

**Annual  
Report**

**2015**

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**Sixth Annual Report of the Guernsey Planning  
Panel**

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## **Chairman's Introduction**

It is my pleasure to present the Planning Panel's sixth Annual Report.

During 2015, the Panel received a greater number of planning appeals than in 2014 or 2013. These cases included, for the first time, three appeals against decisions of the Environment Department to add buildings to the Island's Protected Buildings List. These appeals raised a number of interesting and new issues for the Panel and are dealt with under Section 9 of this Report.

In February 2015, the Environment Department published the Draft Island Development Plan. The Panel has followed the progress of the Planning Inquiry closely and notes that it is anticipated that the Island Development Plan is likely to be presented to the States of Deliberation for adoption in the second half of 2016.

The Panel's membership has remained constant throughout the year. The continuity of its membership has enabled members to develop their understanding of planning issues and prepare for the new challenges the adoption of the Island Development Plan will undoubtedly bring. The diverse mix of professional experience the Panel members bring to each Tribunal (the Panel's membership includes experienced professional planners, surveyors, and lawyers) is of undoubted value. During 2016, it is anticipated that applications will be invited for reserve lay members to join the Panel. Past experience has shown us that it is hugely beneficial to have reserve members available to fill occasional vacancies since they will have been involved in our training sessions and meetings enabling them to be very familiar with the Panel's work upon appointment.

It is again my pleasure to record my thanks to my Deputy Chairman Mr. Stuart Fell and fellow colleagues on the Panel for their hard work, skill, and dedication. We continue to hear complex and novel cases which have again required our professional members in particular to demonstrate their depth of knowledge which has been to the benefit of all of us.

The Secretary to the Panel, Miss Elizabeth Dene, has despite her increasing workload continued to provide invaluable administrative support throughout this period and we are most grateful to her for this assistance. In July 2016, Liz will take a three month sabbatical to fulfil a long held ambition to carry out voluntary work in Uganda and we wish her every success.

Patrick Russell  
Chairman  
March 2016

## **1. Background**

The Planning Panel was established in April 2009, under the Land Planning and Development (Guernsey) Law, 2005 (2005 Law) to determine appeals against planning decisions made by the Environment Department<sup>1</sup>.

The Panel is an independent appeal body, with its own secretariat and administration. The Panel members are appointed by the States of Guernsey. To ensure the independence of the Panel the following groups of people cannot serve on it:

- (a) A Member of the States of Deliberation
- (b) An employee, member or anybody carrying out work or providing services for the Environment Department
- (c) A member of the Strategic Land Planning Group
- (d) Anybody holding judicial office in Guernsey
- (e) Anybody who has held any of the above posts in the preceding two years.<sup>2</sup>

## **2. Planning Panel Membership**

The Panel's membership remained unchanged during 2015. The full membership of the Panel at the end of 2015 is set out at Appendix 1. Mr. Russell and Mr. Fell were re-elected by the States of Deliberation to serve a further 6 year term and also re-appointed as the Panel's Chairman and Vice-Chairman respectively.

## **3. Panel Staff**

During 2015 there were no staff changes and Miss Dene continues to act as the Panel's Secretary on a half-time basis.

## **4. Operating Costs**

The Panel's expenditure in 2015 is set out in Table 1. The increase in the payments to Tribunal members in 2015 reflects the rise in appeal casework during 2015. The travel costs showed a modest decrease as it was possible to arrange appeal hearings in batches of two or three cases. In this way the travel costs for the Panel members who are not resident in Guernsey were kept to a minimum.

The Panel continues to promote, wherever appropriate, the use of the provision for an appeal to be determined without the need for a public hearing and to be determined by a single professional members. The Panel is always mindful that whilst the costs associated with the Panel's work are important considerations they should never

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<sup>1</sup> See section 86 of the Land Planning and Development (Guernsey) Law, 2005

<sup>2</sup> See section 4 of the Land Planning and Development (Appeals) Ordinance, 2007

outweigh the need for each appeal to be determined fairly and transparently and for the evidence to be properly and anxiously reviewed by a Planning Tribunal.

<b>Table 1</b> <b>Panel's Expenditure and Income</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Recruitment and training	£8,352	£8,000	£4,355	£3,250	--
Stationery	£1,038	£685	£254	£132	--
Payments to Panel Members	£50,867	£79,076	£55,558	£47,534	£51,025
Travel and accommodation costs	£1,618	£4,749 <sup>3</sup>	£5,480	£3,961	£2,051
Operational costs	£3,503	£4,259	£3,339	£2,709	£1,964
Staff salaries	£32,232	£33,355	£39,654	£39,810	£36,385
<b>Total Expenditure</b>	<b>£97,610</b>	<b>£132,124</b>	<b>£110,653</b>	<b>£99,410</b>	<b>£91,425</b>
<b>Income from Fees</b>	<b>£965<sup>4</sup></b>	<b>£7,969</b>	<b>£13,422</b>	<b>£4,605</b>	<b>£3,985</b>

## 5. Appeal Fees

In 2015, the Panel's income for appeal fees again fell compared with previous years. This is partly due to only half the appeals submitted falling within the categories of appeals for which an appeal fee is payable under the provisions of the Land Planning and Development (Fees and Miscellaneous Amendments) Ordinance, 2011. For example, neither the eleven appeals against Compliance Notices nor the seven appeals against decisions to add a building to the Protected Building List are subject to any appeal fee.

The Panel did not receive any applications from appellants who indicated a wish to appeal against a planning decision but were unable to do so because of financial hardship. Should such an enquiry be received the Panel has the power to waive the fee if the Panel's Chairman is satisfied that payment of the appeal fee will cause the appellant financial hardship.

## 6. Casework

In 2015 (2014), the Panel received 33 (26) appeals, i.e. 27 per cent increase when compared with 2014. Tables 2 and 3 provide a breakdown of the categories of appeals made and their disposal. In 2015 (2014), the Environment Department refused 5.9% (7.5%) of applications for planning permission and 18% (12%) of the refusals resulted in the applicant appealing the decision. A full breakdown of the appeals lodged during 2015 is set out in Table 3 below.

<sup>3</sup> The increase in costs reflects the additional travel and hotel accommodation following the appointment of two UK-based Professional Members

<sup>4</sup> Appeals fees became payable with effect from 1 September 2011 (see Section 5 for further detail)

At the end of 2015, nine appeals remained unheard. In six cases the appeals were lodged in late December 2015 and in respect of the other three cases, the appellants asked for the appeal hearing to be delayed to allow time for them to enter into negotiations with the Environment Department to seek resolution of the matter without recourse to a Planning Tribunal.

In 2015, the Panel noted that 38 per cent of appeals related to commercial sites and 66 per cent were householder-based appeals.

**Table 2**

	Number of Appeals					
	2015		2014		2013	
	Householder	Commercial	Householder	Commercial	Householder	Commercial
<b>Refusal of planning permission</b>	10	6	10	6	7	9
<b>Refusal of outline planning permission</b>	--	--	--	--	1	--
<b>Planning conditions</b>	--	--	1	--	1	1
<b>Non-determination</b>	--	--	--	1	--	--
<b>Compliance Notices</b>	5	6	4	3	1	1
<b>Completion Notices</b>	--	--	--	--	1	--
<b>Confirmation of a Tree Protection Order</b>	--	--	--	--	--	--
<b>Add building to Protected Building List</b>	6	1	1	--	--	--
<b>TOTAL</b>	<b>21</b>	<b>13</b>	<b>16</b>	<b>10</b>	<b>11</b>	<b>11</b>

As a general rule, the Panel endeavours to determine appeals within twelve weeks of the appeal being lodged, subject to the availability of the parties and any witnesses. Where an appellant requests an appeal be determined as a written representation, the Panel is able to progress such cases more quickly as the arrangements for the case to be determined are generally simpler as no hearing needs to be arranged.

**Table 3**  
Breakdown of  
Appeal Cases by  
Outcome

	Number of Appeals			Outcome																	
				Allowed (i.e. where the Tribunal found in favour of the appellant)			Dismissed (i.e. where the Tribunal upheld the Department's decision)			Other											
										Withdrawn by Appellant			Conceded or Withdrawn by Department			Appeal out of time			Dismissed under s.69(4) of the 2005 Law		
2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	2015	2014	2013	
Refusal of planning permission	16	16	17	7	5	11	8	9	6	1	--	3	--	2	--	--	1	1	--	--	--
Refusal of outline planning permission	--	--	1	--	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Planning conditions	--	1	2	--	1	2	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Non-determination	--	1	--	--	1	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Compliance Notice	11	7	1	1	--	--	5	2	--	--	1	1	1	3	1	1	1	--	--	--	--
Completion Notice	--	--	1	--	--	--	--	--	1	--	--	--	--	--	--	--	--	--	--	--	--
Confirmation of a TPO	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
Add building to or amend existing entry on Protected Building List	7	1	--	1	--	--	2	--	--	1	--	--	1	--	--	--	1	--	--	--	--
<b>TOTAL<sup>5</sup></b>	<b>34</b>	<b>26</b>	<b>22</b>	<b>9</b>	<b>7</b>	<b>14</b>	<b>15</b>	<b>11</b>	<b>11</b>	<b>2</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>--</b>	<b>--</b>	<b>--</b>

<sup>5</sup> 6 appeal cases (3 appeals against the issue of a Compliance Notice, and 2 against a decision to add a building to the Protected Buildings List) remain unheard as the parties requested their appeals be held over pending negotiations with the Environment Department to try and reach agreement without recourse to an appeal tribunal.

## **7. Case Appraisal**

The Decision Notices for each planning appeal is set out in Appendix 1. In 2015 (2014), 21 (17) of the appeals which proceeded to an adjudication. Of these, 14 (16) related to development within the Rural Area and 10 (1) case related to the Urban Area. A full breakdown of the planning policies is set out in Appendix 2.

In 2015, appeals against decisions to add buildings to the Protected Building List were considered by Planning Tribunals for the first time. The Panel noted that during 2015, 17 properties were added to the Protected Buildings' List, 29 properties were removed, and the listing for 30 other buildings previously listed was revised. The six appeals lodged represent 13% of all cases eligible for appeal under section 18 of the Land Planning and Development (Special Controls) Ordinance, 2007.

These appeals raised new challenges for the Planning Tribunals and the appellants, their representatives and advisors, and the Environment Department's officers. The principal issues and challenges identified are set out in greater detail in Section 9 (a) of this Report.

In addition to the particular issues set out in Section 9 (a) of this Report, which have been raised with the Environment Department directly, the Panel has reviewed and revised its guidance notes for appellants and appeal forms in response to issues identified from each of these cases. It has proven a steep learning curve for the Panel members and the various Planning Tribunals have drawn heavily on the considerable experience and expert knowledge that two of its Professional Members, Mr. Fell and Mrs. Wride, have in this specialist area of planning and development.

The Panel recognises that the Environment Department has a significant task in reviewing all the buildings on the Protected Buildings' List and all the other properties identified as potentially meriting listing. It acknowledges that, with limited staff resources, this work stream is being progressed in a timely manner and hopes that the independent scrutiny of the decisions that have been subject of an appeal will assist the Environment Department in progressing this work.

## **8. Case Administration**

As noted above, there remains a strong preference for appellants to request that an appeal be heard before a Planning Tribunal. Table 4 provides a breakdown of the mode of appeal, including cases where the Panel's Chairman has, having reviewed an appeal application, decided that the case should be determined by a different mode of appeal from that indicated by the appellant, such as a request for determination by Written Representations or by a Single Professional Member, the latter also requiring the consent of the Policy Council.

**Table 4**  
**Mode of Appeal**

	Disposal as requested by Appellant			Actual disposal following review by Panel Chairman		
	Planning Decisions	Compliance and Completion Notices	Protected Buildings	Planning Decisions	Compliance and Completion Notices	Protected Buildings
	2015 (2014)	2015 (2014)	2015 (2014)	2015 (2014)	2015 (2014)	2015 (2014)
Public Hearing before a Planning Tribunal	11 (11)	4 (1)	3 (--)	11 (13)	5 (1)	3 (--)
Public Hearing before a Single Professional Member	3 (1)	2 (1)	-- (--)	3 (1)	2 (--)	-- (--)
Written Representation determined by a Planning Tribunal	4 (3)	1 (2)	-- (--)	4 (2)	-- (--)	-- (--)
Written Representation determined by a Single Professional Member	2 (1)	-- (--)	-- (--)	2 (1)	-- (--)	-- (--)

In 2015, just over half of the appellants were represented by an Advocate or Architect. The Panel continues to encourage appellants, where they wish, to present their own appeals without the need for professional representation. The Panel is mindful that, when it was established, one of the main reasons for moving away from appeals before the Royal Court to a tribunal approach was to enable anybody who had been refused planning permission to be able to appeal the decision without having to incur possibly substantial legal costs. Table 5 below provides a more detailed breakdown of representation.

**Table 5**  
**Breakdown of Representation<sup>6</sup>**

		2015	2014	2013	2012
Unrepresented		10	6	9	15
Unrepresented but assisted by friend or family member		1	1	2	3
Represented	Architect	7	17	8	10
	Advocate	6	15	4	4
	Planning consultant	--	3	3	--
	Surveyor	--	--	2	--

<sup>6</sup> Numbers relate to appeals determined at a public hearing; in some cases the appellant was represented by an Advocate together with other professional parties

## **9. Matters arising in cases determined in 2015**

### **(a) *Appeals against decisions to add buildings to the Protected Building List***

During 2015, six appeals were lodged against decisions to add a building to the Protected Building List. Whilst only three cases proceeded to a full appeal hearing, each case raised a number of matters and challenges for the respective Planning Tribunals.

Each of the three cases, which have been determined by a Planning Tribunal, were very different in terms of their architectural, historic, traditional or other special interest. These differences were reflected in the Environment Department's evidence supporting the decisions to add each property to the Protected Buildings' List.

*La Maison de Haut* - comprises several buildings at Brock Road, St. Sampson, including the main house, a barn, a dower cottage and garage. The entry in the Protected Buildings List set out the extent of listing, which includes the main house (with exclusions), together with the barn (exterior only) and roadside walls fronting Brock Road and La Ronde Cheminée. The building had been extended and adapted over several centuries. The oldest parts of the building date back to the 14<sup>th</sup> century, the most recent alterations being made in the late 1990s.

*Balderstone* - is a two-storey, stone house positioned on the north side of La Route des Cornus, St. Martin close to the junction with La Planque Lane and Le Becquet Lane. It forms part of a terrace of other two-storey houses and lies within a Conservation Area, the status of which is proposed to be rescinded as part of the current review of the Rural and Urban Area Plans.

*Chateau du Village Residential Home* - was built between 1820 and 1870 in a Gothic style. The property has an asymmetrical façade and a high degree of ornamentation. However, some 70% of the building's current footprint is modern and of post-War construction. The building was built as a private home but has been operating as a residential care home for many years and was previously a private hotel. The façade of the building is largely unaltered since its construction but to the rear there have been substantial extensions and significant internal alterations.

The three cases raised a range of issues and challenges for the Planning Tribunals considering each case.

#### **(i) *Material accompanying Listing Notice***

In all cases, the Planning Tribunals found that a simple floor plan of the properties would have assisted in understanding the development of the property over time and by locating original features which the Environment Department's officers had identified as meriting inclusion in the listing.

The Planning Tribunals have, when reviewing appeal papers prior to the appeal hearing and associated site visit, experienced difficulties when relating the descriptions in the officer's Building Survey report to the photographs supplied by the Environment Department and appellants. The Panel has asked the Environment Department to consider preparing a simple floor plan for each property added to the Protected Buildings List and for the plan to include an indication as to the age of any alterations to the property over time and to indicate where any features of architectural, historic, traditional or other interest are noted on the Building Survey.

Having reviewed these appeals, the Panel believes such a plan would have assisted the appellants at the Planning Tribunal in understanding what features of a building merit the Environment Department's decision to add the property to the Protected Buildings' List and so identify the most appropriate grounds of appeal and the issues which need to be considered during the appeal hearing.

In addition, during the consideration of these cases, it was noted that it was difficult to relate the Building Survey to the classification indicators and criteria referred to in the Environment Department's published guidance notes. The Panel has noted that the Environment Department's written responses to appeals refers to two different scoring regimes – (a) Completeness – scored 1 (mutilated) to 6 (unique) and (b) Exterior/Interior Quality – scored 1 (poor) to 5 (exceptional) – but the Building Survey (which is sent to the owner of the property together with the Notice adding the building to the Protected Buildings List) does not include any indication as to what the scores represent or how they are determined.

A single unified scoring regime, together with an explanation of what the scoring indicates, would help the owner of a property understand how the Environment Department has reached its decision.

(ii) *Summary of Significance*

During the Balderstone hearing, the Environment Department explained that, following consideration of the La Maison de Haut appeal, the decision had been made not to include a Summary of Significance when adding new buildings to the Protected Buildings Lists. The Environment Department's decision was based on the fact that inaccuracies in the Summary of Significance attached to the La Maison de Haut listing had given rise to a number of appeal points.

The Panel notes that the under section 1(5) of the Land Planning and Development (Special Provisions) Ordinance, 2007 a Summary of Significance is a discretionary paragraph and may include, "... a description of any particular interest by reason of which it is listed, and of any feature which the Environment Department considers it desirable to preserve".

The Panel believes that the Environment Department's decision not to include Summaries of Significance is unfortunate as without a brief description of why the building has been listed it will be difficult to understand the broad reasons for listing the building. The Panel is mindful that the Special Provisions Ordinance clarifies that any such description shall be indicative only, and shall not be taken to be an exhaustive description of any relevant special interest or of any such feature.

(iii) *Impact of Listing on future alterations to the building*

In each case, the appellants raised concerns that the listing may restrict their ability to alter and adapt the property to meet their particular needs and uses. In respect of both La Maison de Haut and Chateau du Village, planning applications or pre-application enquiries had resulted in a decision to list the property.

The various Planning Tribunals noted that, although the Environment Department had included guidance and advice notes on the impact of listing on a building and when planning applications for alterations need to be made and how such applications are determined, the appellants remained concerned that listing meant the building could not be altered.

The owners of the Chateau du Village had made a pre-application enquiry regarding proposed alterations to the roof line to the front of the building to bring rooms in that part of the building up to the standards required for a residential home. The owner of Balderstone was concerned that listing would mean he would be unable to make interior alterations to accommodate the needs of his disabled wife.

During the hearings, although outside the strict scope of the appeals, the Planning Tribunals have asked the Environment Department to explain, for the benefit of appellants, how it balances the reasons for listing a building against the requirements of the owners of the property to make adaptations and alterations to meet their personal or commercial needs. The Panel believes that this approach assisted the appellants in understanding the impact of listing on their property and also to open a dialogue between them and the Environment Department.

The Panel hopes that its Decision Notices will assist the owners of listed buildings, those whose properties may be added to the Protected Buildings' List in the future, professional advisers, and the Environment Department, in understanding the reasons for listing a building, and the evidence required to explain and justify the decision or to challenge it.

**(b) *Assessment of Surroundings of Appeal Site***

Many of the policies in both the Urban and Rural Area Plans require consideration of the surrounding built environment, e.g. a requirement for the development to contribute to local distinctiveness and the quality of the built heritage, respect the scale and massing

of other buildings in the vicinity and avoid the introduction of obtrusive or discordant elements, etc.

These descriptions are, in the Panel's view, central to understanding the Environment Department's reasons for say refusing a planning application. Further, in the absence of such statements, the appellant is potentially disadvantaged in understanding why his/her application has been refused and so limited in developing his/her arguments to challenge the Environment Department's conclusions and reasons.

The Planning Tribunals have had difficulty in ascertaining a clear description from the Environment Department about the character of the surroundings and what it is about the proposed development that will "harm" such existing character and local distinctiveness. The Planning Tribunals have noted that concluding assertions are often expressed in both the Environment Department's Decision Notices and Appeal Statements but lack any reference to how the "harm" may arise or which element/s of the proposed development would be obtrusive or introduce a discordant feature.

During appeal hearings, the Planning Tribunals have continued to request the Environment Department to address these matters in all cases and, in particular, where the planning policies relied on in reaching the planning decision which is subject of the appeal, to provide a clear statement of local distinctiveness and character and from this, to explain what elements or aspects of the application would introduce an obtrusive or discordant element. Further, these concerns have been raised specifically in a number of Planning Tribunal Decision Notices and the various Tribunals have endeavoured to clearly articulate its assessment of the surrounding area and the impact (harmful or otherwise) of the proposed development on the surroundings.

The Panel appreciates that such assessments will always involve a degree of subjectivity and personal judgment. However, a clear description of the character of the surrounding should be included with decisions where issues of "harm" to the existing character of the surrounding area is a reason for refusal. The assessment should, to this end, simply capture in words what anybody visiting the appeal site and the immediate surrounding area would expect to see, i.e. the physical setting of the property/site and the visual characteristics of the area.

(c) ***Relationship between Planning Permission and Building Control Regulations***

The Panel noted that one case (PAP/029/2015) demonstrated a lack of co-ordination between the development control and building control provisions under the Land Planning and Development legislation and resulted in planning permission being granted for alterations to an existing balcony but during the hearing it became clear that the height of the balcony rail was too low to comply with the current Building Regulations<sup>7</sup>.

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<sup>7</sup> The property had an existing balcony with a rail height below that now required to satisfy Building Control Regulations.

At the hearing, the Environment Department explained that, when granting planning permission, the question of whether or not a proposed development complied with Building Regulations was not a material consideration. The Panel notes that the vast majority of planning permissions include a condition requiring compliance with Building Regulations. However, the Panel believes that this approach may render some grants of planning permission inoperable simply because the development cannot proceed as approved and comply with Building Regulations.

Whilst the Panel accepts that it is the responsibility of the person seeking planning permission and anybody providing them with professional advice to make all the relevant checks relating to the proposed development, the Environment Department's approach has on some occasions resulted in undeliverable grants of planning permission.

From, the Panel understands that from 1<sup>st</sup> May 2016, the day-to-day oversight and responsibility for the current Environment Department's development control and building control roles under the Land Planning and Development (Guernsey) Law, 2005 will rest with the new Planning and Development Authority. This change in structure may well assist in ensuring clear and consistent co-ordination between the development control and building control statutory provisions.

## **10. Update on Issues raised in the Planning Panel's previous Annual Reports**

### ***(a) Third Party Representations***

In previous Annual Reports, the Panel has commented on the restrictions placed on third parties and indicated it agrees that some relaxation of the current restrictions placed on taking evidence from third parties would be beneficial.

The restriction raises a particular difficulty where an appeal involves a decision made at an Open Planning Meeting. A third party who has spoken at an Open Planning Meeting is understandably frustrated that he/she is unable to address the Planning Tribunal. The limitations on the ability for third parties to give evidence at an appeal hearing may be viewed as restricting the fairness, openness, and impartiality of the appeal procedure. A protocol similar to that adopted for those wishing to address an Open Planning Meeting could be applied to appeal hearings and any evidence managed by the Planning Tribunal to ensure that its decision was solely based on the evidence, facts and material before the Environment Department at the time the planning application was determined and so comply with the limitations of section 69(1) of the Land Planning and Development (Guernsey) Law, 2005.

The Panel has been advised by the Environment Department that these concerns are to be addressed as part of its wider review of the Land Planning and Development (Guernsey) Law, 2005. The Panel understands that piecemeal amendments to legislation should, where possible, be avoided but is concerned that this amendment to the appeals provisions that has been advanced by the Panel remains outstanding. The expedition of such an amendment would in the Panel's view be of benefit to those involved in a Tribunal hearing.

**(b) Appeal Periods**

The Panel has also raised concerns that in some cases where an individual is appealing a refusal of planning permission on a retrospective application and an associated Compliance Notice, the difference between the two appeal periods (six months from the date of the refusal of planning permission and 28 days from the Date of Issue of a Compliance Notice) may be used as a means to delay enforcement action.

Here again, the Panel understands that the Environment Department shares these concerns and will include recommendations to shorten the appeal period in the case of planning applications where enforcement action has been formally commenced in its forthcoming review of the Land Planning and Development (Guernsey) Law, 2005.

The Panel has noted that during 2015, a number of appellants raised queries with the Panel's Secretary where a Compliance Notice had been issued before the expiry of the statutory appeal period for challenging a refusal of planning permission. In addition to the confusion the two separate though directly related procedures have raised, the Panel also remains concerned that the significant difference in appeal periods could allow the enforcement provisions under the Land Planning and Development (Guernsey) Law, 2005 to be frustrated.

The Panel hopes that this amendment and the amendment referred to in Section 10(a) above will be advanced during 2016.

**(c) Use of Character Assessments and Statements of Significance for Conservation Areas and Protected Buildings**

The Panel has previously expressed its concerns about the absence of published character assessments for the various Conservation Areas as designated under the Urban and Rural Area Plans. The Panel is pleased to note that such character assessments have been included in the emerging Island Development Plan, together with full details of the methodology for designating Conservation Areas.

In relation to Statements of Significance for Protected Buildings, please see the Panel's above comments in respect of the appeals considered during 2015 against decisions to add buildings to the Protected Buildings List.

In respect of the more general matters relating to the assessment of the surroundings to an appeal site, see also the Panel's comments in Section 9(b) above.

## **11. Other Developments during 2015**

### ***(a) Preparation of the Draft Island Development Plan***

In February 2015, the Environment Department published the draft Island Development Plan and during 2015 the draft Plan has been reviewed at an independent Planning Inquiry. The Panel understands that the Environment Department hopes to submit the draft Plan to the States of Deliberation for adoption during 2016.

### ***(b) Planning Appeals in Jersey***

The Panel noted that the Jersey Planning Appeals Tribunal commenced hearing planning appeals during 2015. The Jersey Tribunal determines appeals against planning decisions on their merits, with the exception of deciding points of law arising from such appeals. Under the new system, the independent Inspector reports his/her findings to the Minister for Planning and Environment who would then determine the appeal.

Two of the professional members appointed to the Guernsey Panel, Mr. Jonathan King and Mrs. Linda Wride, have also been appointed as Planning Inspectors in Jersey.

## **12. Conclusion**

During 2015, the Panel has again continued to build on and develop its knowledge and understanding of development control and its understanding of the planning process. The Panel is grateful for the professional and courteous assistance it continues to receive from appellants, their representatives, the Environment Department officers and officers of other States Departments who have given evidence at appeal hearings. The Panel is appreciative of this assistance and recognises that without such co-operation it would face greater challenges in discharging its statutory responsibilities.

The Panel continues to use its best endeavours to ensure that (the) members are kept up-to-date with relevant planning matters and to review its own policies and practices. This is undertaken through in-house training and regular reviews of its operational policies and procedures whilst monitoring any developments in local planning policy or other States policy which may have an impact on the cases it is asked to determine.

Looking forward to 2016, the Panel anticipates that, aside from the particular issues that may arise from individual appeals, the year will be a challenging one as the new Island Development Plan replaces the Urban and Rural Area Plans. The Panel has made arrangements for training for its members and is grateful to the Environment Department's officers for their co-operation and assistance in delivering this training.

# Appendices

## APPENDIX 1 – PLANNING PANEL MEMBERSHIP

Name	Position on Panel	Date Appointed	Term of Office
Mr. Patrick Russell	Chairman	March 2015 <sup>8</sup>	Until March 2021
Mr. Stuart Fell	Vice Chairman Professional Member	March 2015 <sup>9</sup>	Until March 2021
Mr. Jonathan King	Professional Member	January 2012	Until March 2018
Mrs. Linda Wride	Professional Member	January 2012	Until March 2018
Mrs. Sheelagh Evans	Lay Member	January 2013 <sup>10</sup>	Until March 2019
Mr. David Harry	Lay Member	September 2012 <sup>11</sup>	Until March 2017
Mr. John Weir	Lay Member	January 2011 <sup>12</sup>	Until March 2017
Ms. Julia White	Lay Member	January 2012 <sup>13</sup>	Until March 2019

<sup>8</sup> Mr. Russell was first appointed as a lay member in March 2009 to serve for 6 years and was re-elected in 2015 for a further 6 year term

<sup>9</sup> Fell was first appointed as a professional member in March 2009 to serve for 6 years and was re-elected in 2015 for a further 6 year term

<sup>10</sup> Mrs. Evans was first appointed as a lay member in March 2009 to serve for 4 years and was re-elected in 2013 for a further 6 year term

<sup>11</sup> Mr. Harry was appointed to serve the unexpired term of Mr. Burnard's (who resigned from the Panel in August 2012) appointment

<sup>12</sup> Mr. Weir was first appointed as a lay member in March 2009 to serve for 2 years and was re-elected in 2011 for a further 6 year term

<sup>13</sup> Ms. White was first appointed in September 2011 to serve the unexpired term of Mr. Bowen's (who resigned from the Panel in May 2011) appointment and was re-elected in 2011 for a further 6 year term

## APPENDIX 2 - SYNOPSIS OF APPEAL CASES DETERMINED DURING 2015

PAP Ref	Planning Reference	Details	Principal Issues	Appeal Outcome
001	FULL/2014/3029	Appeal against the refusal of planning permission to install sign advertising Brock Road Storage on boundary wall at Brock Road, St. Peter Port	Whether the advertisement preserves or enhances the character and appearance of the Conservation Area and the setting of a nearby protected building.	Appeal Dismissed
002	ENF/2014/00222	Appeal against a Compliance Notice served in respect of a breach of planning control, namely installing a sign advertising Brock Road Storage on boundary wall at Brock Road, St. Peter Port	Whether the Notice was (for any other reason) ultra vires or unreasonable.	Appeal Dismissed
003	FULL/2014/1447	Appeal against the refusal of planning permission to install three roof lights at Maison d'Aval, Vale (protected building)	Whether the three roof lights installed on the north-facing roof pitch of the house have an unacceptably harmful impact on the special architectural and historical characteristics of the c.1740 century house, or on its setting.	Appeal Dismissed
004	PB1622	Appeal against a decision to add Le Maison de Haut, St. Sampson to the List of Protected Building	Whether to building had no special interest; the entry was in any material respect factually incorrect; or the entry was (for any other reason) ultra vires or unreasonable.	Appeal allowed

<b>PAP Ref</b>	<b>Planning Reference</b>	<b>Details</b>	<b>Principal Issues</b>	<b>Appeal Outcome</b>
<b>005</b>	FULL/2014/0239	Appeal against the refusal of planning permission to erect dwelling and restore outbuilding at Plot D, Mon Plaisir, Upper St. Jacques, St. Peter Port	Whether in relation to Policy CO4(a) the need for the development has been demonstrated. Whether the effect of the development on the character and appearance of the surrounding area, having regard to the location within a Settlement Area and an Area of Landscape Value and Policies CO4 and HO2. Whether the development should be considered as a “Minor Departure” from the Plan.	Appeal allowed
<b>006</b>	ENF/2014/00169	Appeal against a Compliance Notice served in respect of a breach of planning control, namely the removal of a roadside boundary granite feature at Driftwood, Route de Cobo, Castel	<i>Compliance Notice withdrawn by the Environment Department prior to an appeal hearing.</i>	
<b>007</b>	FULL/2014/2195	Appeal against the refusal of planning permission to extend and alter dwelling at Sea Horses, La Neuve Rue, Albecq, Castel	The effect of the development on the setting of a protected monument. Whether the development would preserve or enhance character and appearance of the Conservation Area. Whether the design of the development would contribute positively to local distinctiveness and the quality of the built environment.	Appeal Dismissed

<b>PAP Ref</b>	<b>Planning Reference</b>	<b>Details</b>	<b>Principal Issues</b>	<b>Appeal Outcome</b>
<b>008</b>	ENF/2014/0022	Appeal against a Compliance Notice served in respect of a breach of planning control, namely the use of agricultural land at Scara Brae Vinery, Rue de Haut, Vale for purposes outside of Use Class 44 without planning permission	Whether the Notice had been issued after the expiry of the period set out in s.48(4) of the 2005 Law; or the Notice was (for any other reason) ultra vires or unreasonable.	Appeal Dismissed
<b>009</b>	ENF/2014/0100	Appeal against a Compliance Notice served in respect of a breach of planning control, namely the use of agricultural land at La Route de la Rocque, St. Pierre du Bois for purposes outside of Use Class 44	Whether any breach of planning control had occurred; or the Notice was (for any other reason) ultra vires or unreasonable.	Appeal Dismissed
<b>010</b>	FULL/2015/0091	Appeal against the refusal of planning permission to install signs and a new canopy at Norman Piette, Bulwer Avenue, St. Sampson	Whether the effect of the signs on the character and local distinctiveness of the area.	Appeal Allowed
<b>011</b>	PB1623	Appeal against a decision on 31 <sup>st</sup> March 2015 to add Le Guet, Ruelle au Guet, Castel to the List of Protected Building	Appeal withdrawn by the appellant prior to an appeal hearing.	
<b>012</b>	FULL/2014/2391	Appeal against the refusal of planning permission to fell an ash tree (subject of a Tree Protection Order) at Villa Italia, 35 North Plantation, St. Peter Port	Appeal withdrawn by the appellant prior to an appeal hearing.	

PAP Ref	Planning Reference	Details	Principal Issues	Appeal Outcome
013	PB1063	Appeal against a decision to add the roadside wall of Kerribuan, Picquerel Road, St. Sampson to the List of Protected Building	<i>Conceded by the Environment Department under s.68(7) of the Land Planning and Development (Guernsey) Law, 2005.</i>	
014	ENF/2013/0016	Appeal against a Compliance Notice served in respect signage advertising The Italian Job Pizzeria attached to the exterior of 2 Le Truchot, St. Peter Port.	<i>Appeal submitted after the expiry of the appeal period</i>	
015	ENF/2014/0130	Appeal against a Compliance Notice served in respect of a breach of planning control, namely dumping of vehicles, vehicles parts and miscellaneous items on the land at Les Bassieres, St. Peter Port	<i>Appeal on hold pending outcome of negotiations between the appellant and the Environment Department.</i>	
016	FULL/2015/0947	Appeal against the refusal of planning permission for a change of use from Use Class 21 to Use Class 22 for a second floor office at 1 High Street, St. Peter Port	Whether the effect of the development on the vitality and viability of the Town Central Area.	Appeal Allowed
017	FULL/2015/0157	Appeal against the refusal of planning permission to extend and alter dwelling to create a new third floor level, including balconies on the north and east elevations at Côte de Colline, Les Vardes, St. Peter Port	The effect of the development on the character of the host building and the surrounding area. Whether the change of use would preserve or enhance the character and appearance of the setting of the Conservation Area.	Appeal Allowed

<b>PAP Ref</b>	<b>Planning Reference</b>	<b>Details</b>	<b>Principal Issues</b>	<b>Appeal Outcome</b>
<b>018</b>	FULL/2014/2356	Appeal against the refusal of planning permission to extend domestic curtilage, erect car-port, earthbank at Billy's Farm, Rue de la Ronde Cheminée, Castel	Whether there is a functional need for the development. Subject to the Tribunal being satisfied on this: Whether the development would result in the unacceptable loss of agricultural land. Whether the development makes a positive contribution to the visual quality, landscape character and environmental value of the area. Whether the relocation of the southern boundary amounts to the loss or the unacceptable repositioning of the established boundary.	Appeal Allowed
<b>019</b>	FULL/2014/0520	Appeal against the refusal of planning permission to erect sign at Avant Garden, Lifestyle House, L'Islet, St. Sampson	Whether by its size, position and design, the proposed sign would appear unacceptably out of place in its local surroundings.	Appeal Dismissed
<b>020</b>	FULL/2014/1920	Appeal against the refusal of planning permission to erect a statue of a Guernsey donkey at Castle Pier, St. Peter Port	Whether the statue would harm the setting of Castle Cornet. Whether the statue would adversely affect an important public view, skyline, or the sea. Whether the statue would serve to conserve or enhance the character of the Conservation Area.	Appeal Dismissed

<b>PAP Ref</b>	<b>Planning Reference</b>	<b>Details</b>	<b>Principal Issues</b>	<b>Appeal Outcome</b>
<b>021</b>	PB1629	Appeal to add La Fontenelle, Ville au Roi, St. Peter Port to the List of Protected Building	<i>Appeal on hold pending outcome of negotiations between the appellant and the Environment Department.</i>	
<b>022</b>	PB1634	Appeal against a decision to add Nantucket, Rue de la Villaize, Forest to the List of Protected Building	<i>Appeal hearing put on hold to allow the Environment Department to determine a related planning application.</i>	
<b>023</b>	FULL/2015/0164	Appeal against the refusal of planning permission to erect fencing along the western boundary of Craig Gowan, Forest Road, St. Martin	Whether planning permission is required for the development; and if permission is required, the effect of the fencing on the character and appearance of the locality.	Appeal Allowed
<b>024</b>	ENF/2012/0148	Appeal against a Compliance Notice served in respect of a breach of condition 5 of FULL/2012/0617 in respect of Unit 2, Ridgeway Vinery, Rue des Pointes, St. Andrew	<i>Appeal Allowed in respect of storage but dismissed in respect of ancillary uses.</i>	
<b>025</b>	FULL/2015/1135	Appeal against the refusal of planning permission to install an illuminated advertising sign at Mora Restaurant and Grill, The Quay, St. Peter Port	Whether the lighting is contrary to the aims of Policy CEN12. Whether, when the sign is illuminated, the effect causes unacceptable harm to the special interest, character or features of the protected building. Whether, when the sign is illuminated, the effect fails to preserve or enhance the character and appearance of the Conservation Area.	Appeal Dismissed

<b>PAP Ref</b>	<b>Planning Reference</b>	<b>Details</b>	<b>Principal Issues</b>	<b>Appeal Outcome</b>
<b>026</b>	ENF/2015/0121	Appeal against a Compliance Notice served in respect of a breach of planning control, at The Strawberry Farm, Rue des Issues, St. Saviour	Whether the time period specified in the Notice was unreasonably short.	Appeal Dismissed
<b>027</b>	FULL/2015/0200	Appeal against the refusal of planning permission to demolish existing garage to the rear of Taldykorgan, Longrée Road, Vale and erect a one and a half storey dwelling with access and parking	Whether the proposal would result in an inadequate standard of parking. Whether the new dwelling would provide an unsatisfactory standard of internal design and accommodation, and inadequate or insufficient external amenity space. Whether the house would have an obtrusive and overbearing impact, causing harm to the residential amenity of adjoining houses.	Appeal Dismissed
<b>028</b>	PB1636	Appeal against a decision to add Balderstone, La Route des Cornus, St. Martin to the List of Protected Building	Whether to building had no special interest; the entry was in any material respect factually incorrect; or the entry was (for any other reason) ultra vires or unreasonable.	Appeal Dismissed
<b>029</b>	FULL/2015/0308	Appeal against the refusal of planning permission to install glazed balustrade to replace existing balcony at Lion Rock, Cobo Coast Road, Castel	The effect of the development on the building and its surroundings, and on the character and appearance of the locality.	Appeal Dismissed

PAP Ref	Planning Reference	Details	Principal Issues	Appeal Outcome
030	FULL/2015/0853	Appeal against the refusal of planning permission to install glazed balustrade to replace existing balcony at Violet Lodge, Cobo Coast Road, Castel	The effect of the proposed development on the building and its surroundings, and on the character and appearance of the locality.	Appeal Dismissed
031	ENF/2015/0192	Appeal against a Compliance Notice served in respect of a breach of condition 4 of FULL/2014/0817 in respect of Westridge, Route de Cobo, Castel	<i>Appeal hearing put on hold to allow the Environment Department to determine a related planning application.</i>	
032	ENF/2014/0198	Appeal against a Compliance Notice served in respect of a breach of planning control, namely a sign at Crabby Jacks, Vazon Coast Road, Castel	<i>Appeal hearing put on hold to allow related authorised development to be completed.</i>	
033	PB1635	Appeal against a decision to add Chateau du Village, Fort Road, St. Peter Port to the List of Protected Building	Whether the building had no special interest; the entry was in any material respect factually incorrect; or the entry was (for any other reason) ultra vires or unreasonable.	Appeal Dismissed
034	ENF/2015/0135	Appeal against a Compliance Notice served in respect of a breach of planning control, namely abandoning a motor vehicle on a grass verge at 2 Courtil des Vents, Rue de la Fallaise, St. Martin and using the said vehicle for storage	Whether any breach of planning control had occurred; the Notice had been issued after the expiry of the period set out in s.48(4) of the 2005 Law; or the Notice was (for any other reason) ultra vires or unreasonable.	Appeal Dismissed

## **APPENDIX 3 - THE PLANNING PANEL'S GENERAL POLICIES AND PROCEDURES**

### **(a) Determination of an Appeal by a Single Professional Member**

When deciding whether an application should be made to the Policy Council to seek its approval that an appeal should be determined by a Single Professional Member the Panel Chairman will consider the following factors:

- Are the appeal papers complete and self-contained? In other words, can the Tribunal easily understand how the planning decision was reached, the appellants' reasons for appealing the decision and why the Environment Department is resisting the appeal?
- Are the relevant planning policies and issues clear? In other words, can the Tribunal clearly understand the issues by reading the appeal papers and visiting the site?
- Is there an over-riding public interest? Examples of appeals which may have an over-riding public interest will include large scale developments, developments in areas of particular environmental or historic sensitivity or where the policy issues are unclear. In other words, is there likely to be significant public interest in the development or have the policy issues linked to the appeal ones which are the subject of wider debate so that it is appropriate for a hearing to be held.
- Were any third party representations objecting to the development received by the Environment Department?
- Are there significant disputes as to the facts?
- Are there any novel legal issues?

### **(b) Determination on an Appeal by Written Representation by either a Single Professional Member or by a Full Tribunal**

When deciding whether an Appeal should be determined by Written Representations by a Single Professional Member the Panel Chairman will consider the factors referred to above in addition to those below relating to determination by a full Tribunal:

- Does the appeal involve a planning application of Island-wide significance or concern development where an environmental statement has or may be required, as specified under section 6 (2)(a) and (b) of the Land Planning and Development (Appeals) Ordinance, 2007?
- Is the matter appealed fairly minor and uncomplicated?

- Is the evidence self-explanatory and complete?
- Were there any third party representations received by the Environment Department; how many and from whom?

**(c) General Procedure for Determining Compliance Notices and Confirmation of Tree Protection Order**

When deciding whether an appeal against the issue of a Compliance Notice or the Confirmation of a Tree Protection Order should be determined by a Hearing or by Written Representations by either a Single Professional Member or by a full Tribunal, the Panel Chairman's general presumption is that the appeal should be heard by way of public hearing.

This general presumption is because these types of appeal are likely to be of wider public interest and, in some cases, the issues are likely to be more complex, and so require the Tribunal to hear evidence from a number of parties, other than the person making the appeal and the Environment Department.

**(d) General Procedure for Site Visits**

When determining an appeal the Tribunal or Single Professional Member will always visit the appeal site.

As a general rule, where an appeal is determined at a public hearing the site visit will take place at the end of the hearing. However, the Tribunal or Single Professional Member may direct that the site visit should take place at the start of a hearing or part way through a hearing. Such decisions will be determined on a case-by-case basis and the Tribunal or Single Professional Member will explain its decision.

These site visits will require the attendance of the appellants and/or his representative and the Environment Department's representative/s. All parties must be present throughout the site visit and should remain in close proximity to the Tribunal Members to ensure that they can hear any questions that Members may ask and the answers given.

Where an appeal is determined by Written Representations the site visit will generally be made privately, i.e. the attendance of the appellants and/or his representative and the Environment Department's representative/s will not be required. However, where the Tribunal Members need to gain access to a building or cannot view the appeal site without entering privately owned land the site visit will be conducted in the presence of the appellants and/or his representative and the Environment Department's representative/s.

For all accompanied site visits the appellant should ensure he brings any keys which may be needed to afford Tribunal Members access to any locked buildings, sheds, etc. on the appeal site.

**(e) General Procedure for Handling Post-Hearing Correspondence with the Parties**

As a general rule, the Tribunal or Single Professional Member will not enter into any post-hearing correspondence with the parties. However, from time to time this may be necessary, e.g. to clarify a point made in evidence by either party or to seek both parties' comments on the wording of a non-standard planning condition.

Where it is necessary for a Tribunal or Single Professional Member to open such correspondence copies of any letters or email communications will be sent to all parties, together with the replies received from each party.

**(f) General Procedure for Determining Linked Appeals against the Refusal of Planning Permission and against a Compliance Notice**

As a general rule the Panel will endeavour to prioritise appeals against Compliance Notices.

This general rule will be modified where retrospective planning permission has been refused and the Environment Department has commenced enforcement measures before the appeal period for the refusal of planning permission has expired.

The Panel's general policy for dealing with appeals against both the refusal of planning permission and a Compliance Notice seeks to ensure that the party's rights under s.68 of the 2005 Law to appeal a decision refusing planning permission are not interfered with and that the Environment Department's endeavours to deal with any breaches of the Island's development controls are not frustrated.