

Petition 1560

**Index** of pages referred to during Preliminary Hearing. 12<sup>th</sup> May 2015.

Page 1. Flow Diagram of Report of Handling      Recommendation

Page 2. Flow Diagram of Report of Handling      Current

Page 3. Flow Diagram of Report of Handling      Actual

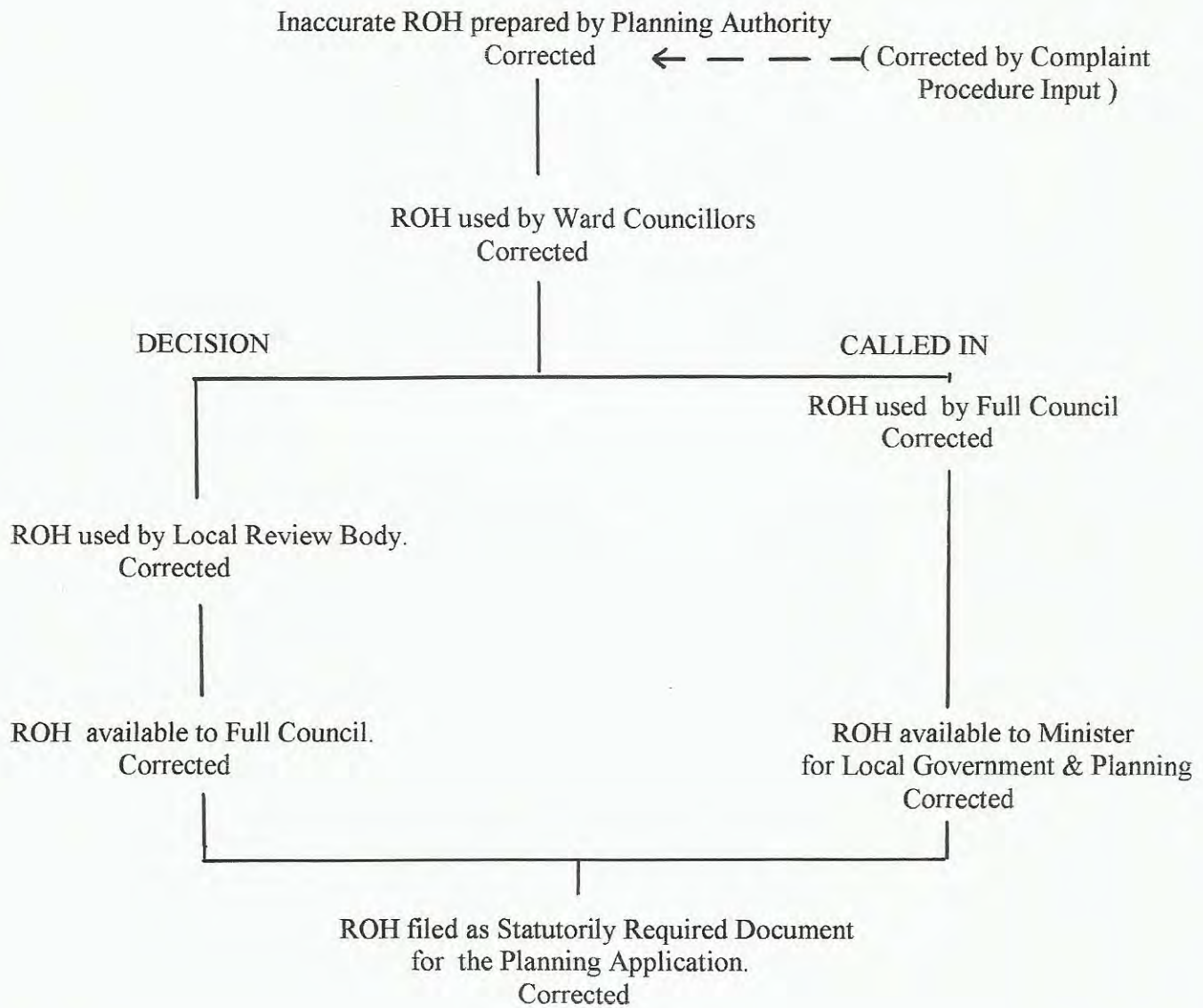
Page 4. Summary

Attachment 1. Aberdeenshire Council Letter. 4<sup>th</sup> April 2013

Attachment 2. Extract from SPSO Planning Guidelines.

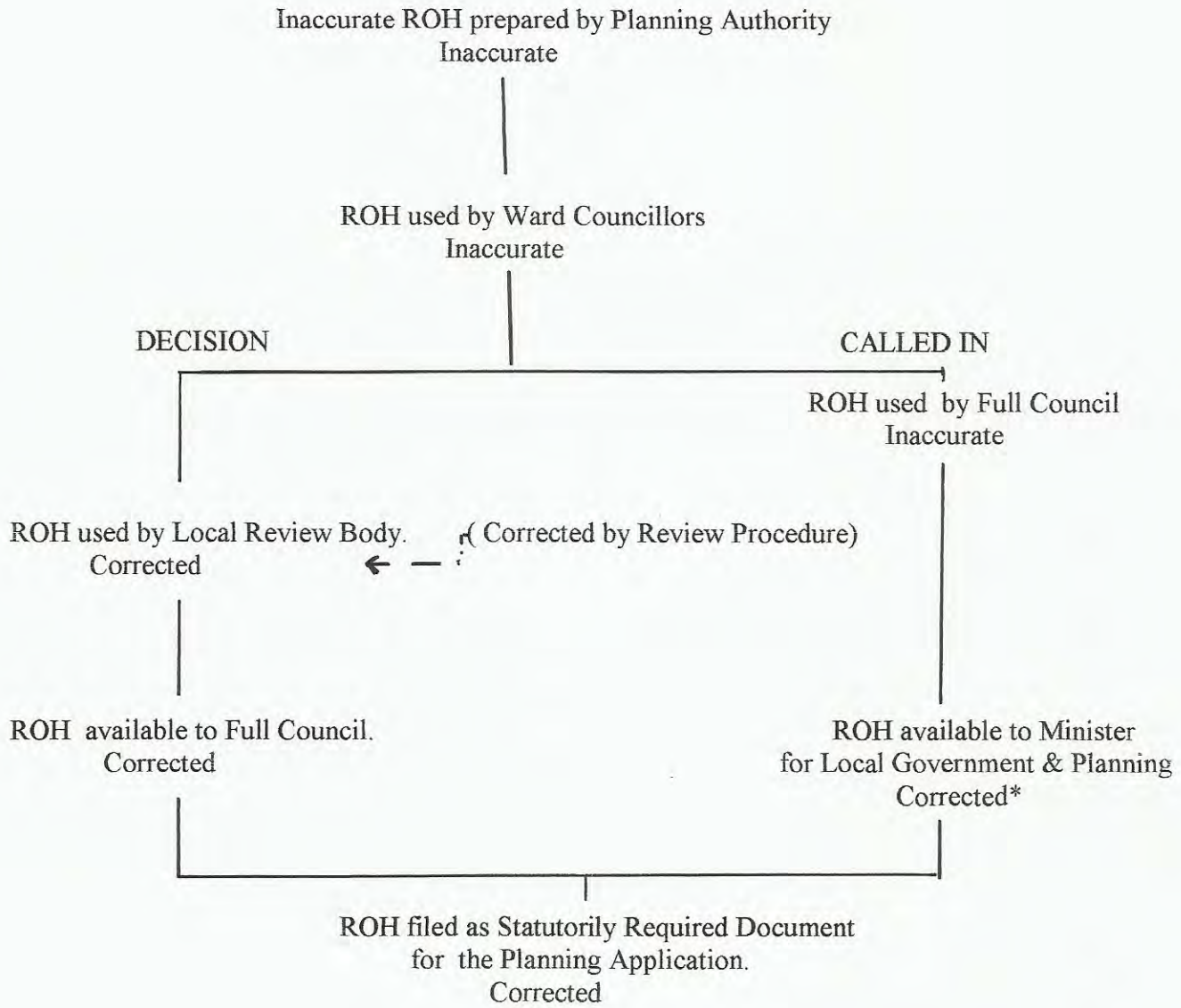
Flow Diagram of Report of Handling.

Recommended  
( Complaint Procedure Completed )



Flow Diagram of Report of Handling.

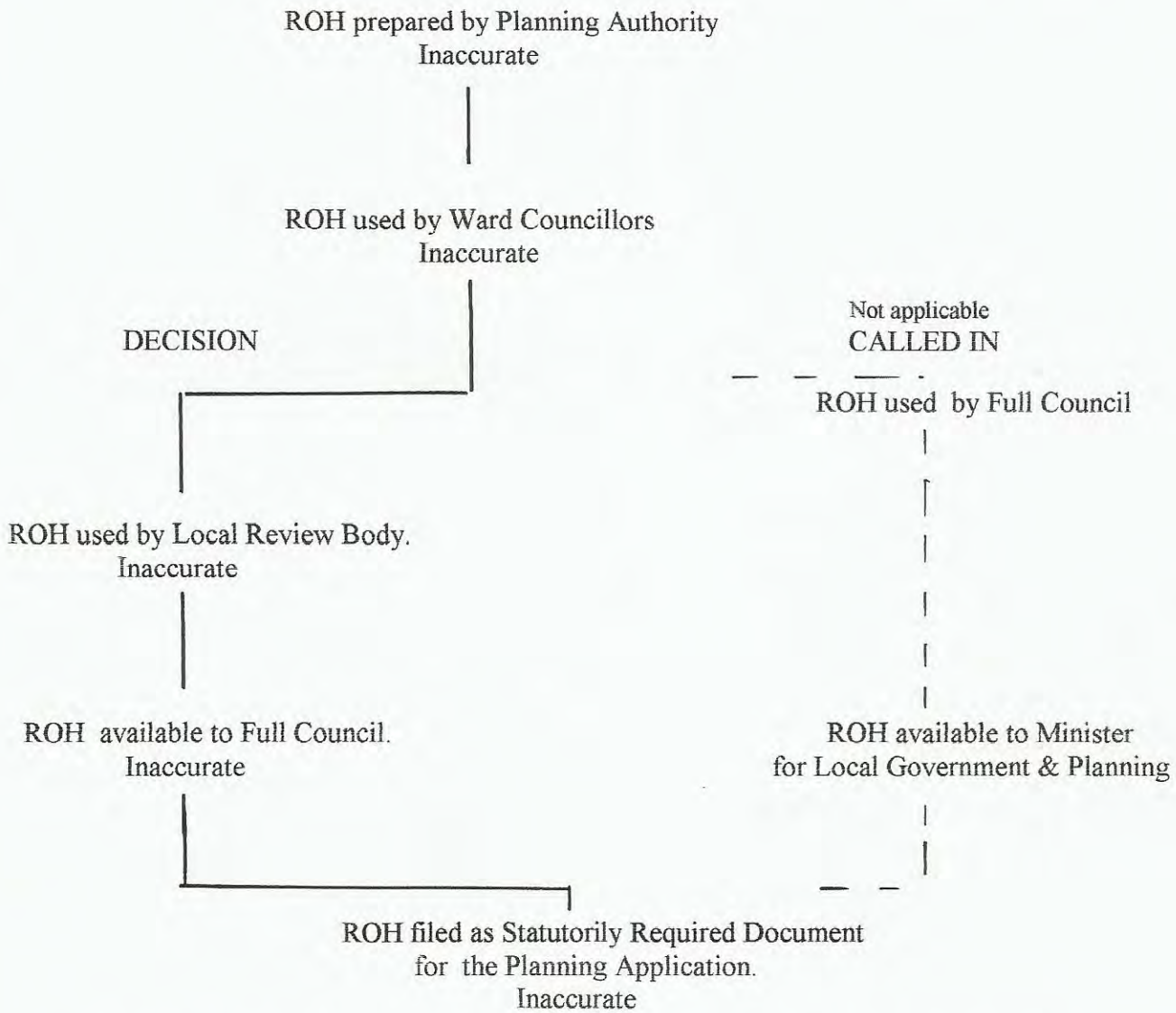
Current  
( SPSO cede examination to LRB)



\* If the application was 'called in' then a professional assessment independent of the Planning Authority would occur by the Minister.

Flow Diagram of Report of Handling.

Actual



Actual – Example Issue not reviewed by either Complaint or Review Procedures

## Summary

The petitioner has attempted, by comparing the flow charts on pages 1 and 2, to show that the Complaints Procedure is a key component of the planning process and has suggested legislative change to ensure that the Procedure is not stopped by an application for a LRB review. The LRB are only involved in the planning process by Ward Councillor determination and this involvement may not occur if an accurate ROH were available as a basis for decision. It is therefore inappropriate for them to be involved prior to the ROH being corrected.

A further point, that if involved, the LRB are professionally advised by the Planning Authority, and there are doubts whether the advice received on technical planning issues would be sufficiently independent where there is conflict with a Planning Authority generated report.

The petitioner also expressed concern that the planning process does not allow a legitimate planning complaint to be examined, with this illustrated by the flow chart on page 3. It remains unclear to the petitioner if this lack of examination was due to a procedural and, or, operational failure of the Complaints/Review Procedures.

There were several complaint issues raised by the petitioner in his planning application but, for simplicity, only one was noted in the petition as an example. If this specific example is raised with the Planning Authority and SPSO their responses should give a better understanding of the problem. As this is a preliminary hearing the petitioner would like to comment once feedback from them has been obtained.

The following summarises the information that, in my opinion, would be helpful in establishing if a procedural or operational failure occurred.

*Information request to Head of Planning & Building Control. Aberdeenshire Council.*

*In Petition PE 1560 the petitioner provides an example of an issue which was not addressed during the Council Complaint process.*

*In a letter to the petitioner dated 4th April 2013 ( attachment 1) you confirm satisfaction that all concerns raised had been addressed.*

*Please confirm if the issue noted had been considered, your findings if relevant, and whether the petitioner was subsequently informed of these findings.*

*If the issue was not considered then please give the reasons for this non consideration..*

*Information request to the Scottish Public Services Ombudsman.*

*In Petition PE 1560 the petitioner provides an example of an issue which was not addressed during the Council Complaint process.*

*In your published guidance notes (attachment 2) it states misleading or inaccurate information provided in a planning committee report is a legitimate area that may be examined by the SPSO.*

*Would you please confirm if the issue noted had indeed been considered, the findings, and whether the petitioner was subsequently informed of these findings.*

*If the issue was not considered then please give reasons for this non consideration..*

*It may also be useful to confirm with the Chairman of the LRB that the issue was not discussed at the two meetings held.*





4 April 2013

**If you have difficulty reading this document please contact the admin team**

Dear Mr Buston

Thank you for your recent correspondence to \_\_\_\_\_ and also for your letter to \_\_\_\_\_  
received on 2 April 2013.

I can advise that following the response that was sent to you on 27 March 2013, I have had the opportunity to review your complaint and the response that was sent to you. I can confirm that I am satisfied that all of your concerns have been addressed and that the correct procedure has been followed. As such \_\_\_\_\_ response is Aberdeenshire Council's final position in relation to your complaint. I would reiterate that your next course of action would be to ask the Scottish Public Services Ombudsman (SPSO) to look into your case. Please be advised that the SPSO will not look to overturn any decision made by Aberdeenshire Council and will only look at any maladministration made during the Complaints Process. Should you wish to contact the SPSO their details are as follows:

Address: SPSO, Freepost EH641, Edinburgh, EH3 0BR OR  
SPSO, 4 Melville Street, Edinburgh, EH3 7NS

Telephone: 0800 377 7330

Website: <http://www.spsos.org.uk/contact/index.php>

Yours sincerely

**Robert Gray**  
**Head of Planning & Building Standards**

You must keep to the timescales for appealing. These are given in the initial acknowledgement of your application and in the decision notice.

**We cannot get involved because you have missed a deadline.**

## What can I do if I'm unhappy with the way my application has been handled?

If you are unhappy with how the application was handled, rather than with the decision that was made, you should first report the problem to the planning authority. They will consider your concerns and they should try to deal with them.

### I reported the problem and am still unhappy. How do I complain?

You should normally complain to the planning authority if they have still not dealt with the matter after you reported it. This doesn't just mean telling staff about the problem. It means making a formal complaint telling the authority that they have not sorted it out. You should approach them direct and ask for details of their complaints procedure.

Please remember that planning authorities often have more than one stage in their complaints procedure. We usually expect you to have gone through all the stages before we will look at your complaint. This gives the authority the chance to try to put things right. If you're still unhappy after going through their complaints procedure, or if the time they're taking to look into your complaint is unreasonable, you can complain to us.

You also have to see the planning process through to completion before complaining to us that something has gone wrong in it. We can't look at complaints about something that *may* happen.



**You should normally make your complaint to us within twelve months of realising that you think the planning authority have done something wrong.**

## What we can look into

We can look into how planning authorities administer planning applications. They must make sure they keep to the Planning Acts and other legal regulations and take all relevant issues into account when they consider an application.

We can look at how they handled applications for new developments, and for changes in the way land and existing buildings are developed and used. We can also look at how they handled

applications that cover listed buildings, control of advertisements and enforcement action. We can consider whether a planning authority's actions under these procedures were appropriate.

By law, planning authorities have to prepare development plans as a guide to future development. They must use these and Scottish Government planning policy documents to make their decisions. Planning authorities, however, make decisions on a wide range of planning matters, not all of which are clearly covered by a development plan. They have the right to decide on all of these as they see fit. This is called 'exercising their discretion'. We cannot usually get involved in an authority's exercise of this discretion, and we cannot change their decision.

We can look at whether officers or a committee from a planning authority followed the right procedures when they made their decision. However, it's for the authority to judge how important each relevant point of the case is when they're making their decision. To do this they should follow their development plan, unless other factors that are 'material' to planning say otherwise. You can get more information about this in the 'Built Environment' area of the Scottish Government website at [www.scotland.gov.uk](http://www.scotland.gov.uk).

Here are some examples of the main areas we may be able to look at:

- an incorrect or misleading planning discussion or consultation
- an incorrect procedure in processing an application
- incorrect or misleading information in a committee report
- not following a correct procedure when making a decision on an application, such as:
  - not taking the relevant development plan into account
  - not taking a 'material' planning consideration into account
  - a local review body not taking relevant information into account when making a decision
  - not serving legal notices (such as enforcement notices, modification notices and building preservation notices) without following the proper procedure
- handling the complaint poorly or inappropriately