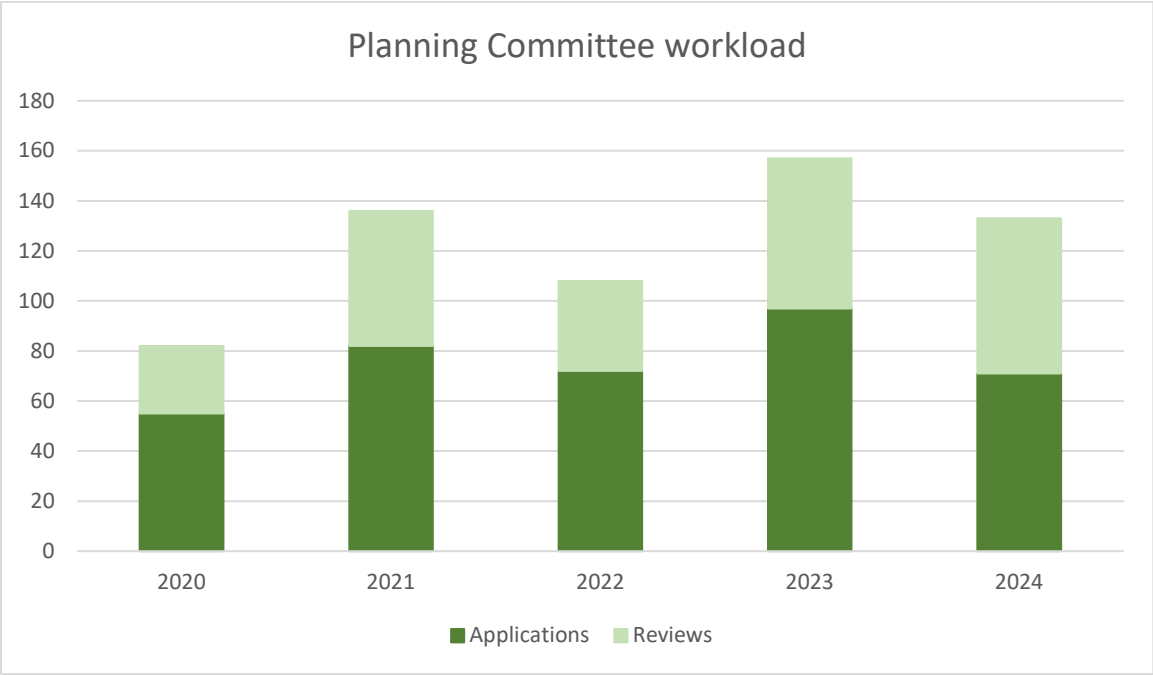
Reviews were formalised with the introduction of the appeals system and serve to enable decisions that are made under delegated powers by officers to be reviewed by the Planning Committee. A review can be requested in relation to a decision to refuse planning permission or to attach a planning condition to the award of planning permission.

Their formalisation was justified on the basis that they provide a ‘free and fast’ *de facto* system of appeal to the applicant; and that this system might serve to reduce the number of formal appeals being made to the Minister.

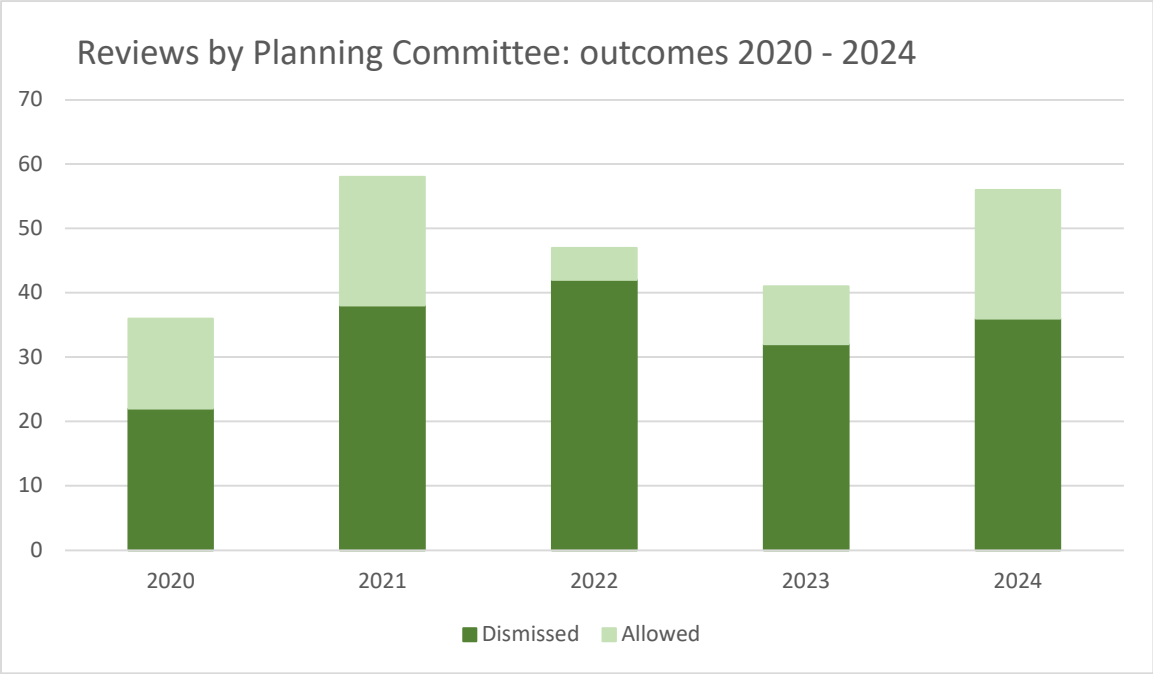
Reviews must be requested within 28 days of the date of a decision. They will usually be considered at the next available Committee meeting following receipt of a review request (the Planning Committee generally sits once a month).

The number of reviews requested has increased over time and represents a significant proportion of the work of the Planning Committee, reaching almost half of committee business in 2024.





The majority of reviews are dismissed by the Planning Committee, where the original decision to refuse planning permission at a delegated officer level is upheld. On average, in the five years between 2020 and 2024, over 70% of reviews are dismissed. This means that less than 30% of all reviews are allowed, where the original decision to refuse planning permission is changed and planning permission granted, following review of the matter by the Planning Committee.



In a very small number of cases (2.5% of all review decisions in the five-year period between 2020 and 2024) review decisions made by the Planning Committee are subsequently overturned on appeal to the Minister.

Since its formalisation in 2001, the review process, where a delegated decision to refuse planning permission taken by an officer is heard by the Planning Committee, provides a *de facto* free appeal process that is available to the applicant. This is also available where the applicant wishes to challenge the conditional grant of planning permission.

It would also appear that this process is quicker than the formal appeal process to the Minister.

b) Review requests: new information

The process for requesting review requires the applicant to submit a form, setting out the reasons why they disagree with the original officer decision. In some instances, applicants will provide significant supporting documentation instead of using the limited space that is available on the form.

The guidance about requesting a review makes it very clear that applicants 'can't amend the application or include additional information that wasn't available when the original decision was made'.¹⁹

This means that the Planning Committee's review is very much limited to the details associated with the original application. By limiting the review of a decision to the information that was available at the time of the application, in addition to the reasons why the applicant disagrees with the reasons for the decision, the Committee is unable to deal with changes which might not materially change the substance of the proposal; or which might not cause procedural unfairness to anyone involved in the original application.

If the Committee were able to consider changes which passed the tests outlined in the Wheatcroft principles (see Part 2: amended or late plans, above), this might make for a more efficient and effective planning service.

c) Determination by the Minister: the principle

The model adopted for Jersey's planning appeals system in 2015 involves consideration of appeals by independent planning inspectors who then make a recommendation to the Minister, to determine the appeal. Whilst the Minister is not bound to follow the recommendation of the inspector, the law is framed on the basis that they should do so, unless they have a clear and justifiable reason(s) to do otherwise.

This arrangement directly addresses the constitutional issue of where the decision-making power lies and the issue of accountability to an electorate, whilst at the same time allowing an independent consideration of the merits of the appeal.

In order to provide a fair system, the role of the Minister has had to change with the introduction of the new appeals system in 2015. Most significantly, the Minister cannot be involved in an original decision against which an appeal could be brought. This arrangement has meant that the Minister cannot be involved with applications for planning permission, either in terms of discussing specific proposals or determining an application for planning permission. The same applies for the Assistant Minister, who is required to perform this role where the Minister, for whatever reason, might be conflicted.

¹⁹ [Review of a planning decision or condition by the Planning Committee](#)

d) Determination by the Minister or a panel

Where a planning application is considered to be of such significance to the island's population, or part of it; or where a proposed development would be a substantial departure from the island plan, the Minister can call a public inquiry²⁰. This enables the Minister to appoint a planning inspector to hold a public inquiry into the development proposal and, subject to the terms of reference for the inquiry, to make recommendations about the proposal to the Minister. Public inquiries have been called in a limited number of circumstances.²¹

In 2022, changes were made to law to enable the Minister, where they considered that the nature of the application or the decision to be of such significance for the public of Jersey, to refer the matter the subject of a public inquiry to a panel for determination. Any such panel is required to consist of the Minister and at least two other Members of the States Assembly. This change was introduced to provide more robust decision making, and to provide better governance with limited impact to individuals.²²

The provision has been little used since its introduction, in March 2022, and has been limited to the consideration of the outline planning application for the development of the St Helier waterfront²³. Whilst the prospect of a development proposal being of such significance for the public of the island being determined on appeal may be limited, it may arise.

4. How to respond

You may respond to specific questions (see section 5), or provide your views, in a variety of ways.

- by completing the online survey: planning appeal review [\(include a link\)](#)
- by email to islandplan@gov.je
- by post to Place and Spatial Planning, Cabinet Office, Government of Jersey, Union Street, St Helier, JE4 8PF

²⁰ See Article 12 of the Planning and Building (Jersey) Law 2002

²¹ (see: [Public inquiries and examinations in public \(EiP\)](#)).

²² [States Assembly | P-76-2021](#)

²³ [South West St Helier Waterfront \(Public Inquiry\)](#)

5. Questions

Part 1: Aggrieved parties and rights of appeal

a) First-party rights of appeal: comprehensiveness

1. Should there be extension of first-party rights of appeal i.e. to applicants, against decisions to refuse permission for other operations and activities (such as the control of advertisements and movable structures)?

Strongly agree/agree/don't know/disagree/strongly disagree

b) Third-party rights of appeal: the principle

2. Should the principle of third-party rights of appeal against decisions to grant planning permission be part of Jersey's planning appeals process?

Strongly agree/agree/don't know/disagree/strongly disagree

c) Limited third-party rights of appeal: extent of right

3. Should the limitation to the rights of appeal for third parties be removed (i.e. that the requirement to have an interest within 50 metres of an application site in order to be able to make a third-party appeal).

Strongly agree/agree/don't know/disagree/strongly disagree

d) Third-party rights of appeal: limitation of decisions against which an appeal can be made

(i) Appeals against other operations, activities and conditions

4. Should third-party rights of appeal be extended to include decisions to grant permission to erect or station a movable structure?

Strongly agree/agree/don't know/disagree/strongly disagree

5. Should there be Third-party rights of appeal against decisions to grant permission to display an advertisement?

Strongly agree/agree/don't know/disagree/strongly disagree

6. Should there be third-party rights of appeal against the amendment of planning permission, involving the variation or removal of conditions?

Strongly agree/agree/don't know/disagree/strongly disagree

7. Should third-party rights of appeal against decisions to grant permission for activities and operations affecting listed buildings and places, sites of special interest and protected trees be added?

Strongly agree/agree/don't know/disagree/strongly disagree

(ii) Appeals against notices: listing

8. Should there be third-party rights of appeal against any decision whether or not to include an asset such as a building or place; a site of special interest; or a tree on a list?

Strongly agree/agree/don't know/disagree/strongly disagree

Part 2: Appeals process and procedures

a) Conduct of appeals by independent inspectors

9. How satisfied are you with the role of independent planning inspectors in Jersey's planning appeals process?

Very satisfied/Fairly satisfied/Neither satisfied or unsatisfied/Not very satisfied/Not at all satisfied

b) Administration by the Judicial Greffe

10. How satisfied are you with the role of the Judicial Greffe (who run the Planning Tribunal) in Jersey's planning appeals process?

Very satisfied/Fairly satisfied/Neither satisfied or unsatisfied/Not very satisfied/Not at all satisfied

c) Appeals out of time

11. Should the law be amended to allow more flexibility to consider appeals that are 'out of time'?

Strongly agree/agree/don't know/disagree/strongly disagree

d) Cost of appeals

12. Does the cost of making an appeal against a planning decision strike an appropriate balance between being affordable and accessible whilst making a meaningful contribution to the cost of running the planning appeals service?

Strongly agree/agree/don't know/disagree/strongly disagree

13. Are the fee levels for different types of planning appeals appropriate?

Strongly agree/agree/don't know/disagree/strongly disagree

e) Time for determination

14. Should a performance target be established for the determination of planning appeals?

Strongly agree/agree/don't know/disagree/strongly disagree

f) Hearings and written representations

15. Should requests for a hearing be the subject of a fee?

Strongly agree/agree/don't know/disagree/strongly disagree

g) Amended or late plans and papers

16. Should amended or late plans and papers be considered, by exception, as part of the appeals process where they do not involve a substantial difference or a fundamental change to the proposals and where they would not cause procedural unfairness to anyone involved in the appeal?

Strongly agree/agree/don't know/disagree/strongly disagree

h) Enforcement appeals: ground (h) the award of planning permission

17. Should the ability to apply for retrospective planning permission as an integral part of an appeal against a breach of planning control that is alleged in an enforcement notice be retained within the law?

Strongly agree/agree/don't know/disagree/strongly disagree

i) Power to decline to determine respective planning permission

18. Should there be the ability to decline to determine a retrospective planning application for works that are already the subject of an appeal against a breach of planning control is introduced?

Strongly agree/agree/don't know/disagree/strongly disagree

Part 3: Reviews and determinations

a) Review of a planning decision by the Planning Committee: the principle

19. Should applicants continue to have the right to request a Planning Committee review when their planning application is refused under delegated powers, as part of Jersey's planning appeals process?

Strongly agree/agree/don't know/disagree/strongly disagree

20. Should third parties be able to request that the Planning Committee review a decision made under delegated powers to grant planning permission?

Strongly agree/agree/don't know/disagree/strongly disagree

21. Should requests for the Planning Committee to review a decision made under delegated powers be subject to a fee?

Strongly agree/agree/don't know/disagree/strongly disagree

b) Review requests: new information

22. Should late plans and papers be considered, by exception, as part of Planning Committee reviews where they do not involve a substantial difference or a fundamental change to the proposals and where they would not cause procedural unfairness to anyone involved in the appeal?

Strongly agree/agree/don't know/disagree/strongly disagree

c) Determination by the Minister: the principle

23. How satisfied are you with the role of the Minister in Jersey's planning appeals process?

Very satisfied/Fairly satisfied/Neither satisfied or unsatisfied/Not very satisfied/Not at all satisfied

d) Determination by the Minister or a panel

24. Should the Minister have the ability to convene a panel for significant planning applications?

Strongly agree/agree/don't know/disagree/strongly disagree

Any other comment

Do you have any other comments that you would like to make about Jersey's planning appeals process and the need for change?

ENDS