



PLANNING A DISPUTE?

SEPTEMBER 2019

Background

Planning in Guernsey has long been an easy target for complaints, often providing a hot-topic of discussion for many would-be politicians. Currently overseen and implemented by the Development and Planning Authority (DPA), the Island Development Plan (IDP) is the policy, approved by deputies, which guides planning decisions.

The IDP is subject to annual monitoring, and has been the focus of several news articles and a requete from deputies calling for change; the primary purpose of most being protecting Guernsey's reducing number of green-spaces.

Decision making process

The majority of planning applications are delegated to a planning officer; the remaining applications are decided by the political board of the DPA itself, comprised of five deputies with no planning expertise who sit without conflict of interest to make decisions guided objectively and without bias by the planners.

The DPA may require that an application should be made at an Open Planning Meeting. The primary aim of these meetings is to enable the public to see the decision making process transparently and have their say.

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; invariably the matters are highly charged and controversial.

Appeal process

The appeal process is an inquisitorial process, and hearings are informal and often feel like a detailed discussion and investigation. Each appeal is appointed a tribunal, led by the chairman, consisting of professional planners and ordinary members who are often surveyors and lawyers. They are completely independent of the States.

At the hearing, individual representors who may have objected to the original application cannot be heard, but the tribunal have access to the whole file from the DPA so will consider all objections made before reaching their decision.

It is a very managed hearing; whilst each side is able to ask questions of the other, it can be a frustrating process as the chair will have their own way of doing things, meaning a tactical line of questioning prepared ahead of the hearing can be cut short or changed by the chair who may ask the questions in a different way.

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Practical advice for applicants

The current success rate of planning applications is higher than ever before, although it is still advisable to take the following practical measures to have the best chance of a successful application:

1. Applicants should endeavour to engage with the DPA as early in the process as possible and maintain constant dialogue.
2. The DPA encourage applicants to arrange 30 minute meetings with a duty planning to consider proposals and provide advice.
3. Pre-application enquiries can be submitted on a standard form setting out what the proposal is, from which an applicant can receive feedback written without prejudice.
4. The DPA are very willing to meet on site to consider and discuss any issues with the application, and will often come back to ask for more information before deciding on the application.

If dealing with a more complicated planning application, there is benefit in the applicant taking planning or legal advice to ensure that the application includes facts and evidence which may be needed on appeal, as a tribunal can only consider information available to the DPA when deciding on the original application.

Practical Advice for those aggrieved

While aggrieved third parties currently have no right of appeal, there are practical measures which they can take from the outset of an application to ensure their objections are heard. These include:

1. Being familiar with the IDP and other relevant policies (including overriding States policies which apply).
2. Ensure an objection is made in writing in the fullest terms within 21 days of the application being advertised.
3. Try to gain support from other aggrieved parties; spread the word and petition to groups and organisations who may wish to get involved.
4. Remember that only policy and material planning considerations are relevant.
5. If the application goes to an Open Planning Meeting, organise coordinated objections with others to ensure each four minute window is used effectively.

Conclusion

Guernsey possesses a planning regime appropriate for the 21st Century. Whilst updating and improving policy remains a continual task, the appeal process is more user-friendly; it enables do-it-yourself litigation and provides a far less formal setting where the chair takes the lead and not the parties.

The DPA's wish to be more engaged from the early stages of an application is seeing more applications being granted, even if the time taken to reach a decision is on the slow side.

Watch this space in terms of how things will progress following the DPA's commitment to refresh things and the work being done following Deputy Jennifer Merett's successful requote.

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