

New planning appeals could mean faster and fairer system

Ogier's principal planning lawyer, Claire Smith, looks at Jersey's planning appeal process following her involvement in one of the first appeals under the new system.

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Jersey's new planning appeals system, which has been in effect since March, should make it easier for applicants to successfully challenge refused planning applications and for third parties to challenge granted consents.

Under the old system you had to prove that the decision to refuse or grant planning consent was legally unreasonable - a high legal hurdle to pass - which meant the majority of appeals were dismissed.

Under the new system appeals will be determined on the individual merits of the case which, it is hoped, will be less legalistic and less expensive than was the case for appeals before the Royal Court.

Discussion around the changes has seen speculation about the likely impact of the introduction of an independent merits-based appeal process for decisions and actions taken under the Planning and Building (Jersey) Law 2002.

The intention seems to have been that the consideration of appeals by independent inspectors, who would report to the Minister for Planning and Environment to make a final decision, would lead to a faster, fairer, more efficient planning appeals system.

It is probably too soon to say whether any of those aims have been achieved but it is notable that only two appeals have been heard so far since the new system came in. We at Ogier advised on a particularly significant appeal which went before the inspector in November 2015 and so have in depth practical experience of the new system backed up by genuine planning law expertise.

Little detail of the internal workings of the new process has been published, mainly because, unlike in England and Wales, extensive guidance on the new appeal process has not been issued.

Inspectors are allocated appeals by the Judicial Greffe, who administer the process, and appeals are considered either by written submissions or by the interested parties appearing at a hearing chaired by the inspector.

But the devil is very much in the detail, and as the new process beds down it is vital to be properly represented by specialist planning advisors. Planning legal specialists have a detailed understanding of the planning merits of a particular case and the Ogier planning law team has considerable experience of dealing with the new Jersey planning appeal inspectors both in Jersey and the UK, making us best placed to represent appellants and bringing greatly improved prospects of success.

If you're buying and selling a property, or developing, extending or re-developing your dream home, Ogier's property team can provide comprehensive strategic advice on policy allocations and zoning, viability, and bringing development sites forward, with 'legal robustness' health checking of planning applications (including environmental statements) to reduce the risk of legal challenge and third party appeal.

We negotiate planning conditions and draft planning obligation agreements, as well as providing advocacy if you end up at a planning Appeal Hearing. We work seamlessly alongside your team of architects, planning consultants and builders, or can recommend specialists to provide those services based on our extensive local knowledge.

The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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