

BERMUDA STATUTORY INSTRUMENT

SR&O 67/1974

**DEVELOPMENT AND PLANNING (APPEALS TO THE
MINISTER) RULES 1974**

*[made under section 78 of the Development and Planning Act 1974 [title 20
item 1] and brought into operation on 7 December 1974]*

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PART I

Interpretation

- 1 In these Rules, unless the context otherwise requires —
- "the Act" means the Development and Planning Act 1974 [*title 20 item 1*];
- "appeal" means an appeal under section 57 of the Act;
- "applicant" means the applicant for planning permission or, as the case may be, to subdivide land by reference to a registered plan of subdivision;
- "appointed person" means the person appointed under section 57(4) of the Act;
- "inquiry" means the hearing of an appeal by an appointed person;
- "parties to the appeal" means —
- (a) the appellant;
 - (b) where he is not the appellant —
 - (i) the Director;
 - (ii) the applicant;
 - (iii) any person who is an objector to the application for the purposes of the Development and Planning (Development Application Procedure) Regulations 1970 [*title 20 item 1(d)*];
 - (c) any person upon whom the notice of appeal was served in accordance with a direction under rule 4(2);
- "prescribed fee" means the fee prescribed under the Government Fees Act 1965 [*title 15 item 18*].

PART II

Time limit for appealing

- 2 (1) A person aggrieved by a decision of the Board may give notice of his intention to appeal —
- (a) in the case of an applicant to whom section 59 of the Act applies, within twenty-one days of the date upon which he is deemed by section 59 to have been notified of the decision;

- (b) in the case of other applicants and of objectors, within twenty-one days of being notified of decision;
- (c) in all other cases, within twenty-one days after notice of the decision has been displayed on the notice Board situated at the offices of the Department of Planning.

(2) Where an applicant or objector is notified by post of a decision of the Board such notice shall be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

Notice of appeal

3 A notice of appeal shall be addressed to the Minister and to the Clerk to the Board, signed by the appellant or his representative and accompanied by—

- (a) the prescribed fee;
- (b) where the appellant desires that the appeal should be heard by an appointed person, a statement to that effect;
- (c) a statement setting out—
 - (i) the grounds of appeal;
 - (ii) the appellant's submissions thereon, and such statement shall be called "the appellant's case".

Service of notice

4 (1) Service of the notice of appeal may be effected by personal delivery to the offices of the Department of Planning between the hours of 9 a.m. and 4.30 p.m. on any day other than a Saturday or public holiday.

(2) Copies of the notice of appeal shall be served by the Director on all other parties to the appeal and on such other persons as the Minister or the appointed person may at any time require.

Director of Planning's case

5 (1) Within twenty-one days of the receipt of the notice of appeal the Director shall serve upon the appellant a statement setting out any submission which he proposes to put forward at the inquiry or, if there is no inquiry, which he proposes to make to the Minister, and such statement shall be called the "Director's case".

(2) Where the Director is the appellant paragraph (1) and rule 6 shall apply as though for references to the Director there were substituted references to the applicant.

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Additional documents

6 The appellant's and Director's case shall be accompanied by a list of any documents (including maps and plans) which are not included in the record and which the appellant or Director intend to refer to or put in evidence at the inquiry or, as the case may be, submit to the Minister, and any party to the appeal shall be afforded a reasonable opportunity by the Director or appellant, as the case may be, to inspect and, where practicable, take copies of such documents.

The record

7 (1) Any party to an appeal and any person entitled to appeal may obtain from the Department of Planning on payment of the prescribed fee the record of the proceedings of the Development Applications Board which are the subject of the appeal or, as the case may be, may be the subject of an appeal.

(2) The record shall consist of the following documents, together with any plans or drawings annexed thereto —

- (a) the application to the Board;
- (b) where the application has been advertised, the advertisement thereof;
- (c) any notice of objection received by the Board and considered by them;
- (d) any recommendation made to the Board in the matter by the Department of Planning or its officers and considered by the Board;
- (e) the minutes of the Board relevant to the application;
- (f) the notification to the applicant of the results of the application;
- (g) the report, if any, of the Chairman of the Board;
- (h) such further documents as the Chairman of the Board may direct or which the parties to the appeal may agree to be included.

(3) There may be excluded from copies of the record, other than that transmitted to the Minister or the appointed person, any plans, drawing or other documents the copying of which is not reasonably practicable in the circumstances, but a list of any document so excluded shall be included in the record and any party to the appeals shall be afforded a reasonable opportunity by the Minister to inspect and, where practicable, take copies of such documents.

Appeals where no inquiry held

8 (1) The Minister may, where no inquiry is to be held, on receipt of the appellant's and Director's (or applicants') cases, require—

- (a) any party to the appeal who is not required by these Rules to submit his case, to make such written submissions in the matter or produce such written or documentary evidence as such party may think fit;
- (b) any party to the appeal who has submitted any submissions to submit further submissions or written or documentary evidence,

within such time and in such manner as he may specify.

(2) The Minister may thereafter determine the appeal on the basis of the record, written submissions and written and documentary evidence.

(3) The Minister may require any evidence submitted to him under this rule to be given in the form of or verified by an affidavit.

Minister may dismiss appeal in spite of certain irregularities

9 Without derogation from the discretion vested in the Minister by the Act the Minister may dismiss an appeal notwithstanding that he may be of the view that the proceedings of the Board in coming to the decision appealed against were in breach of any of the rules of natural justice or that there has been any failure to comply with any provision of the Act or any statutory instrument thereunder (being a provision of a procedural character) if he is satisfied that the appellant has had a proper opportunity of putting his case at the inquiry, or where there is no inquiry, to the Minister.

Extension of time

10 The Minister may, in his discretion and upon cause shown, enlarge any period of time prescribed by these Rules for the doing of any act.

Abandonment of appeal

11 In any case where an appellant wishes to abandon his appeal he may do so by giving notice in writing to the Minister.

PART III

Part III applies to inquiries

12 This Part shall apply to inquiries.

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Notification of inquiry

13 A date, time and place for the holding of the inquiry shall be fixed and may be varied by the Minister who shall give not less than twenty-one days' notice in writing of such date, time and place to the parties to the appeal:

Provided that —

- (a) with the consent of the appellant, (and where the applicant is not the appellant, the applicant) the Minister may give such lesser period of notice as shall be agreed between the Minister the appellant and, as the case may be, the applicant;
- (b) where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the Minister shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

Who may appear at the inquiry

14 (1) A party to an appeal may appear at the inquiry either in person or through his duly authorised representative.

(2) Any other person may appear at the inquiry at the discretion of the appointed person.

Procedure

15 (1) Except as provided in these Rules, the procedure at the inquiry shall be such as the appointed person shall in his discretion determine.

(2) The appellant shall have the right to begin and of final reply; and other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine.

(3) The appellant, the Director and, if he is not the appellant, the applicant shall be entitled to call evidence and cross-examine persons giving evidence, but any other person appearing at the inquiry may do so only to the extent permitted by the appointed person.

(4) The appointed person may allow the Director, applicant or the appellant to alter or add to their cases, but shall give the Director, applicant or appellant, as the case may be, an adequate opportunity of considering any such submission and replying thereto.

(5) If any person entitled to appear at the inquiry fails to do so, the appointed person may proceed with the inquiry at his discretion.

(6) The appointed person shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representations or

statements received by him before the inquiry from any party to the appeal.

(7) The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

Site inspection

16 The appointed person may make an inspection of the land before, during or after the inquiry as he may think fit and may be accompanied by the parties to the appeal or unaccompanied as he may think fit.

Procedure after close of the inquiry

17 If, after the close of the inquiry, the appointed person proposes to take into consideration any new evidence or any new issue of fact which was not raised at the inquiry and which he considers material to his decision, he shall not come to a decision without first notifying the appellant, the Director and any party to the appeal who appeared at the inquiry of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within such time, being a time reasonable in the circumstances, as he may think fit.

Cost

(1) Where any person makes application at any inquiry for the award of costs, the appointed person shall report in writing the proceedings on such application to the Minister and may in such report draw attention to any considerations which appear to him to be relevant to the Minister's decision in the matter.

(2) The Minister may pay any such costs out of moneys appropriated by the Legislature to the purpose.

Report and recommendations

19 (1) The appointed person shall as soon as practicable after the close of an inquiry submit his report and recommendations to the Minister.

(2) Any person aggrieved by the decision of the Minister upon the appeal may, for the purposes of an appeal under section 61 of the Act, be afforded a reasonable opportunity by the Minister to inspect and take a copy of the report and recommendations of the appointed person.

Transitional

20 [omitted]

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Commencement

21 [omitted]