

planning democracy



PE1560/C

Response to Public Petition 1560

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.

Planning Democracy welcomes the opportunity to respond to the petition 1560 from John Buston.

The issue of the petitioner lies with having his objection to a failure to correct a factual inaccuracy in the officer's report. In practice, however, our understanding of the system would suggest that an *applicant* for planning permission should have ample opportunity to have such an inaccuracy dealt with.

Where a decision is taken to a planning committee, officers' reports and recommendations are often made available in advance of the relevant meeting. In addition the committee meeting at which an application is considered should also be open to the public. In some cases people, including the applicant, are granted the right to address the committee.

Even were such opportunities not available, post-decision, the applicant has the right of appeal. If there was a factual error in the original report this would offer an opportunity for the applicant to highlight the error and use it as part of their grounds for appeal.

Where this error is material to the decision (i.e. where it actually held some weight in making the decision) an error in fact would leave the authority open to legal challenge and it would therefore be very much in their interests to address and fix it (notwithstanding that there is a separate issue of the costs facing anyone seeking access to the courts in Scotland!).

It may be helpful for the committee to consider requesting the full case history before making a decision as to whether the issues discussed are illustrative of a wider problem. It may also be helpful if the petitioner could explain each step that has occurred and how he considers his diagrams illustrate a specific problem related to the timings of LRB processes.

Based on the material presented, the petition seems to highlight that it is often very difficult for those inexperienced in the workings of Scotland's planning system to understand how decisions are taken, whether they are being made fairly and what recourse they have to challenge procedures when they perceive there to be problems. It certainly highlights that planning officers may make interpretations on planning matters which are still felt to be inaccurate by the applicant. While in this instance the applicant feels that this has been dealt with inappropriately - leading to the need for a review - the LPA is adamant that it has been handled appropriately.

Planning Democracy is sympathetic to those who experience difficulties with planning procedures and we feel that much could be done to provide clarity and support, particularly for infrequent users of the planning system. However, we are unsure that the proposed solution of effectively intertwining SPSO complaint and planning appeal procedures would help very much.

The SPSO is an alternative procedure for the redress of grievances, it is there to be used and offers a range of remedies where errors are found to have occurred but it is usually separate from formal decision-making and not intended to correct errors that are in process. The SPSO guidance notes state that it can only be used at the end of the planning process.

More generally it is important to reiterate that *applicants* for planning permission already have the right to appeal against a decision. For other interested parties there are currently no such rights. This means that the only paths of redress open to local communities who identify errors are via the SPSO or the courts – this is why Planning Democracy has previously petitioned the committee to investigate the introduction of an equal right of appeal.

We would highlight the disparity between the opportunity afforded to the applicant to access an appeal process when other parties affected by an error leading to overshadowing from inappropriately designed development would be unable to query the decision.

We do not see that legislative change is required on the basis of the current petition. However, the petition does highlight that a review of complaint handling procedures may be possible or desirable. Perhaps some guidance could be created that could be sent to LPAs, and councils, to ensure that such concerns are addressed in a timely manner.

Any such review/ guidance might also consider the workings of the Local Review Bodies introduced by the 2006 Planning (Etc.) Scotland Act to ensure that they are clearly explained to all parties. There is no doubt considerable scope for mistrust in a system where appeals are effectively heard by a separate part of the same local authority that made the original decision. Strenuous efforts should be made to ensure their independence and impartiality.