COLLAS CRILL

Challenging planning decisions: Third party appeals

AUGUST 2019

Where do third parties stand in Guernsey?

Currently there is no formal process of appeal for those aggrieved or third party applicants against a planning decision in Guernsey. A third party, who may have voiced their objections before the decision either in writing or by speaking at an Open Planning Meeting, has no right to appeal either the grant of planning permission by the Development and Planning Authority (DPA) at the outset, or after subsequent decision by the Planning Tribunal should the applicant appeal a rejected application.

The only option currently available to third parties in Guernsey, aside from organising coordinated objections at the Open Planning Meeting, is Judicial Review: A costly process which essentially is limited only to situations where:

1. the decision was irrational; or
2. procedural requirements were not correctly followed.

While there is no specific time bar before such a claim can be made (unlike the UK's 6 week time bar) there is clearly an overriding requirement to bring proceedings as quickly as possible. It is therefore advisable that third parties or aggrieved neighbours make full use of their chance to object at Open Planning Meetings to put forward their objections before a decision is made.

Planning and the DPA have been the subject of much debate in recent weeks. Deputy Jennifer Merett's recent requete has prompted further discussions primarily concerned with protecting open land and green spaces on the island, but also contains the suggestion of a possible third party appeal system in Guernsey.

How do third party appeals work in Jersey?

Jersey currently allow third parties to make planning appeals, provided that they:

1. have made a written statement about a neighbour's application (or objected to the original application); and
2. reside or have an interest in land within 50 metres of the application site.

Third party appeals in Jersey cost £525.30 to lodge, and must be lodged within 28 days of the contested planning decision using an Appeal of a Decision Form. On this form, a third party is required to provide a brief outline of why they disagree with the decision.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Should this initial appeal be accepted by the Judicial Greffe, an independent inspector will be assigned and a further 28 days is allowed to submit a more detailed appeal including supporting evidence and documentation. Most appeals will involve a hearing chaired by an inspector, but some appeals can be considered based on written statements. No additional issues can be raised after the detailed appeal is submitted, so it must be comprehensive.

The appeal will be considered by the inspector, who will make a recommendation to the Minister for the Environment, who makes the final decision and all parties will be informed of the outcome. Applicants can usually expect a decision around ten weeks after their appeal's acceptance, although the court often has a large volume of appeals to process, so a four to six month waiting period is a more realistic timeframe for a decision.

What about other Jurisdictions?

The Republic of Ireland has allowed third parties the right of appeal since 1963, and served as a valuable case study referenced by the UK government when debating the potential introduction of third party appeals in the UK as a result of the Human Rights Act 1998. Ultimately, the UK Government decided against allowing third party appeals on the grounds that it would likely cause unnecessary delay or administrative problems with planning.

In 2004, Northern Ireland considered the possible introduction of third party appeals. The arguments for allowing third party appeals centred mainly on ideals of equality and natural justice and combating 'environmentally unfriendly decisions', while the arguments against centred on the potential for high costs and delays as a result of third party appeals.

In each case, advocates on either side appreciate the need for a transparent and accessible planning process with opportunities for third party input.

Are third party appeals good for Guernsey?

While the current planning application process in Guernsey is not without its flaws, its aim has always been to enable the public to see the decision making process transparently and have their say through Open Planning Meetings. The meetings, which allow members of the public four minutes each to voice their objections, are as open and consultative as reasonably possible, providing a forum for third parties to input their views and concerns.

Third party appeals, while perhaps bringing some additional opportunities for aggrieved neighbours to formally object to an application or a decision, would also bring some potentially adverse consequences.

There is a concern that a third party appeal process could be vulnerable to misuse, as it would allow potentially frivolous objections not based on material planning considerations, or even vexatious objections. Spending time and money on NIMBY type appeals would be wrong.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

On a larger scale, the increased costs of defending appeals and the delays to construction will not only affect private residential, commercial and industrial development, but also to infrastructure developments, bringing wider economic and social implications which affect islanders' lives.

It is a tricky balancing act. What is in the best interests of the island?

Unless a third party right of appeal can be filtered swiftly at the outset to weed out inappropriate, without merit, or malicious appeals or there is a fast track way of dealing with them, I have to remain concerned that they will surely extend the whole planning process to unacceptable timelines that will do nothing for our economy and the construction industry.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Jason Green

Senior Partner (Advocate) | Guernsey

t: +44 (0) 1481 734216 | **e:** jason.green@collascrill.com



Paul Nettleship

Consultant (Advocate) | Guernsey

t: +44 (0) 1481 734200 | **e:** paul.nettleship@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.