

**Case 200501921: Scottish Executive Inquiry Reporters Unit**

**Summary of Investigation**

***Category***

Scottish Executive: Planning, handling of appeal

***Overview***

The complaint concerned the handling of an appeal against a local authority planning decision by the Scottish Executive Inquiry Reporters Unit (SEIRU). The complainant alleged that SEIRU failed to follow their own procedures. He also alleged that communication from SEIRU was of a poor standard and that SEIRU/the Reporter failed to explain decisions, resulting in the complainant (Mr C)'s view that SEIRU lacked accountability.

***Specific complaints and conclusions***

The complaints which have been investigated are that:

- (a) the SEIRU failed to follow their own procedures (*not upheld*)
- (b) the Reporter failed to explain decisions (*not upheld*); and
- (c) there was poor communication from SEIRU (*upheld*).

***Redress and recommendations***

The Ombudsman recommends that SEIRU:

- (i) should consider when writing to complainants how best to give clear, plain English, explanations supported by references to relevant statute where appropriate;
- (ii) should consider developing guidelines for Reporters on recording measurements and their presentation in letters and reports; and
- (iii) should ensure that its complaints procedure is made clear to complainants at an early stage after they have made their complaint.

SEIRU have accepted the recommendations.

## **Main Investigation Report**

### **Introduction**

1. In October 2005 the Ombudsman accepted a complaint from a person who is referred to in this report as Mr C. Mr C complained that SEIRU failed to follow their own procedures. He also alleged that communication from SEIRU was of a poor standard and that SEIRU/the Reporter failed to explain decisions, resulting in his view that SEIRU lacked accountability.

2. The complaints from Mr C which I have investigated are that:

- (a) the SEIRU failed to follow their own procedures;
- (b) the Reporter failed to explain decisions; and
- (c) there was poor communication from SEIRU.

### **Investigation**

3. Mr C's neighbour, Ms N, applied to the local authority for planning permission to erect a conservatory. The local authority refused permission and Ms N appealed the decision to SEIRU. A Reporter appointed by SEIRU considered written submissions and made an accompanied inspection of the appeal site and the surrounding area. Based on this evidence the Reporter upheld Ms N's appeal and overturned the local authority's refusal, thereby granting planning permission for the conservatory.

4. Mr C complained to SEIRU and exchanged correspondence with them over a number of months. He also complained to his MSP before submitting his complaint to the Ombudsman. Given the Reporter's decision to grant planning permission Mr C felt that the local authority must not have made its original decision or compiled its appeal submission to SEIRU properly and robustly. However, Mr C made it clear to the Ombudsman that in his view 'the real blame lies in the Reporter's decision and with the Reporters Unit'.

5. Mr C submitted documentary evidence to the Ombudsman, including a copy of the Reporter's decision letter and photographs of the appeal site. I used this evidence to make enquiries of SEIRU in relation to the specific complaints brought by Mr C. I refer to SEIRU's response to my enquiries in detail below.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and SEIRU were given an opportunity to comment on a draft of this report.

**(a) The SEIRU failed to follow its own procedures**

7. The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990 provide the statutory framework which applies to appeal cases. In addition, Scottish Executive Circular 1/2000, Code of Practice for Planning Appeals and Other Planning Cases Determined by Written Submissions also applies. Both documents set out the actions required of appellants, interested parties, local authorities and SEIRU in terms of submission of evidence, site visits, the Reporter's decision letter and relevant timescales. The overarching legislation is the Town and Country Planning (Scotland) Act 1997. The contents of the Scottish Executive document Scottish Planning Policy SPP1 – The Planning System are also relevant.

8. Scottish Planning Policy SPP1 – The Planning System at paragraph 52 states:

'The planning system does not exist to protect the interests of one person or business against the activities of another, although in some cases private interests may coincide with the public interest. In distinguishing between public and private interests, the basic question is whether the proposal would unacceptably affect the amenity and existing use of land and buildings which ought to be protected in the public interest, not whether owners or occupiers of neighbouring or other existing properties would experience financial or other loss from a particular development'.

*(a) Conclusion*

9. Having read the two key documents referred to at paragraph 7 above, and examined the documents sent to me by Mr C and SEIRU, I can find no evidence to show that SEIRU failed to follow the procedure for dealing with planning appeals determined by written submissions. Mr C has alleged that the Reporter made comment on the potential aesthetic appeal of the proposed extension during the site visit. The Reporter disputes Mr C's recollection and as there is no corroboration of this conversation I am unable to come to a judgement on it. Mr C has stated that he is not happy that, after granting planning permission, the Reporter or SEIRU have no further involvement in assessing or approving the conservatory as erected. While I understand Mr C's position, it is clear to me that the Reporter's role as set out in legislation is to make a decision on planning matters, and that they do not have any role in checking the subsequent implementation. That is a matter for the local authority. Therefore, I do not uphold this element of Mr C's complaint.

10. Mr C felt strongly that his interests, in particular the value of his property, were not well served by SEIRU's involvement. Again, while I understand Mr C's position, *Scottish Planning Policy SPP1 – The Planning System* is clear on this point as quoted at paragraph 8.

**(b) The Reporter failed to explain decisions**

11. Mr C was of the view that the Reporter's decision letter did not sufficiently explain the reasons why the local authority's original decision was overturned and planning permission granted, resulting in Mr C's view that SEIRU lacked accountability.

12. In his decision letter, the Reporter gave an outline description of the appeal site and a summary of the case for Ms N and the local authority. In that summary the Reporter said that the local authority:

'acknowledges that the design of the conservatory relates to that of the original building ... [but] whilst the design and materials are acceptable, the proposal would create an enlarged extension that would be out of character with its surroundings.'

In drawing conclusions the Reporter said that:

'Section 25 of the [*Town and Country Planning (Scotland) Act 1997*] requires the determination in this case to be made in accordance with the provisions of the development plan unless material considerations indicate otherwise. In this case, no reference has been made to either the approved structure plan or the adopted local plan. I consider, therefore, based on my inspection of the appeal site and the written submissions, that the issue to be determined is whether or not other material considerations justify a refusal of planning permission. In this respect, I have considered the proposal in relation to the relevant ... guidance in the non-statutory guidelines on 'House Extensions' and 'Daylighting, Privacy and Sunlight'.'

**(b) Conclusion**

13. While I have some minor concerns regarding precision and consistency of some specific detail in the Reporter's decision letter (which I deal with under heading (c) below), my reading of the letter is that the Reporter set out and explained a logical case for overturning the local authority's decision and granting planning permission, based on the written evidence submitted to him,

his observations from the site visit, and the relevant legislation. In terms of the 'non-statutory guidelines' these are, by definition, not legislation and are not regulations. They are recommendations for practice and are not binding. Their use is subject to interpretation of the context in which development takes place which, as stated, was based on the written evidence submitted to the Reporter and his observations from the site visit. SEIRU are held accountable as decisions made by Reporters can be challenged on a point of law in the Court of Session (see paragraph 16). SEIRU also had a complaints procedure in place to examine complaints in relation to its service. Such complaints can be investigated, as in this case, by the Ombudsman, if the complainant remains dissatisfied. Therefore, I do not uphold this element of Mr C's complaint.

**(c) There was poor communication from SEIRU**

14. Communication between SEIRU and Mr C leading up to the appeal appears to have been clear and satisfactory to both parties. After the decision letter was issued, however, Mr C wrote to SEIRU expressing his dissatisfaction with the decision. SEIRU responded the following day, as follows:

'I ... should explain that once a Reporter has issued a decision on an appeal the decision is final and neither he nor Scottish Ministers have any further jurisdiction on the matter. You will appreciate that it is not possible to comment on the merits of the appeal other than to say that the Reporter's decision was based on the written submissions of the parties involved, on all representations received and on his site inspection... .'

15. In his decision letter the Reporter noted that:

'The rear garden of the appeal site is bordered by a conifer hedge in excess of 2m high and I find that the proposed new boundary wall would only be marginally higher than the existing hedge.'

Elsewhere in the decision letter measurements are given to one or two decimal places. SEIRU have said in evidence to me that:

'The reporter has commented ... that while it might have been possible to state with a little more precision the height of the hedge, its nature did not lend itself to exact measurement. By contrast, where walls and fences are involved it is his practice to take exact measurements.'

SEIRU also said that 'The Unit does not have specific guidelines for reporters on the recording of measurements and their presentation in letters and reports'.

16. When Mr C sent his letter of complaint to SEIRU he was advised in the SEIRU response about contacting the Court of Session or seeking legal advice which is the formal route for appealing on a point of law against a Reporter's decision. This letter and subsequent correspondence from SEIRU did not, however, mention SEIRU's complaints procedure in relation to their administrative handling of the matter or the service provided. SEIRU have referred me to a letter sent by them to Mr C in the course of gathering evidence for the appeal, which was before Mr C complained, in which it was stated:

'if you are dissatisfied with any aspect of the service provided by The Scottish Executive Inquiry Reporters Unit, please contact ... the person dealing with this appeal. If you remain dissatisfied, or wish to lodge a complaint, please write to the Scottish Executive Inquiry Reporters Unit Manager...'

17. SEIRU have advised me that they

'accept that to have referred to the detail of the Act in the Unit's letter ... would have given [Mr C] fuller information on the reasons why there was no further jurisdiction, but as you will appreciate, the Unit receives many letters questioning or objecting to reporters' decisions where these did not favour the writer. In responding it is our practice to attempt to do so in plain language and to add the legislative support for each statement would not be helpful in that respect.'

*(c) Conclusion*

18. In terms of the Reporter's decision letter, while I am satisfied that his decisions were explained, I am concerned about the precision and consistency of specific information used. I understand the logic of SEIRU's response regarding precision of measurements in this case, in that a growing, non-uniform hedge is naturally more difficult to measure with precision compared to a static, uniform structure such as a wall or a fence. However, the vagueness of 'in excess of 2m high' could lead to an interpretation of anywhere between, for example, one centimetre to 99 centimetres higher. Similarly, stating that the new wall would only be 'marginally' higher is also unhelpfully vague and could lead a reader to doubt the robustness of the Reporter's observations during the site visit.

19. I understand the position adopted by SEIRU, and the need for plain English in communications, but I find that SEIRU's response letter to Mr C's complaint could have explained more clearly to Mr C why the decision was final

and there was no further jurisdiction. This could have been done by referencing, and perhaps quoting if possible and appropriate, the relevant statute. It is important to make clear to complainants, in a culture of openness and transparency, the legislative framework supporting any authority's actions. Not doing this can lead, as it has done in this case, to a suspicion that an authority is acting outside of its powers and unaccountably. It might have been helpful to explain and justify clearly why SEIRU could not comment on the merits of the appeal, ideally referencing or quoting statute, regulation or guidance.

20. Given that Mr C was dissatisfied with the Reporter's decision it was quite correct of SEIRU to refer him to the proper process for appealing the decision on a point of law, as originally quoted in the Reporter's decision letter. However, it would also have been helpful to refer Mr C to the SEIRU complaints procedure if he remained dissatisfied or wished to lodge a complaint with any aspect of the service provided by SEIRU, as opposed to the decision. A copy of the complaints procedure should have been sent to Mr C.

21. On the basis of the evidence I have seen, I uphold Mr C's complaint about poor communication from SEIRU.

*(c) Recommendations*

22. SEIRU should consider how best to explain clearly to the public why SEIRU or its Reporters have acted, or cannot act, in particular ways. It would be helpful for SEIRU to cite, if not quote in full, the relevant section of statute to demonstrate the legislative basis for its actions. I understand the resource issues that SEIRU raised in responding to the complaint. They may wish to consider drafting some plain English template text for use in certain standard responses, to ensure minimum impact on resources and maximise consistency of responses.

23. SEIRU should consider developing guidelines for Reporters on recording measurements and their presentation in letters and reports, allowing for the fact that the relative precision necessary in any particular case will depend on the circumstances and the matters in dispute. This could form part of a SEIRU 'house style' guide.

24. SEIRU should ensure that its complaints procedure is made clear to complainants either by letter or leaflet at an early stage after they have made

their complaint. I note that such information is already available online at the SEIRU homepages (<http://www.scotland.gov.uk/Topics/Planning/Appeals/Introduction>).

25. SEIRU have accepted the recommendations

23 May 2007



**Explanation of abbreviations used**

Mr C	The complainant
Ms N	Mr C's next door neighbour
SEIRU	Scottish Executive Inquiry Reporters Unit

**Glossary of terms**

The Reporter

A professional, independent expert, with experience in town planning either as a town planner or in associated professions such as architecture or law, appointed by Scottish Ministers.

**List of legislation and policies considered**

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990

Scottish Executive Circular 1/2000, Code of Practice for Planning Appeals and Other Planning Cases Determined by Written Submissions

Scottish Planning Policy SPP1 – The Planning System

SEIRU Comments/Complaints

(<http://www.scotland.gov.uk/Topics/Planning/Appeals/Comments>).