

Case 200603174: Directorate for Planning and Environmental Appeals

Summary of Investigation

Category

Scottish Government and Devolved administration: Planning appeal

Overview

The complainant, Mr C, alleged that an undertaking to defer the decision on his planning appeal was ignored.

Specific complaint and conclusion

The complaint which has been investigated is that an undertaking to defer the decision on Mr C's planning appeal was ignored (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 12 January 2007, Mr C complained to the Ombudsman about the way in which the Directorate for Planning and Environmental Appeals (DPEA), formerly the Scottish Executive Inquiry Reporters Unit, handled his planning appeal. Specifically, he alleged that, although he had reached agreement with one of DPEA's senior officers and with the Reporter concerned to delay the issue of the decision because of his holiday commitments, they failed to do so. He said that, as a consequence, he had only a week (as opposed to the statutory six weeks) to consider whether to appeal to the Court of Session.

2. The complaint from Mr C which has been investigated is that an undertaking to defer the decision on Mr C's planning appeal was ignored.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and DPEA. I have also had sight of copies of various internal emails relating to Mr C's appeal; the Reporter's site inspection notes of 21 November 2006; and her subsequent decision on Mr C's appeal, dated 5 December 2006. On 30 April 2007, I made a written enquiry of DPEA and their formal response was sent to me on 8 May 2007.

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

Complaint: An undertaking to defer the decision on Mr C's planning appeal was ignored

5. On 5 April 2006 South Ayrshire Council turned down Mr C's planning application and, in accordance with the terms of the Town and Country Planning (Scotland) Act 1997, Mr C decided to pursue the matter to appeal. DPEA formally acknowledged receipt of Mr C's valid appeal on 24 July 2006. A site inspection was held on 12 October 2006 but, because Mr C complained about the way in which the visit was conducted, another reporter was appointed to begin the appeal process again. The reporter appointed (the Reporter), made arrangements to view the site on 21 November 2006.

6. Mr C said that on the day of the site visit (21 November 2006), and before the Reporter left the site, he asked that, because of his holiday commitments over the festive season, she would 'hold' her report until January 2007. The complainant said he was assured by the Reporter that her workload was such that she would not be in a position to send it to him earlier. Mr C also said that, in advance of the site visit, he had also discussed the matter with one of DPEA's senior officers and obtained his consent to a delay. However, he complained that the report was issued on 5 December 2006, immediately before he was due to leave the country on holiday. He said that, as a consequence, the six weeks he should have had to consider appealing further was reduced to one week (that is, the period after 7 January 2007, when he returned from holiday until 16 January 2007, the final day by which he could appeal to the Court of Session).

7. I can confirm, from the Reporter's inspection notes dated 21 November 2006, that Mr C raised the matter of his holidays with her. The Reporter noted that 'Mr C then said that he had explained to [the senior DPEA officer] that he and his wife would be going abroad and would be away until just after New Year. No dates were mentioned, but he gave the impression that their departure was soon and led me to understand that he did not wish the decision to be issued until they had returned.' The visit note is silent about whether the Reporter agreed to Mr C's request.

8. In DPEA's formal response to me of 8 May 2007, the Chief Reporter confirmed that, while a senior officer and the Reporter did discuss Mr C's request that the report be held back, no firm commitment was made. The Chief Reporter added that, 'Indeed it became clear, internally, that to delay the issue would mean that the case would miss the Ministerial target for determining cases within 20 weeks of receipt, and so the letter was issued when it was ready, on 5 December 2006' I am also aware from letters sent to Mr C on 16 and 31 January 2007 that, unexpectedly, the Reporter had been in a position to complete her report earlier than anticipated because a large scale inquiry to which she had been committed in December 2006 had been cancelled.

Conclusion

9. Mr C complained that DPEA and the Reporter did not adhere to an agreement to defer a decision on his complaint and, while there is clear evidence that he discussed deferral with the Reporter and a senior officer, there is no confirmation that it was agreed to hold back the decision. The Reporter

had anticipated that her report would be issued later than it was but her work circumstances changed, allowing her to complete the report sooner than anticipated. The Chief Reporter also pointed out (see paragraph 8) that there were Ministerial targets to be adhered to so the report was issued when it was ready. Mr C said that the time he had to consider the Reporter's decision was reduced from the six weeks he could normally have expected.

10. From correspondence available to me, I have been able to establish that Mr C had about two weeks to consider the matter. (Mr C received the Report on 6 December 2006 and was corresponding with me about it on 13 December 2006. He returned from holiday on 7 January 2007 and the final date for notification of an appeal to the Court of Session was 16 January 2007.) I appreciate that this was less time than was usual and less than he had anticipated. However, I am not satisfied from the information before me that there was a firm commitment to delay the report. Rather, it seemed that the Reporter considered that her expected workload would affect the date of Mr C's report's issue in the way he wanted but circumstances changed unexpectedly. Then she could not ignore Ministerial targets and the report was issued. In all the circumstances, I do not uphold the complaint.

19 September 2007

Explanation of abbreviations used

Mr C	The complainant
DPEA	Directorate for Planning and Environmental Appeals
The Reporter	The second DPEA reporter appointed to the appeal