

## **Planning Appeals – A Guide**

### Introduction

An appeal can be made to the Minister of the Department of Environment Food and Agriculture against the decision made on a planning application and where the person who made the application, or another 'Interested Person', does not agree with the decision or conditions attached to any approval. Unlike other jurisdictions in the Isle of Man an appeal may be lodged against an approval or the refusal of a planning application, and by persons other than the applicant parties providing they have been accorded the powers to do so.

Persons intending to appeal against a decision of the Department should consider the matter carefully before doing so. In particular they should thoroughly consider the Officer report and the reasons for refusal, or conditions of approval.

### Who can appeal?

Whilst an applicant and local authority will always have powers of appeal, any other parties to an application will be notified if they also have such powers within the body of their decision letter. These powers are referred to as 'Interested Person' status – as defined in 6(3) the Town and Country Planning (Development Procedure)(No2) Order 2013

Persons who have such power and who may wish to contest the decision or disagree with the conditions/reasons attached to it may lodge an appeal.

### How to submit an Appeal

Once a planning application has been determined a formal notice of the decision will be issued as soon as is practical after the decision has been made. The notice will include the conditions of any approval or reasons for refusal. The decision issued will only become final when the time for requesting an appeal has expired, or any appeal has been determined, whichever is later.

A decision notice is issued to the applicant or their agent and a letter sent to all other parties who contributed to the consideration of the application. Guidance is included in the decision notice and letter advising the recipient whether they have been accorded powers to appeal the decision and, should they wish to, how to lodge an appeal.

In the case of a refusal the decision notice to the applicant or their agent will be accompanied by a copy the officer's report.

The appeal must be in writing to the Department, signed by the Appellant, and submitted to the address as follows within 21 days of the date of the Notice being issued. An appeal application form is available on the Government website.

For an appeal to be valid it must:

- Be received in writing, signed and validated within 21 days of the date of the planning decision notice

- be submitted by the applicant, their agent or an interested person, as defined by the Town and Country Planning (Development Procedure)(No2) Order 2013
- include the reasons for making the appeal.
- be supported by payment of a planning appeal fee (as prescribed under Section 1(1) of the Fees Duties Act 1989)
- include an election to have the appeal considered by inquiry or written representation

Failure to include ALL criteria will render an appeal invalid.

The administration for a planning appeal is managed by the Cabinet Office and planning appeals administration in the Isle of Man is governed by Article 8 of the Town and Country Planning (Development Procedure)(No2) Order 2013.

**All** planning applications, upon which an appeal is lodged, will be subject to an appeal fee. Later withdrawal of an appeal will not constitute a refund of the appeal fee.

Appeals can be determined based upon written statements or by interested parties attending a hearing. Many appeals can be satisfactorily determined without a hearing, based purely on written submissions and a site visit by the Inspector. Written considerations are usually quicker than a hearing, and will save any expenses a party may incur in order to attend a hearing.

Where an appellant may request the form of the appeal to be in writing, another party may opt for a hearing, accordingly the hearing request will override all others.

All parties (regardless as to status) will be notified where a valid appeal has been lodged.

Should a party receive notice that an appeal has been lodged, and had powers and intention to submit their own, it is recommended that they still do so. An appellant can withdraw their appeal at any point prior to its determination.

Please note that an appellant may withdraw the appeal by giving notice in writing to the Cabinet Office

- at any time prior to 7 days from the date of the scheduled commencement of an inquiry; or
- in the case of a written representation procedure, at any time before the final date of the receipt for the written submission.

Once an appeal has been lodged, the Planning administration staff will convey a complete copy of the application file, along with all details relative to the consideration (including all representations made) to the Cabinet Office. The Planning Appeals Administrator, based in the Cabinet Office, will refer the appeal and all correspondence to an independent person (Planning Inspector), appointed by the Council of Ministers, to consider the matter. Thereafter, all administration in relation to the appeal will be carried out by the Cabinet Office until the Planning Inspectors Report has been forwarded to the Department.

## Role of the Planning Inspector

There are two separate procedures for dealing with appeals, the Written Procedure and Inquiry Hearings. In all cases the Inspector carries out a site visit accompanied by an officer of the Cabinet Office. The Inspector will not receive any evidence or seek to interact with any parties during their visit

The Planning Inspector has certain specific functions set down to perform on behalf of the Department. These functions are set down under Article 8(7) of the Town and Country Planning (Development Procedure)(No2) Order 2013, in summary, they:

1. must consider the application and any written submissions made with respect to it;
2. may in the case of an inquiry only, hold a pre-inquiry meeting to be convened on his or her behalf by the Cabinet Office;
3. must in the case of an inquiry only, give to the appellant, the Department and every interested person an opportunity to appear before him or her on a date fixed and to make oral representations and to call and examine witnesses;
4. may invite any Government Department (including any Divisions of a Department) or any other body or person to provide technical advice; and
5. must make to the Department a report in writing that includes the Planning Inspector's recommendations as to the determination of the appeal.

## How appeals are considered

For both the Written Procedure and Inquiry Hearings, participants will be invited to make written submissions.

The Planning Inspector will consider not only the documentation submitted to the Department as part of the original application, but also further written submissions, which will be sought from all interested parties on their behalf by the Planning Appeals Administrator of the Cabinet Office.

The Planning Appeals Administrator aims to request written submissions as soon as the appeal is received. However, this may not always be possible as it depends on the number of appeals being progressed at any one time.

When requesting written submissions, the Planning Appeals Administrator notifies interested parties of the date and time by which the documents must be received. This is normally within 21 days of the request. If a submission is not received within the time limit, the Inspector may exclude a late submission in his consideration of the appeal. This applies in particular where it is not possible to circulate copies of the statement to other interested parties in advance of a hearing.

Whilst the reason for an appeal will have substantiated the original appeal request, the grounds of appeal made by an appellant in their written statement (making up the appeal submission) should be set out clearly the detail of their appeal.

Submissions may be accepted via e-mail with the agreement, in advance, of the Appeals Administrator.

Appeal representations should explain why the appellant disagrees with the Department's decision, and deal with each of the reasons given for refusing, or the conditions of approving the application. An appeal on the grounds that the decision is 'unacceptable' will not suffice in planning terms. It should be noted that the Inspector will consider the application in full, even when an appeal is purely against a condition of approval, as the Minister is empowered to reverse or vary any part of the Department's decision.

#### Additional Procedures for Inquiry Hearings

Inquiry hearings, when requested, are usually conducted by the Planning Inspector in Government Offices. The Planning Inspector allows all parties opportunity to state their case, call any witnesses, and question any evidence produced by others.

Interested parties are normally given at least 21 days notice of the date and time of the hearing. The Department will be represented at hearings, usually by the Planning Officer who raised the report and original assessment of the application. All other parties should make arrangements to present their own case, either personally or by a representative.

It should be noted that hearings are not formal legal proceedings and where parties engage legal representation, such individuals cannot act in a legal capacity. In addition any costs incurred by parties to a planning appeal, including any representation, must be borne by the individual parties concerned. The Inspector will open the hearing by explaining what the appeal is about.

The Inspector may give a summary of the Appellant and Department's case, and say which topics will be discussed. In most cases the Appellant will be asked to present their case, followed by any other parties present who support the Appellant's case.

The Department's representative will then be called to present their case, followed by any other parties who support the decision taken. Following the presentation of evidence, that evidence will be open to questions from those on the opposing side of the case together with questions from the Inspector.

Although hearings are usually informal, they must be orderly if everyone involved is to have a fair hearing. The key point to remember is that the format of the hearing is for the Inspector to determine, although he/she is required to properly explain the format at the outset.

#### Appeal Decisions

Following the hearing, or consideration of the case under the Written Procedure, the Planning Inspector will consider all the evidence, and submit a report (with recommendations) to the Minister for the Department of Environment, Food and Agriculture.

Under Article 8(8) of the Town and Country Planning (Development Procedure)(No2) Order 2013 the Minister will then determine the appeal. The Minister will consider the report and

either allow or dismiss the appeal; and may in either case reverse or vary any part of the original decision, whether or not the appeal relates to that part. In doing so the Minister does not have to agree with the recommendation in the Planning Inspectors Report. However where the appeal decision does vary from the Inspector's recommendation, the Minister will explain his/her reasons for doing so.

The Minister's decision and the Inspector's report will be copied to the applicant and the primary appellants. All other parties will be notified of the decision and directed to where the report may be viewed should they wish to. The detail is usually available on line the following working day after issue.

There is no right of appeal against the Minister's decision, although it is always open to any party to seek a judicial review, through a Petition of Doleance to the High Court. Such review should only be progressed where it is believed there has been a misdirection or legal complication either during or after the appeal or its conclusion, or in relation to the decision of the Minister.

Where an appeal is upheld the fee initially paid by the appellant will be refunded.

Please be aware that under Article 9 of the Development Procedure Order costs may be charged against the Appellant should they fail without reasonable cause to appear at the time and place appointed for the inquiry. The Department may require the appellant to pay the whole or specified part of the costs and expenses incurred by any interested person in connection with the appeal.

#### Approaching the Minister about Specific Planning Applications

In view of the Department's role in the appeal process and the final decision being made on behalf of the Department by the Minister, it is important that the Minister is kept impartial for any potential planning appeal consideration. Therefore no approach should be made for the Minister's earlier input and / or involvement in a planning application's consideration.