

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for the* ENVIRONMENT & INFRASTRUCTURE

MODIFICATION OF REQUIREMENTS RELATING TO PLANNING TRIBUNALS IN
GUERNSEY WHERE THERE ARE RESTRICTIONS IN RELATION TO TRAVEL TO AND
FROM THE BAILIWICK UNDER THE CIVIL CONTINGENCIES LAW

The States are asked to decide:-

Whether, after consideration of The Modification Of Requirements Relating to Planning Tribunals Where There are Restrictions in Relation to Travel to and from the Bailiwick Under the Civil Contingencies Law policy letter dated 26th June 2020 they are of the opinion:-

1. To agree that section 87 of the Land Planning and Development (Guernsey) Law, 2005 is modified to allow members who are not professional members of the Planning Panel to preside in a Planning Tribunal where prohibitions or restrictions in relation to persons travelling into or out of Guernsey have been made and are in force, or to come into force, under the Civil Contingencies (Bailiwick of Guernsey) Law, 2012 as further detailed in paragraphs 5.15 to 5.19 of the policy letter, and
2. To approve the draft Ordinance entitled “The Land Planning and Development (Planning Tribunals) (Modifications) Ordinance, 2020”, attached at the Appendix to the policy letter, and to direct that the same shall have effect as an Ordinance of the States.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

The Ordinance modifies section 87 of the Land Planning and Development (Guernsey) Law, 2005 relating to the appointment of a Planning Tribunal to hear and determine a particular planning appeal. It modifies the section so that a member, who is not a professional member, of the Planning Panel can be designated to preside over a Planning Tribunal and to allow for a Planning Panel member, who has been appointed

to preside in a Tribunal, to be replaced if it is not reasonably practicable for the member to travel to Guernsey.

Such modifications are permanent but only apply where at either the time of the designation of the person presiding, or at any time before the final hearing of the Planning Tribunal, directions or other provisions are in force, or are to come into force, which prohibit or restrict, or impose conditions on, persons travelling into or out of Guernsey.

These modifications are to avoid planning appeal hearings becoming unreasonably delayed because at present only professional members (usually planning inspectors) can be designated to preside in the Planning Tribunal and currently all such professional members live in Jersey and the UK and so are affected by the restrictions on travel, including requirements for self-isolation, imposed because of coronavirus. These modifications would allow ordinary members of the Planning Panel, which include legally qualified members with significant experience of sitting on Tribunals, to preside at the Planning Tribunal but only whilst prohibitions or restrictions etc. have been made and are in force, or to come into force, relating to persons travelling into or out of Guernsey under the Civil Contingencies (Bailiwick of Guernsey) Law, 2012. The modifications would then apply until the current restrictions relating to travel outside of the Bailiwick are lifted and would also apply if restrictions had to be re-imposed because of a second wave of the coronavirus or in the event of similar restrictions being made under the Civil Contingencies Law due to a future emergency.

COMMITTEE *for the* ENVIRONMENT & INFRASTRUCTURE

MODIFICATION OF REQUIREMENTS RELATING TO PLANNING TRIBUNALS IN GUERNSEY WHERE THERE ARE RESTRICTIONS IN RELATION TO TRAVEL TO AND FROM THE BAILIWICK UNDER THE CIVIL CONTINGENCIES LAW

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
Guernsey

26th June 2020

Dear Sir

1. Executive Summary

- 1.1 This Policy Letter seeks States approval of modifications to the Land Planning and Development (Guernsey) Law, 2005 (“the Law”) to enable the Chairman of the Planning Panel (“the Panel”) to designate a member of the Panel who is not a professional member to preside in a Planning Tribunal (“a Tribunal”) if it is not reasonably practicable for a member to travel to Guernsey due to restrictions in relation to persons travelling in or out of Guernsey under the Civil Contingencies (Bailiwick of Guernsey) Law, 2012.
- 1.2 The Panel’s three professional members are not Bailiwick residents and so are currently unable to travel to Guernsey to preside in person at a Tribunal without restriction. The current requirements for anybody arriving in the Bailiwick by air or sea are for that person to self-isolate for a period of 14 days.
- 1.3 Section 87(2) of the Land Planning and Development (Guernsey) Law, 2005 requires that the Chairman designates one of the Panel’s professional members to preside over a Tribunal.
- 1.4 In reaching the decision to recommend a modification to section 87(2), the Committee *for the* Environment & Infrastructure (“the Committee”) has considered a number of options for how planning appeal hearings may be conducted whilst restrictions relating to the persons travelling in and out of the Bailiwick, including requirements for self-isolation, are in place. It has concluded that the only option which will provide sufficient flexibility and

resilience for the Panel is to modify the provisions of section 87(1) and (2) of the Law until such time as the current restrictions on travel allow for one or more of the Panel's professional members to travel in or out of Guernsey without restriction. The modifications are also worded to apply if such travel restrictions have to be re-imposed if there were a second wave of coronavirus or another future emergency.

2. Background

- 2.1 The Panel was established in April 2009, under the provisions of the Law, to determine appeals against certain planning-related decisions of the Development & Planning Authority. The Panel currently has three professional members and four lay members. The professional members are all former planning inspectors and two live in the UK and one in Jersey. The four lay members are all Bailiwick residents.
- 2.2 Under the provisions of the Law, the Chairman of the Panel is responsible for determining how an appeal shall be determined, i.e. either at a public hearing or on the basis of written representations and whether a tribunal of three members or a single professional member should determine the case. The Chairman is also responsible for deciding which Panel members should be appointed to determine a particular case.
- 2.3 Where the appellant requests or the Chairman directs that an appeal should be determined at a public hearing before a Tribunal, section 87(2) of the Law requires that one of the professional members must be designated by the Chairman to preside in a Tribunal. The Panel has issued general guidance¹ setting out the matters the Chairman will take into consideration when deciding whether an appeal may be determined on the basis of written representations and/or by a single professional member.

3. Current Planning Appeals

- 3.1 Prior to the decision of the Civil Contingencies Authority on 18th March 2020 to make the Emergency Powers (Coronavirus) (Bailiwick of Guernsey) Regulations, 2020 which included powers for the Medical Officer of Health to require a person arriving in the Bailiwick by air or sea to self-isolate for 14 days on arrival, three planning appeals to the Planning Tribunal had been lodged with the Panel.
- 3.2 During lockdown, work has been progressing on these appeals and the cases are nearing the point where they will be ready for listing for a hearing. The Panel has also received a number of enquiries from people regarding the arrangements for submitting planning appeals during the lockdown.

¹ [A Guide to Planning Appeals in Guernsey](#)

- 3.3 However, until the Bailiwick moves into Phase 6 of the Exit from Lockdown Framework and people arriving from outside of the Bailiwick are no longer required to self-isolate for 14 days, it is not possible in practice to hold a planning appeal hearing, including a site visit as all professional members live outside the Bailiwick.

4. Options

- 4.1 The Committee has, in consultation with the Panel, identified the five options for handling planning appeals whilst COVID-19 related restrictions are in place in Guernsey, namely:
- (a) Delay determining appeals until the Bailiwick is in Phase 6;
 - (b) Determining the appeals by a single professional member on the papers;
 - (c) Determining the appeals via a virtual link before a tribunal;
 - (d) Appoint one of the Bailiwick-based lay members as a professional member on a temporary basis; and
 - (e) Amending or modifying section 87(2) of the 2005 Law to allow a tribunal to comprise 3 lay members.

5. Analysis of Options

- 5.1 The Committee has reviewed each of the options and taken advice from the Law Officers of the Crown and guidance from the Panel. In undertaking this analysis, the Committee is keen to enable the Planning Panel to discharge its responsibilities in respect of planning appeals in a fair and timely manner.

(a) Delay determining appeals until Bailiwick is in Phase 6

- 5.2 The Committee *for the* Environment & Infrastructure notes that the current appeals were lodged between late December 2019 and February 2020. It understands that the appellant in one case has advised that the Panel that he wished to delay determination of his appeal until it was possible to hold a public hearing with the parties attending in person rather than via a remote link as he would have to rely on family members to enable him to participate in a virtual hearing. It also notes the appellants in the other case are keen to progress their appeal as soon as practicable.
- 5.3 The Committee has concluded that, given the uncertainty about when Phase 6 of the Exit from Lockdown Framework may commence and what transport links would be available, this option is not appropriate.

(b) Determining the appeals by a single professional member on the papers

5.4 The Panel's Chairman has advised the Committee that, based on his review of the initial written submissions from the appellants and the Development & Planning Authority that both cases require a formal public hearing because:

- one of the appeals involves questions of law raised by the appellant;
- the other case has attracted a significant number of third party representations;
- in both cases the appellants have requested determination before a tribunal of three at a public hearing;
- the written submissions raise matters which require investigation by a tribunal through questioning of the parties; and
- a full site visit is necessary to understand the wider setting of the appeal site.

5.5 The Committee acknowledges and accepts the reasons why neither case can be determined by way of written representations by a single professional member, as provided for under section 6 of the Land Planning and Development (Appeals) Ordinance, 2007, in a fair and transparent manner.

(c) Determining the appeals via a virtual link before a tribunal

5.6 The Committee notes that, on first inspection it may appear that there is nothing to prevent a Tribunal from determining an appeal through a virtual appeal hearing. However, the Panel has advised that site visits are an essential part of each appeal hearing, including where an appeal is determined on the basis of the written representations of the parties. The Panel has further indicated that for the pending appeals a site visit will be required in each case to ensure a full and fair consideration of the evidence, facts and material, including understanding the wider setting of the appeal sites. Also, the planning legislation would require the consent of the appellant to an appeal being decided on the papers without a hearing and in both cases the appellants have requested determination before a Tribunal of three with a hearing.

5.7 The Panel has also advised the Committee it has explored various options for undertaking a remote site visit. However, it has not been possible to identify a way of making this work without purchasing specialist kit that may only need to be used on a handful of occasions.

5.8 The Committee understands that consideration was also given to whether it would be possible to convene a hearing with the off-Island professional member participating by a remote link. It concluded that because of the need for the three Tribunal members to interact with each other, as well as the

parties to a hearing, such an approach would be far from ideal and may result in the parties feeling that the approach had limited their ability to present their case. Further, this hybrid approach would not overcome the challenges for holding a site visit and modifications or amendments would also be required to the Law to allow for remote or virtual hearings.

- 5.9 Finally, as noted above, one of the appellants would be reliant on his son to participate in a virtual hearing. He has advised that he believes this would restrict his ability to present his case.

(d) *Appoint one of the Bailiwick-based lay members as a professional member on a temporary basis*

- 5.10 Section 86(3)(b) of the 2005 Law provides for not less than two members of the Panel to be designated as a professional members and section 87(2) requires that the presiding member of a tribunal is one of the professional members. A professional member is a person with such qualifications and experience in planning matters as in the opinion of the States is necessary for the hearing and determination of appeals to the Planning Tribunal.

- 5.11 As noted above, all three of the Panel's professional members live outside the Bailiwick.

- 5.12 The Committee, in consultation with the Panel, has taken the view that, wherever possible, a professional member should ideally have experience as a planning inspector. However, in 2011, when one of the then two professional members resigned from the Panel, one of the lay members was appointed as a professional member to ensure reliance until such time as a replacement with experience as a planning inspector was recruited. The member was an experience Tribunal member and also a qualified solicitor. He also had experience as a judge on Mental Health Review Tribunals in England.

- 5.13 Two of the Panel's lay members are legally qualified (one a retired English solicitor with significant experience in property and land law matters and the other a practising Advocate). Both have been approached to see whether they would be willing to allow their name to go forward for appointment as a professional member on a temporary basis until it is possible for the current professional members to travel again to Guernsey. Although one of the legally qualified members was willing to allow his name to be put forward, the member indicated that he would be unable to preside at a hearing for one of the pending appeals because of a conflict of interest.

- 5.14 On this basis, the Committee has concluded that this approach would not provide a complete solution until the Island's transport links with the UK and Jersey have re-opened and restrictions relating to travel removed.

(e) *Amending or modifying section 87(1) and (2) of the 2005 Law to allow a tribunal to comprise 3 lay members*

5.15 As noted above, section 87(2) requires that the presiding member for each Tribunal is a professional member. In removing this requirement a Tribunal could be convened comprising any three of the four Bailiwick-resident Panel members and so provide the greatest flexibility for appeals to be progressed in a timely manner. It is also proposed that section 87 is modified so as to allow a member already designated to preside in the Planning Tribunal to be replaced where it was not reasonably practicable for that person to travel to Guernsey to preside at a hearing.

5.16 Section 87(9) of the 2005 Law provides for the States, by Ordinance, to amend or modify the application of section 87. Therefore section 87 may be amended or modified by Ordinance.

5.17 The draft Ordinance, attached at the appendix to this policy letter, only modifies the application of section 87 as proposed where restrictions relating to travel has been made under the Civil Contingencies Law rather than amending the text of the section. This was thought preferable as the modifications, to allow a non-professional member to preside in a Planning Tribunal or to replace the person presiding, will only apply in those circumstances.

5.18 The Ordinance has been worded so that the modifications would also apply if travel restrictions had to be re-imposed later in the year if there were a second wave of the coronavirus or if there were a different emergency. This was considered a better approach to prevent appeal hearings being delayed in the future in similar emergency situations where travel was restricted under the Civil Contingencies legislation.

5.19 Finally, before confirming the membership of a Planning Tribunal where a non-professional member is appointed to preside, The Panel's Chairman will consider any submissions from the appellant and the Development & Planning Authority setting out why, in the particular circumstances of the appeal, a professional member should be appointed as the presiding member.

6. Resource implications

6.1 There are no additional resource implications to progress this Ordinance.

7. Legislative implications

7.1 The modifications made by this Ordinance will only apply whilst the current restrictions in relation to travel of persons into and out of Guernsey in

response to the COVID-19 pandemic emergency remain in place. They will also apply if such restrictions have to be re-imposed in the event of a second wave of coronavirus or if there were a future similar emergency where travel was restricted under the Civil Contingencies Legislation.

8. Operational implications

- 8.1 There will be no operational implications if this modification to the Land Planning and Development (Guernsey) Law, 2005 is approved.

9. Consultation

- 9.1 In addition to consulting with the Panel, the Committee has also consulted with the Law Officers of the Crown and the Development & Planning Authority.

10. Conclusions and recommendations

- 10.1 The Committee is unanimously of the view that for the reasons set out in Section 5 of the policy letter the modifications to section 87(2) of the Law are necessary to enable the Planning Tribunal to determine planning appeals in a timely, transparent and fair manner.

11. Compliance with Rule 4

- 11.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 11.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 11.3 In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee has written to the Policy & Resources Committee to request that this policy letter be scheduled for debate at the August 2020 States meeting.
- 11.4 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 11.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee in respect of land use and planning, its duties under the Land Planning and Development (Guernsey) Law, 2005, as amended and its responsibility for the administration of planning appeals.

Yours faithfully

B L Brehaut
President

M H Dorey
Vice-President

H L de Sausmarez
S Hansmann Rouxel
S L Langlois

The Land Planning and Development (Planning Tribunals) (Modifications) Ordinance, 2020

THE STATES, in pursuance of their Resolution of the 19th August, 2020^a, and in exercise of the powers conferred on them by sections 87(9) and 89 of the Land Planning and Development (Guernsey) Law, 2005^b, and all other powers enabling them in that behalf, hereby order:-

Modification of section 87 of the Land Planning Law.

1. (1) Section 87 (appointment and proceedings of Planning Tribunal) of the Law shall apply with the modifications set out in subsection (2) but only in the circumstances set out in subsection (3); and in those circumstances such modifications shall apply despite any other provision to the contrary under the Law.

(2) The modifications are that section 87 shall apply as if -

- (a) a member of the Planning Tribunal, who is not a professional member of the Planning Panel, may be designated to preside in the Tribunal under section 87(2), and
- (b) subsections (1) and (2) included a power for the Chairman of the Planning Panel, or as the case may be the Deputy Chairman, to replace the member of the

^a Article [] of Billet d'État No. [] of 2020.

^b Order in Council No. XVI of 2005; section 87 is amended by Ordinance No. XXVIII of 2007 and No. IX of 2016; there are other amendments not relevant to this Ordinance.

Tribunal designated to preside in the Planning Tribunal if it is not reasonably practicable for that member to travel to Guernsey to preside at a hearing before the Planning Tribunal.

(3) The circumstances are that at the time of the designation of the person presiding under subsection 87(2), or at any time following that designation but before any final hearing in relation to the appeal before the Planning Tribunal, directions or other provisions have been made and are in force, or are to come into force, under the Civil Contingencies (Bailiwick of Guernsey) Law, 2012^c which prohibit or restrict, or impose conditions (including, without limitation, requirements for isolation) in relation to, persons travelling into or out of Guernsey.

Interpretation.

2. In this Ordinance, unless the context requires otherwise –

"**isolation**" in relation to a person means the separation of that person from any other person in such a manner as to prevent infection or contamination, and

"**the Law**" means the Land Planning and Development (Guernsey) Law, 2005,

and other terms or expressions which are also used in the Law have the same meanings as in the Law.

Citation.

3. This Ordinance may be cited as the Land Planning and Development

^c Order in Council No. XIV of 2012; amended by Ordinance No. IX of 2016 and No. II of 2017.

(Planning Tribunals) (Modifications) Ordinance, 2020.

Commencement.

4. This Ordinance shall come into force on the 19th August, 2020.



Committee *for the*
Environment & Infrastructure

Raymond Falla House
Longue Rue
St. Martin
Guernsey
GY4 6HG

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St. Peter Port
Guernsey
GY1 1FH

26th June 2020

Dear Deputy St. Pier

Policy Letter - The Modification of Requirements Relating to Planning Tribunals Where There are Restrictions in Relation to Travel to and from the Bailiwick Under the Civil Contingencies Law

In accordance with Rule 4(2) of the Rules of Procedure for the States of Deliberation and their Committees, it is requested that the Policy Letter entitled “The Modification Of Requirements Relating to Planning Tribunals Where There are Restrictions in Relation to Travel to and from the Bailiwick Under the Civil Contingencies Law” be considered by the States of Deliberation at its meeting on Wednesday 19th August 2020.

The request is made to ensure that the modification to section 87 of the Land Planning and Development (Guernsey) Law, 2005 to allow members who are not professional members of the Planning Panel to preside in a Planning Tribunal as detailed in paragraph 5(e) of the policy letter can be brought into force as soon as possible to enable a Planning Tribunal to be appointed to determine the appeals currently awaiting determination in early September 2020.

I can confirm that the Presiding Officer has been consulted and has advised that he is content to give an indication that the draft Ordinance may be laid with the propositions and accompanying policy letter at the August 2020 States meeting.

Yours sincerely

B L Brehaut
President
Committee *for the* Environment & Infrastructure