

PE1560/D

CONSULTATION RESPONSE

PUBLIC PETITION PE01560: LOCAL AUTHORITY PLANNING APPEALS PROCEDURE

PAS

PAS is a Scottish national charity and social enterprise which helps people in Scotland to understand and engage with the places they live in through advice, training, education awareness raising and engagement events.

PAS is especially interested in planning policy and law; engagement and consultation; and in involving all of society in a transparent and equitable way with planning matters.

PAS welcomes the opportunity to provide written evidence on this petition.

DISCUSSION OF ISSUES RAISED

It is essential to differentiate between the separate roles of the Local Review process and the local authority complaints procedure, the former looking exclusively at the quality of planning decisions and the latter focused on procedural matters and potential mal-administration. Both procedures provide essential safeguards within the planning system.

The petitioner states that currently a scenario exists whereby the timescales of the two systems can conflict, potentially impinging on the ability of LRBs to make decisions with accurate information before them. This pertains to the particular scenario he sets out whereby the Scottish Public Service Ombudsman (SPSO) rules that a Report of Handling (RoH) is inaccurate after the expiry of the 3-month Notice of Review deadline, or after a Local Review has already taken place. He therefore believes that the existing statutory 3-month time limit for a Notice of Review should be eliminated or amended to allow a Local Review to follow the outcome of a SPSO investigation.

SPSO provides a Complaints Handling Procedure for public bodies, however timescales for dealing with complaints do vary between Local Authorities. Planning complaints can also be complex and as the petitioner states, not resolved within three-months. PAS therefore concurs that the scenario described by the petitioner could arise.

However, as detailed in the petition, the SPSO has already examined this matter and has stated that in applying for a Local Review sufficient opportunity exists to raise matters of inaccuracy in RoHs on the Notice of Review form for the LRB to address if they choose, and that Scottish Ministers have supported this position.

The reason for a 3-month period in which LRB can be applied for is in the interests of keeping the planning system running efficiently to clear and recognised timescales. It also provides applicants and third parties with a clear procedural framework in which they can engage with the planning system. **PAS is therefore of the opinion that the current three-month Notice of Review period should be retained.**

POSSIBLE ACTIONS

PAS is not able to recommend a definitive solution to the subject of this petition.

It should be noted that the vast majority of planning applications in Scotland area approved without recourse to complaint procedure. The SPSO Complaints Report 2013-14 states that 213 planning complaints were received (13% of the total complaints about Local Authority services). It does not specify complaint topics and so investigation of the frequency of the petitioner's complaint scenario inform whether action needs to be taken.

It might be helpful if, when there is a complaint about an inaccurate RoH, the complainant is be allowed to address the Local Review Body (LRB). This opportunity may be sufficient to address the petitioner's concerns, although he may feel that his views would still lack influence in the absence of a decision from the SPSO. This is something that would need to be decided at local level or possibly through guidance at national level.

A possible measure suggested in PAS's discussion of this issue is that, in the case of delegated planning applications, the RoH should be published online in advance of the letter of refusal being sent out to allow applicants and 3rd parties to review it for accuracy. This would however have potentially huge resource implications for local authorities and could lead to the misapprehension of the existence of a further opportunity to make representations.

A further recourse could be that the Notice of Review period initiated by the decision notice could be suspended on receipt of a formal complaint by the Local Authority. The Complaint Procedure could then be followed, including any involvement of the SPSO. Once the complaint procedure has been concluded, any necessary correction of the Report of Handling could take place, and the Notice of Review period resumed. The applicant would then have the remainder of the three month period to request a Review, which would be based on the corrected RoH. A

downside of this approach is that it could result in the opportunity to use complaints procedures being used as a delaying tactic in the processing of controversial planning applications.

With regard to all of the possible actions above a balanced decision will need to be reached as to whether the issues raised in the petition merit action which could impact on the clarity and efficiency of the planning system.

Petra Biberbach
Chief Executive