



PUBLIC PETITION NO.

PE01560

Name of petitioner

John Buston

Petition title

Local authority planning appeals procedure

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to eliminate or amend the Notice of Review period of 3 months in order that the Council Complaint Procedure can be concluded prior to a request for a Local Body Review.

Action taken to resolve issues of concern before submitting the petition

The petitioner has had personal experience of appealing a decision to refuse a planning application. The experience made the petitioner aware of problems arising from the interfaces between the complaint and review systems.

As such, the petitioner contacted his Ward Councillors and MSP making them aware of the issues. The MSP wrote to the Minister of Planning and Local Government whose response failed to eliminate petitioner concerns.

Petition background information

INTRODUCTION

When an application is made for planning permission a designated planning officer is appointed to carry out an assessment. The officer has an option to hold a design review meeting with the applicant prior to producing a committee report termed the 'Report of Handling' (ROH), with a recommendation for approval or otherwise of the application.

The ROH is then forwarded to Ward Councillors who use it as a basis for decision in determining if they endorse the planning officer recommendation. If this is the case, then the 'decision' is notified to the applicant. The ROH is not sent to the applicant but is made available on the Authority website some weeks later.

In circumstances where an application is refused, there are review and complaint options available. The applicant can lodge a complaint via the Local Authority's complaint procedure to address incorrect or misleading information contained in the ROH. The applicant can also request a review by the Local Review Body of Councillors (LRB) on the opinions which have led to the planning officer recommendation.

THE COMPLAINT PROCEDURE

The complaint procedure detailed is that followed by Aberdeenshire Council (there may be variations elsewhere in Scotland). This procedure excludes planning related issues where a right of appeal is available through Scottish Ministers (but not a right to a review by the LRB).

Initially there is an attempt at front line resolution, followed by an investigative second stage. The objective is to provide a response within 20 working days with the procedure calling for revised time limits to be agreed, if this is unachievable. The internal council complaint process concludes with the Head of Planning and Building Control confirming the correct procedures have been followed, and stating the next course of action will be for the complainant to ask the Scottish Public Services Ombudsman (SPSO) to look into the case.

The SPSO publishes an advice leaflet dealing with complaints on planning issues. This states a main area that may be looked at is where incorrect or misleading information is contained in a planning committee report.

From experience, the period from the decision date to obtaining the internal council second stage response can be in excess of three months. The period elapsing from first raising the issue with the council and obtaining the SPSO response can be in excess of six months.

THE REVIEW PROCEDURE

The applicant has three months from the decision to apply for a hearing by the LRB, whose membership consists of Councillors. It is expected that all submissions made by an applicant should accompany an application and not be forwarded at a later date.

The LRB meet monthly with additional site visits occurring as required. They receive specialist assistance from the planning authority by the secondment of a planning officer as advisor, and also by providing the ROH as a basis for LRB decision.

The LRB, unlike the SPSO, can review the opinions and weightings of planning factors contained within the ROH and have the ability to change the decision for refusal.

The assumption of LRB Councillors must be that the ROH, prepared by a professionally qualified planning engineer employed by the planning authority, is both fair and accurate. In unusual circumstances where this is not the case, then independent advice would not be expected from the planning authority in Committee to highlight error or a need for investigation.

The Councillors are a lay group and, whilst the LRB have the facility to employ consultants, they are unlikely to commission such investigations, unless alerted to a requirement to do so. For this reason, the identification and correction of ROH error is not a function that the LRB can be expected to undertake. This is illustrated with example provided below.

INTERFACE BETWEEN PROCEDURES

There are difficulties encountered in concurrently operating both procedures, each of which could make a contribution to the planning process. The expectation is that the SPSO examine report integrity, whilst the LRB overview the opinions expressed within the report (assuming a sound informational basis is available for these).

From experience, the SPSO will not consider issues of error after a review by the LRB has been requested, even in circumstances where the LRB agree to postpone a hearing until the SPSO investigation is finalised. The time scale of a complaint assessment means that it will be unlikely to be concluded within a three-month period from the decision date, which effectively rules out SPSO consideration.

It should be noted that the SPSO position, in referring consideration of report integrity to the LRB, fails to recognise that an inaccurate ROH has already been used as a basis for decision by Ward Councillors.

RECOMMENDATIONS

The petition seeks to create separation between the complaint and review procedures, so that each can contribute to the planning decision making process. At present, the complaint and review procedures are conflated due to the 3-month notice of review period required in Scottish Statutory Instruments 2013 No.157, Local Review Body Procedure PART 3, Section 9(2)).

Removing this barrier would allow the full complaint and review procedures to operate. If the SPSO considered and upheld a complaint, they could recommend to the Authority that the ROH be amended. The planning process could then restart with both Ward Councillors and the LRB having an accurate document available as a basis for consideration. There would be no subsequent involvement by the SPSO in the planning decision making process.

This appears to be a clear and logical way to address the problem.

EXAMPLE

The petitioner encountered several instances within a ROH of error and misleading statements. It is significant that the designated officer had not held a design review meeting during the assessment. One issue is now described to illustrate a complaint that was well researched, and therefore worthy of consideration and response:

As a key refusal point, the planning authority stated that an existing dwelling overshadowed windows in a proposed new dwelling.

There is definitive guidance available in this area from the Buildings Research Establishment who had developed a formula to calculate the degree of overshadowing that occurs for a given geometric layout. Calculations based on this formula showed no problems existed. Photographs taken from the proposed centre point locations of these windows further illustrated the lack of overshadowing obstructions.

The responses received were as follows-

The Council did not respond to the issue in the internal complaint stages. However, as independent SPSO adjudication was available, the lack of response, although disappointing, is not one that requires action from this petition.

The SPSO did not consider the issue. Their planning advisor stated in his report: 'There should be no impediment to the normal processing of the case to the LRB, which has the power to make a different decision on the application if it so chooses. The complainant as applicant, has the opportunity to make submissions to the LRB to challenge the facts as well as the opinions of the Report of Handling.'

The LRB did not consider the issue. A formal submission presented after receiving the SPSO decision was not examined, neither was the applicant allowed to address the LRB in a subsequent meeting that was held. The planning officer, advising the LRB, made no reference to the issue in his summary of the application to Councillors.

After a request made by my MSP, the Minister of Local Government and Planning examined the issue and did not acknowledge any administrative failure of the complaint and review procedures in the response.

In a well-governed country, a planning applicant should have the right to have a legitimate and well-researched complaint addressed. It is hoped this petition will help

future applicants in circumstances when Planning Authorities may have produced an unfair and inaccurate report.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01560>

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Comments to stimulate online discussion

The petitioner is aware that there may be alternative options available to ensure a complaint is addressed and would welcome any suggestions of change to the planning system that achieves this.

Presently a Planning Authority may decide that a Design Review Meeting will not be held during an assessment. However, these meetings are recommended in order to help in eliminating ROH error at an early and pre decision stage. Should they be mandatory?

Would adjustment to the operating parameters of the LRB and SPSO provide a solution?

The Royal Institute of British Architects and other Engineering Institutions offer adjudication services. Is there a place for these services to be used where the SPSO are unable to provide an independent issue assessment?