

Member briefing  
**Introduction to planning**

Minister for the Environment  
Assistant Minister for the Environment  
Members of the Planning Committee

February 2024



What are we  
planning for?

Decision-making:  
planning  
applications

Decision-making:  
appeals



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Island Plan

Planning  
application  
process

Behaviour and  
engagement



Island Plan

Planning application process

Behaviour and engagement



# Delivering sustainable development

- Planning and Building (Jersey) Law

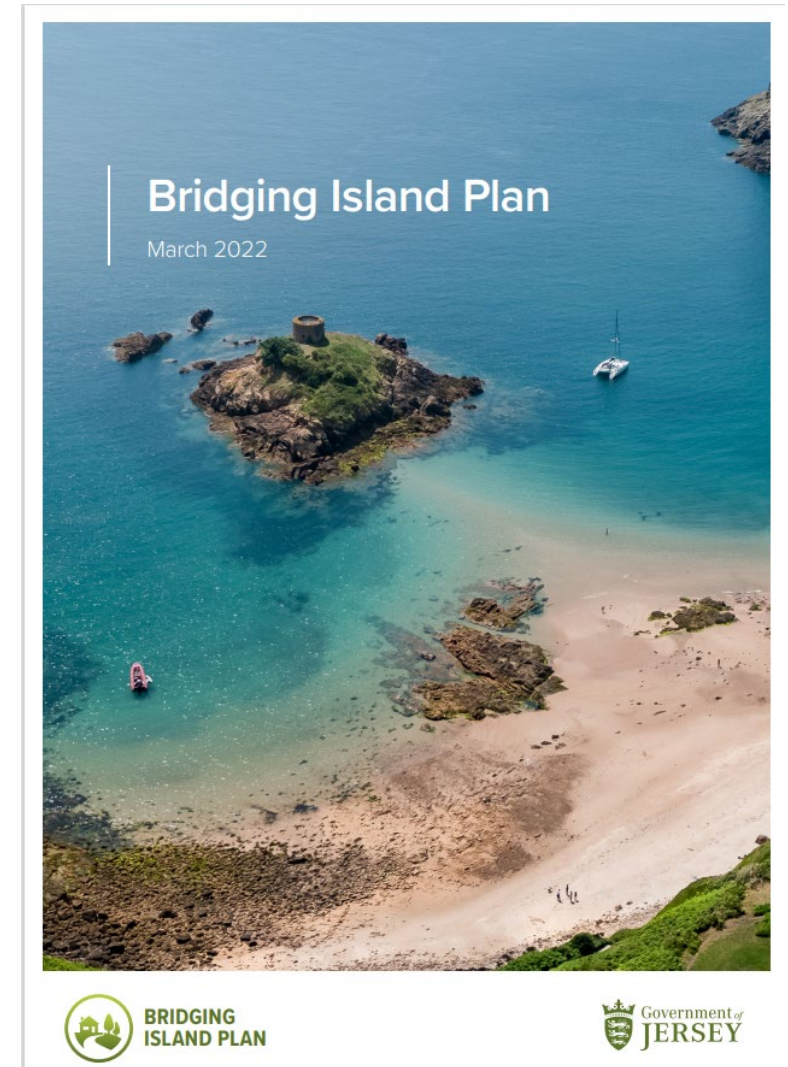
- *development is in accordance with a **development plan** that provides for the orderly, comprehensive and **sustainable development** of land in a manner that **best serves the interests of the community***





# Basic principle: always start with the plan

- Plan-led system
- Planning and Building (Jersey) Law
  - *In general planning permission shall be granted if the development proposed in the application is in accordance with the Island Plan*



# Updated programme: draft bridging Island Plan

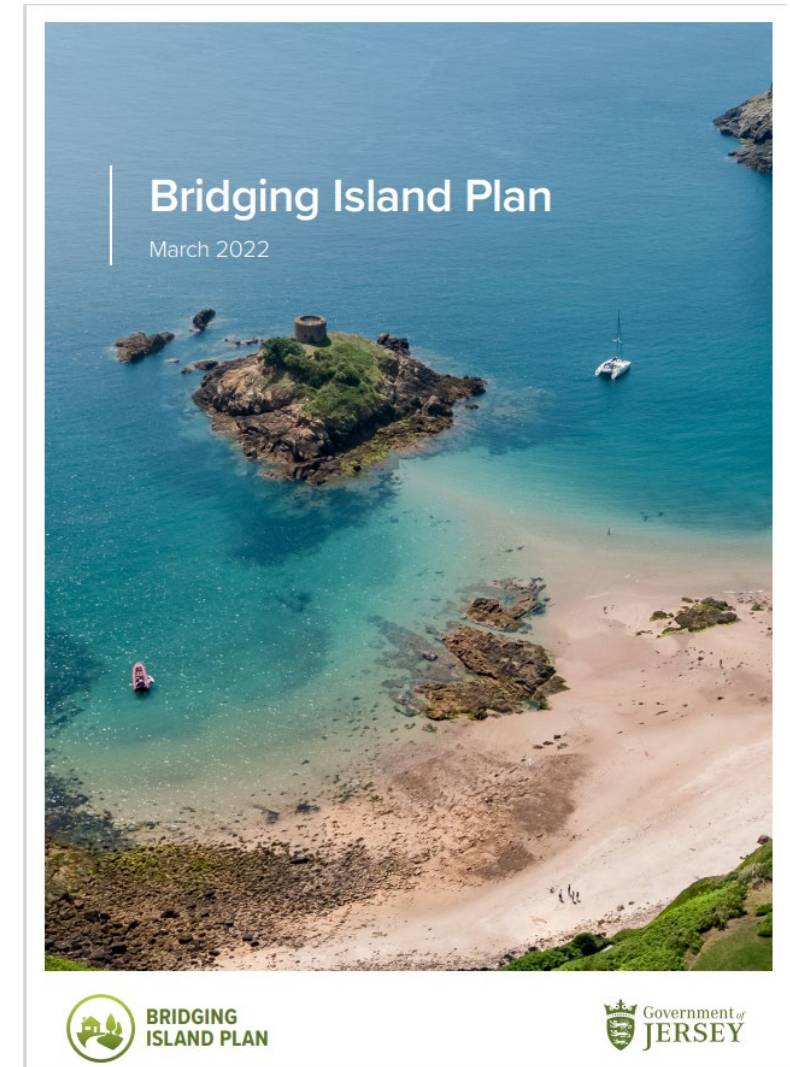






# Why do we need a plan?

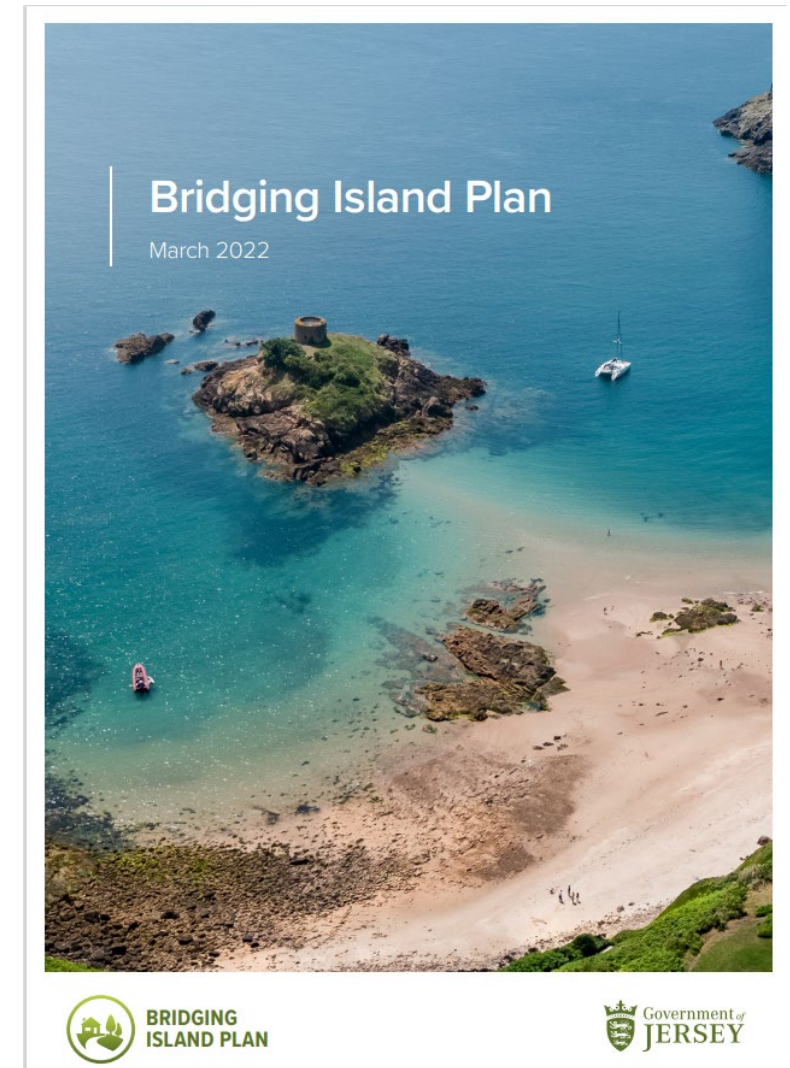
- to provide some certainty
  - for developers and applicants making proposals
  - for islanders about what might happen in different parts of the island





# Why do we need a plan?

- to stop inappropriate development
- to deliver the development that the island needs
  - decision-making through the application process enables and delivers **positive change**





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# Managing change: the need for planning permission

- Development defined by law and requires permission
  - embraces activity in, on, over and under land (including the sea)
  - some forms enjoy 'express consent' (permitted development)
- **Types of application**
  - detailed planning permission
  - outline planning permission
  - development affecting listed buildings and places and SSIs
  - high hedges

# Life of a planning application



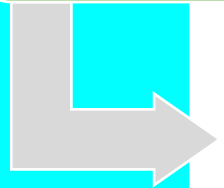
Application made



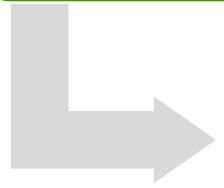
Registration and validation



Consultation and notification



Assessment



Determination

• OFFICER OR COMMITTEE



# Role of Planning Committee

- A difficult role
  - officers make most decisions under delegated powers (c.87% in 2023)
  - most challenging and controversial applications referred to Planning Committee
  - in 2023 Planning Committee considered
    - 97 determinations and
    - 60 requests for reconsideration



Island Plan

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# Members code of conduct

- Avoid actual and perceived conflict of interest
  - a conflict of interest is one *“where a fair minded and informed observer would conclude that there was a real possibility of bias”*
  - any potential or actual conflict should be **declared** before consideration of any particular proposal
  - any such declaration should be **formally noted and recorded**, even where any conflict does not arise.
- **Manage engagement**
  - avoid discussion with parties and social media commentary
  - beware unsolicited representations



# Predisposition and predetermination

- **Avoid predisposition**
  - e.g. expressing your general view on various types of development
- **Avoid predetermination**
  - e.g. expressing a view – whether positive or negative - about a particular development proposal in advance of being presented with the evidence about it





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# Duty as a decision-maker

- determine planning applications in public
  - officers advise; Planning Committee members decide
- **your duty is to the whole community**
  - serves the best interests of the community
  - consider the implications for the wider community – not just those making the application; or making representations
- **only take into account considerations that are material**
  - base decisions on evidence before you – nothing else



# Material considerations: what are they?

- they should relate to the use and development of land
- Island Plan policy
  - e.g. location in the island – BUA/ CNP/ green zone
  - e.g. impact on residential amenity
  - e.g. design
- **Supplementary planning guidance**
  - e.g. amount of parking relative to standards
  - e.g. specification of homes, relative to standards
- **Previous decisions/appeals**
  - planning history



# Material considerations: what are they?

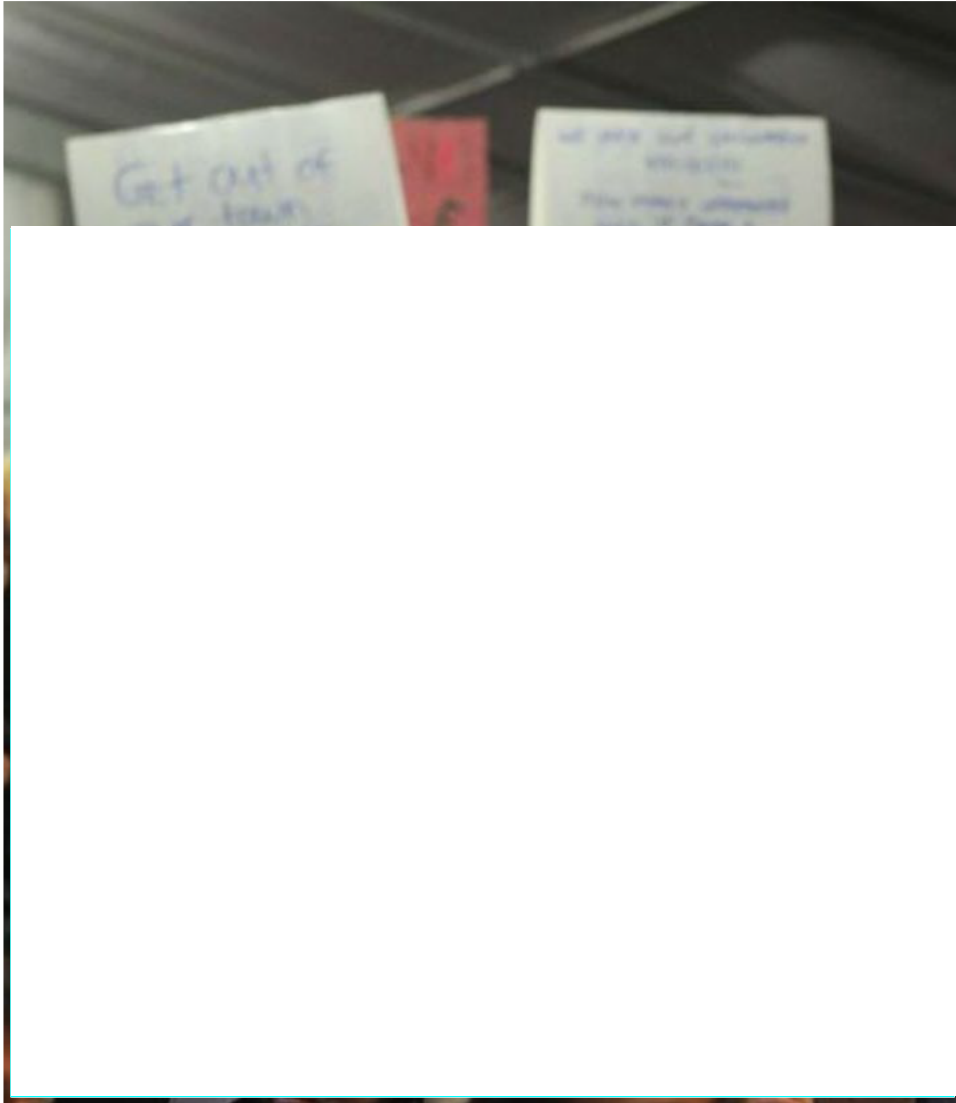
- **consultee advice (relative to IP policy)**
  - e.g. historic and natural environment
  - e.g. highway authority (Parish and I&E (Transport and operations))
  - e.g. drainage
- **representations**
  - the views of organisations and individuals
    - but only where they relate to planning matters



# Material considerations: what are they NOT

- private interests
  - e.g. impact on house prices or house insurance
  - e.g. loss of a private view
  - e.g. boundary disputes or covenants
  - e.g. loss of trade

# Consideration of representations



- content not volume
  - it is the content, not the **volume** – number or strength of feeling – of objections that is most relevant
  - sometimes vocal representations can drown out other views



# What happens at Planning Committee

- case officer report
  - comprehensive and balanced overview of all relevant issues
  - recommendation
- Pre-arranged site visit
- Public Committee meeting
  - officer presentation of proposal
  - opportunity for representations – for and against
  - Members invited to set out their views
  - determination



# Determination: the 'planning balance'



- policy tensions
  - policies may pull in different directions
  - not a flaw – but a reflection of meeting competing objectives
  - carefully balance the planning merits of a development proposal with the policy requirements of the plan
  - consider the plan as a whole – don't consider one policy in isolation

# Determination: the 'planning balance'



- weighing considerations
  - consider the officer report and presentation
  - listen to representations and seek clarification/advice
  - reach your own conclusion
  - the weight you give to each consideration is a matter for you

# Determination: the 'planning balance'



- decision contrary to officer advice
  - Planning Committee can and do make decisions contrary to officer advice
  - decision should be based on proper planning grounds
- departure from the Island Plan
  - the law allows for decisions to be made which do not accord with the policy of the plan
  - only where there is considered to be sufficient justification for doing so



# The planning decision

- Decision
  - approval/ conditional approval
  - refusal
- Reasons for the decision
  - should be clear why decision has been made and on what basis
- Planning conditions
- Planning obligation agreements

# Be prepared!

- read the papers
- visit the site
  - pre-arranged
- consider the key issues
  - officer advice – it's there to help you
    - professional advice about technical/complex issues – is it finely balanced; or very clear?
    - to help you make sound decisions
    - ask for advice/clarification before you vote
  - how much weight to give to various issues?
    - consider justification for your position





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# Appeal against what?



Determination  
of planning  
application

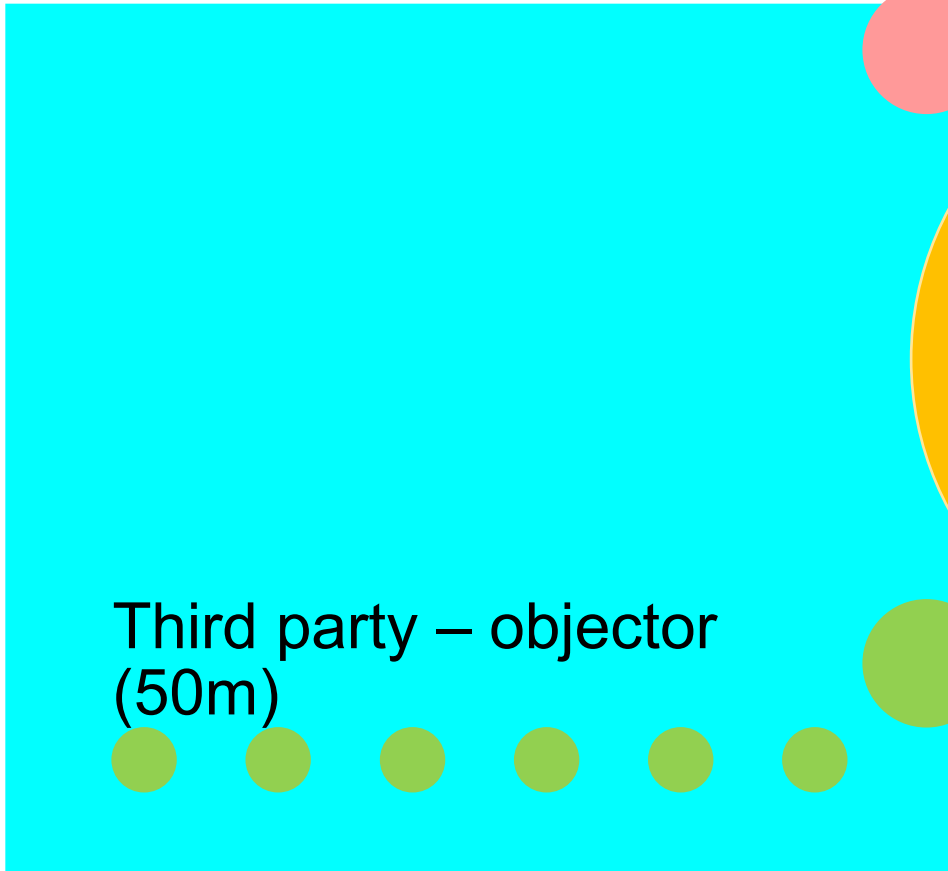
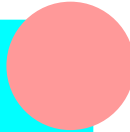
Service of a  
notice

Listing  
(heritage assets,  
trees and sites)

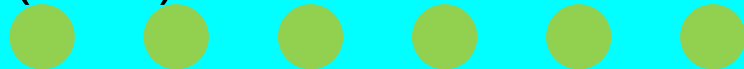
# Who can appeal? – planning application determination



First party - applicant



Third party – objector  
(50m)





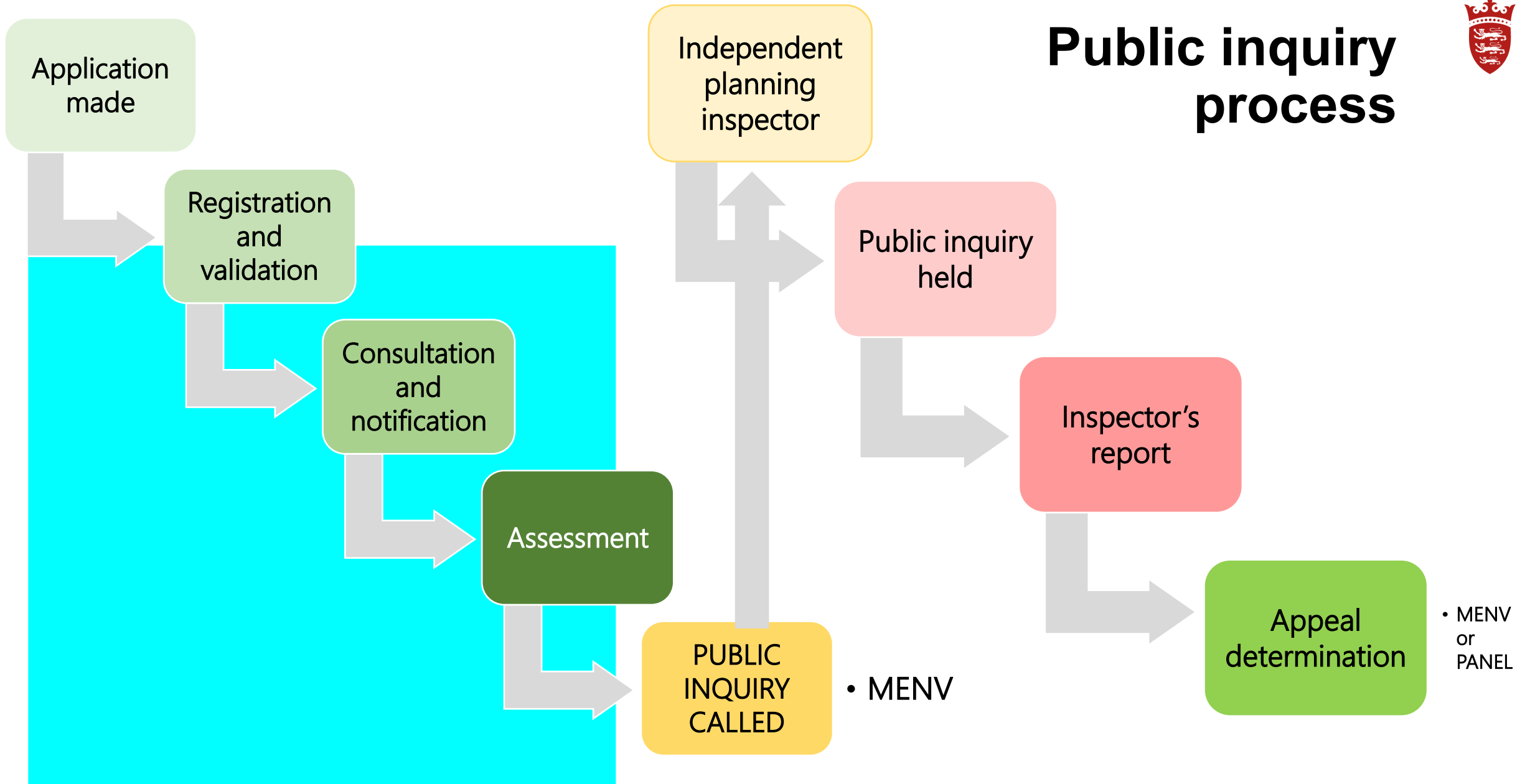


# Public inquiry

- Can be invoked by MENV where:
  - the development would be likely to have a significant effect on the interests of the whole or a substantial part of the population of Jersey; or
  - the development would be a departure (other than an insubstantial one) from the Island Plan.
- Referred to planning inspector:
  - holds a public inquiry
  - prepares a report and recommendation
- Applications determined by:
  - MENV; or
  - determining panel (at least two other Members)



# Public inquiry process





# Role of the Judicial Greffe

- independent of all parties
  - administer and oversee the appeals process
- upon receipt of appeal
  - parties invited to submit statements
  - invite representations
  - inspector nominated to handle appeal



# Role of the inspector

- consider the appeal without undue delay
- appeal can be considered in different ways
  - written representations
  - appeal hearing
  - Inspector will visit site
- prepare a report for the Minister
  - set out a recommendation
  - reasons for that recommendation



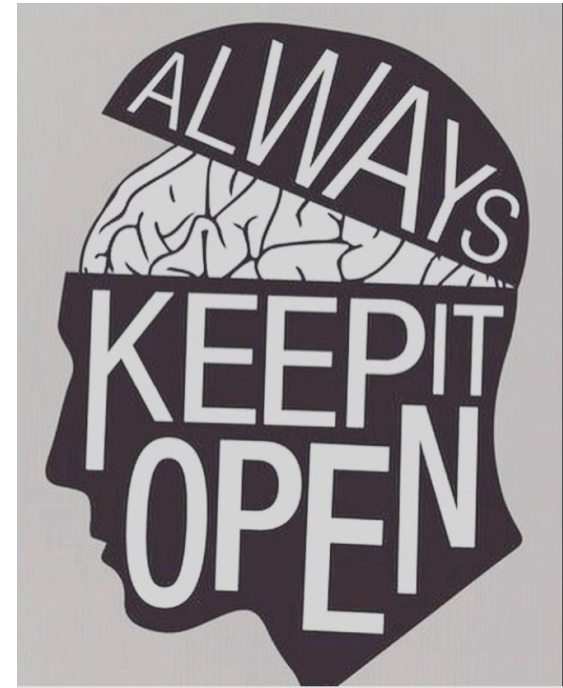


# Preliminaries: Members code of conduct

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# Predisposition and predetermination

- **Avoid predisposition**
  - e.g. expressing your general view on various types of development
- **Avoid predetermination**
  - e.g. expressing a view – whether positive or negative - about a particular development proposal in advance of being presented with the evidence about it





# Duty as a decision-maker

- determine planning appeals/ public inquiries
  - inspector advises
  - MENV or delegate minister decides (appeals)
  - MENV or Panel decides (public inquiries)
- **only take into account considerations that are material**
  - base decisions on evidence before you – nothing else



# Support for decision-maker (appeals)

- Impartial professional support
  - usually provided by Place and Spatial Planning team (CABO)
  - role is not to provide professional advice about the case
  - role is to enable a robust decision to be made and recorded
- **Prepare an appeal bundle**
  - Inspector's report
  - relevant plans and background papers
  - can accompany on site visit, with Greffe, if required



# Determination: the 'planning balance'

- policy tensions
  - policies may pull in different directions
  - not a flaw – but a reflection of meeting competing objectives
- weighing considerations
  - consider the inspector's report
  - consider any relevant plans/ visit site





# Determination: options (appeals)

- Compliant with the inspector's recommendations
  - the law requires the Minister to give effect to the inspector's recommendation, **unless** there are clear reasons not to do so
  - the default position should be that the Minister agrees with and determines an appeal in accord with the inspector's recommendations.
    - a succinct ministerial decision will be prepared to reflect this
    - the inspector's reasons become the Minister's reasons
  - no further appeal on this basis except to the Royal Court on a point of law



# Determination: options

- Not fully compliant with the inspector's recommendations
  - Minister is not bound by and does not have to follow the inspector's recommendation where they are satisfied that there are reasons not to do so
  - they **must** explain fully, in their ministerial decision, why the recommendations were not followed
- Seek advice of Law Officers' Department



# Full reasons for decision

- Royal Court has adjudged that:
  - *"[t]he requirement for full reasons is so that the party whose arguments have not been accepted by the Minister understands the reasons why that is the case. This requires the Minister to address expressly the findings of an inspector and to set out the reasons why the Minister has reached a different conclusion."*
  - *"...where [the Minister's] reasons are different to the conclusions reached by an inspector, the Minister must explain the weight attributed to each consideration. It is not enough...for the Minister...simply to form a different view."*
- Address inspector's points in turn
- Concluding remarks setting out balance of decision-making



# Determination: options

- Not fully compliant: imposing new conditions
  - decision-maker can add further conditions
  - these should meet the 'normal' tests for conditions
  - depending upon the nature of these conditions, it may be prudent to refer the matter back to the Inspector
    - e.g. where it alters the form of the development
    - this allows parties to be consulted, to consider implications



# Determination: options

- Referral back to the inspector
  - insufficient discussion on a particular topic,
  - possible misinterpretation of policy,
  - lack of sufficient information in the original submission;  
and
  - the need to have regard to new material considerations.
- **Requires a formal Ministerial Decision**



# Further appeals to the Royal Court

- potential challenge on a point of law
- 28-day period post-decision
- rely on decision only
  - as set out in Ministerial decision
  - request for comment should be referred to MD
- **Successful challenge?**
  - likely outcome = quash and remit decision back

# Questions?