

**Cases 200502409 & 200503071: Fife Council and Directorate for Planning and Environmental Appeals**

**Summary of Investigation**

***Categories***

Local government and Scottish Government and Devolved Administration: Planning; objection by developer to enforcement notice and handling of appeal

***Overview***

The complainant and his wife (Mr and Mrs C) moved house and relocated their sports tour package business to a town in Fife in February 2004. Shortly thereafter neighbours complained about associated activities and Fife Council (the Council) issued a Planning Contravention Notice (PCN) and, after the matter was reported to the Council's Development Committee (the Committee), a Planning Enforcement Notice (PEN). Mr C appealed against the PEN to the Scottish Executive Inquiry Reporters Unit (SEIRU)<sup>1</sup> and that appeal was heard before a reporter (Reporter 2) at a Public Local Inquiry (PLI) in June 2005. Reporter 2's decision was issued on 25 August 2005. Reporter 2 dismissed the appeal, confirmed the PEN subject to a number of amendments and, in a separate determination, refused an application on Mr C's behalf for expenses.

***Specific complaints and conclusions***

The complaints which have been investigated are that:

- (a) poor and/or incorrect advice was given by Council officers to Mr C (*not upheld*);
- (b) the Council issued the PCN and subsequently the PEN on the basis of insufficient evidence (*partially upheld to the extent of the inadequacy of the report presented to the Committee*);
- (c) there was poor and inconsistent handling of matters by the Council and a failure to follow appropriate procedures (*not upheld*);

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<sup>1</sup> Now the Directorate of Planning and Environmental Appeals (DPEA). On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

- (d) the SEIRU's initial appointment of a reporter (Reporter 1) did not follow relevant guidance on conflict of interest (*upheld*);
- (e) the PLI and related activity was handled poorly (partially upheld to the extent that not all letters were shared); and
- (f) Reporter 2, in determining the appeal, did not adequately justify his decisions by demonstrating they were based on the available evidence (*not upheld*).

***Redress and recommendations***

The Ombudsman recommends that the Council review the scope of information to be presented to the Committee on planning contravention when seeking authorisation to consider the expediency of taking enforcement action; and

The Ombudsman recommends that DPEA remind their staff and panel of reporters of the need to consider whether particular appointments may be perceived as involving a conflict of interest, and that DPEA take account of ethical standards in public life in relation to such appointments.

The Council and the DPEA have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) and his wife (Mrs C) jointly run a sports tour package business which was established at their previous home elsewhere in Fife in 1997. In February 2004 they moved house and continued to run the business from a small room in their home. Shortly after moving, two nearby neighbours complained to Fife Council (the Council) about the business's vehicles and associated activities. The Council issued a Planning Contravention Notice (PCN) and, after the matter was reported to the Council's Development Committee (the Committee), a Planning Enforcement Notice (PEN). Mr C appealed against the PEN to the then Scottish Executive Inquiry Reporters Unit (SEIRU). That appeal was allocated initially to a reporter (Reporter 1) who had previously worked with the Council. The appeal was reallocated and heard before another reporter (Reporter 2) at a Public Local Inquiry (PLI) on 21 and 22 June 2005. Reporter 2's decision was issued on 25 August 2005. Reporter 2 dismissed the appeal, confirmed the PEN subject to a number of amendments and, in a separate determination, refused an application on Mr C's behalf for expenses.

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

- (a) poor and/or incorrect advice was given by Council officers to Mr C;
- (b) the Council issued the PCN and subsequently the PEN on the basis of insufficient evidence;
- (c) there was poor and inconsistent handling of matters by the Council and a failure to follow appropriate procedures;
- (d) the SEIRU's initial appointment of Reporter 1 did not follow relevant guidance on conflict of interest;
- (e) the PLI and related activity was handled poorly; and
- (f) Reporter 2, in determining the appeal, did not adequately justify his decisions by demonstrating they were based on the available evidence.

3. I very much regret that for a variety of reasons the process of considering this complaint has taken much longer than it should have done. For that, I apologise to Mr and Mrs C, the Council and the DPEA.

### *Jurisdiction*

4. Section 7(1) of the Scottish Public Services Ombudsman Act 2002 restricts the remit of the Ombudsman's office. The Ombudsman is not entitled

to question the merits of a decision taken without maladministration by, or on behalf of, a listed authority in the exercise of a discretion vested in that authority. Section 7(8) states that the Ombudsman must not investigate any matter in respect of which the person aggrieved has or had a right of appeal to Scottish Ministers or a remedy by way of proceedings in any court of law, unless the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to the right or remedy.

5. It is important to make clear at the outset that it has not been my role to assess or challenge the merits of planning matters or planning decisions, the professional and technical judgement of Council officers or SEIRU staff or contractors. What I have considered is whether the authorities subject to this complaint fulfilled their duties and responsibilities in a reasonable manner.

### **Investigation**

6. The investigation is based on extensive documentation supplied by Mr C, the Council and SEIRU and the responses of Mr C and the two authorities to my enquiries. I also met with Mr and Mrs C at their home. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C, the Council and the DPEA were given the opportunity to comment on a draft of this report.

7. In 1997 Mr and Mrs C established their sports tour package business from their home in another town in Fife. They moved to their present home in February 2004. It is a detached villa in a residential street with a sizeable curtilage. They operated their business from a room in their home and the three vehicles associated with the business were either parked on their driveway or on the road outside their home.

8. On 16 March 2004, two nearby neighbours (Mr and Mrs Y and Mr and Mrs Z) wrote to the Council's Department of Planning and Building Control, drew attention to the website for Mr and Mrs C's business, and claimed that the business was being run from their home. They felt it unsuitable for Mr and Mrs C's business vehicles to be based at, and to operate from, a residential area. These letters were passed to a planning enforcement officer (Officer 1) to investigate. Officer 1 visited the street on 26 March 2004 and was shown around the house and curtilage by Mr C. Mr C maintains that Officer 1 stated that there was no problem with his use of a room as an office and that the

parking of vehicles was a 'grey area'. The Council advised me that Officer 1 did acknowledge that use of a room within a dwelling as an office was generally not a problem and would be unlikely to require any change of use. Officer 1's view chimed with Mr C's recollection in that operating a business from a dwelling was a 'grey area' and that whilst one vehicle being operated by the property owner may be acceptable, a second vehicle being driven by an employee may not be. Officer 1 also stated his view that in all such circumstances the final assessment depends upon 'fact and degree' and each proposal for change of use has to be considered on its own merits. However, there is no record of this meeting and no independent corroboration of what was said.

9. Subsequently, Mr Y telephoned Officer 1 and stated that works had commenced on the outside of the property on 5 April 2004. Officer 1 discussed the matter with his line manager (Officer 2). On her advice, Officer 1 wrote to Mr and Mrs C on 8 April 2004 requesting the submission of an application for planning permission to regularise the use of the property for business. He enclosed the relevant forms and provided contact details of an officer in the Council's Business Property team should Mr and Mrs C wish to pursue the availability of storage facilities for vehicles associated with the business.

10. Mr Y followed up his telephone call with a letter to Officer 1 on 9 April 2004. He stated that Mr C had carried out alterations to the driveway and garden ground to provide permanent hard standing for the business vehicles. A section of boundary wall adjoining the entrance had also been removed. Mr Y queried whether planning permission was required for these works. Officer 1 replied to Mr Y's letter on 28 April 2004 confirming that Mr C had been asked to apply for planning permission. On 14 May 2004, Mr and Mrs Y wrote again to Officer 1 bringing to his attention that drivers' cars were being parked overnight and alleged that driving 'tests' of competence were being conducted in the street. Mr and Mrs Y considered that these activities should cease until the appropriate application for planning permission had been decided.

11. At this time Mr and Mrs C consulted a solicitor (Solicitor 1). His advice dissuaded Mr and Mrs C from making an application for planning permission.

12. On 5 July 2004, Mr and Mrs Y wrote to Officer 1 requesting an update. They maintained that Mr and Mrs C were operating their business vehicles seven days a week, 24 hours a day which caused noise, fumes, pollution and

visual intrusion. Mr and Mrs Y stated that they had contacted the office of the Traffic Commissioners and had learned that Mr and Mrs C did not hold a Public Service Vehicle (PSV) licence. Mr and Mrs Z also wrote to Officer 1 on 5 July 2004. Their letter stated that they considered Mr and Mrs C's business activities were in breach of the feuing conditions for their property and were adversely affecting property values in the street. As a precaution, since they were due to go on holiday, they intimated their opposition to any application for planning consent which might be made in their absence by Mr and Mrs C.

13. Despite Officer 1's initial letter of 8 April 2004 and follow-up letters of 19 May and 16 July 2004 to Mr and Mrs C requesting the submission of a planning application, no application was received (see paragraph 11). Officer 1 drafted a report dated 30 July 2004 which was presented to the Committee by the Council's Head of Development Services on 17 August 2004. The Committee members decided, without a division, to authorise the pursuit of enforcement action.

14. A PCN was served on Mr and Mrs C on 7 September 2004. This asked them to provide details of all those with an interest in the property. On 23 September 2004, Solicitor 1 responded on behalf of Mr and Mrs C. Solicitor 1's letter did not disclose that Mr and Mrs C had a mortgage on their property and that there was, therefore, a heritable creditor. The Council followed up the PCN by serving a PEN on Mr and Mrs C on 26 November 2004. The PEN required by 31 December 2004 the cessation of the operating, parking and maintenance, including cleaning and valeting of any vehicles associated with the sports tour business, within the curtilage of the house or road outside the house.

15. Mr and Mrs C decided to oppose the PEN and consulted with another solicitor (Solicitor 2) experienced in planning law. Solicitor 2 wrote on 14 December 2004 to a solicitor in the Council's Planning and Environment Team (Officer 3) and she responded on 22 December 2004.

16. On 28 December 2004 Solicitor 2 submitted an appeal on behalf of Mr and Mrs C to SEIRU. The statement of appeal extended to eight pages. The appeal contested the validity of the PEN and pointed out that it had not been served on the heritable creditor. It argued that the parking and cleaning of two Mercedes nine seater vehicles was ancillary to the use of Mr and Mrs C's house as a residence and that planning permission was not, therefore, required.

Solicitor 2 maintained that the decision to proceed with enforcement action was in contradiction of what Officer 1 had stated to Mr C at his visit on 26 March 2004. He claimed that the report of 30 July 2004 to the Committee seeking authority to take enforcement action was inadequate and flawed. The appeal was made under section 130 (1) (a), (b), (c), (e), (f) and (g) of the Town and Country Planning (Scotland) Act 1997 (the Act).

17. The appeal, with appropriate fee of £240, was received by SEIRU on 29 December 2004 and was acknowledged the next day. Solicitor 2, in completing the appeal form, requested that it should be dealt with at a PLI rather than by written submissions. A letter was sent by SEIRU to the Council on 30 December 2004 advising them of receipt of an appeal, and enclosed a questionnaire for completion and return within 14 days. The Council did not receive this questionnaire until their offices reopened after the New Year closure. The questionnaire was returned by the Council on 17 January 2005 and received by SEIRU on 19 January 2005. It crossed in the post with a reminder to Officer 3 from SEIRU. A copy of the completed questionnaire was also sent directly to Solicitor 2 and received by him on 19 January 2005. The Council's statement, in response to the appeal, was submitted by Officer 3 to SEIRU on 26 January 2005. In terms of their internal administrative arrangements, the SEIRU secretariat decided that the case should be allocated to an available reporter.

18. In advance of preparing for the PLI, Solicitor 2 corresponded directly with Officer 3 on 1 February, 15 February and 25 February 2005. He requested information to assist him in further preparing a statement of his client's case. At that stage, a definite date had not been fixed for the PLI.

19. In the meantime, on 14 February 2005, Solicitor 2 learned in a telephone conversation with an officer in SEIRU of the appointment of Reporter 1. Solicitor 2 subsequently identified that Reporter 1, prior to his appointment on the SEIRU panel of reporters, had worked with the Council's Development Services, albeit in a different area from where Mr C lived. This was confirmed by a SEIRU officer on 25 February 2005. SEIRU reconsidered the appointment and informed the Council and Solicitor 2 on 11 March 2005 that another reporter would hear the appeal (see section (d) of this report).

20. On 25 March 2005, a statement of case was prepared by Solicitor 2 on behalf of Mr and Mrs C and sent to SEIRU and Officer 3 at the Council. Also on

25 March 2005, the Council informed SEIRU that they would rely on their earlier statement of case submitted on 26 January 2005 (see paragraph 17) with specified additional information.

21. After reserving a booking of the venue on 17 March 2005, SEIRU formally wrote to the Council and to Solicitor 2 on 7 April 2005 stating that the appeal hearing would be conducted by Reporter 2 and that the PLI would be held at the local town hall on 21 and 22 June 2005.

22. SEIRU consulted Solicitor 2 on the wording of the press notice in respect of the PLI. Solicitor 2's comments by fax of 12 April 2005 were taken on board and a press notice appeared in the local paper on 6 May 2005. This notice attracted a letter to SEIRU from a member of the local community council stating that that the community council had not had the opportunity previously to comment but would have objected had an application for planning consent been submitted.

23. On 10 June 2005, the local paper published an anonymous letter on its letters page supportive of the Council's decision to take enforcement action. This prompted a letter of the same date to SEIRU from another resident in Mr and Mrs C's street in support of them and denying that their business activities were a problem. On 15 June 2005 a different resident in Mr C's street wrote to SEIRU stating that the author of the 10 June 2005 letter also operated a business from his home and, therefore, she was supportive of the Council's enforcement action. On 16 June 2005 a resident elsewhere in Mr C's town wrote to SEIRU supporting the Council's enforcement action on the general principle that business should not encroach on residential areas. The latter two pieces of correspondence were not copied to Solicitor 2 either prior to, or at, the PLI.

24. The PLI was held as arranged on 21 and 22 June 2005. Reporter 2 visited Mr and Mrs C's house and its environs before the PLI convened for its second day.

25. Subsequent to the PLI, Solicitor 2 advised Mr and Mrs C to have a detailed plan drawn up showing where the two Mercedes vehicles might be accommodated within the curtilage of their home should Reporter 2 be minded to sustain the appeal. Mrs C has said that it was Reporter 2 who requested the plans at the PLI, though Reporter 2 has no recollection of this (see



paragraph 46). This plan was obtained on 9 July 2005 and a copy was forwarded to the Council. Despite reminders from Solicitor 2, the Council did not comment on the acceptability of the arrangements in advance of Reporter 2's decision.

26. On 25 August 2005, Reporter 2, in an 18-page decision letter, dismissed the appeal and confirmed the PEN with amendments. Mr and Mrs C were given twelve months to relocate the two Mercedes vehicles. In a separate three-page determination letter of the same date, Reporter 2 decided not to make an award of expenses. Both letters made criticisms of actions by the Council which are dealt with further below. Paragraph 98 of the determination of the appeal against the PEN referred to the decision being final, subject to a reference to the Court of Session within six weeks of the date of the letter. The letter said that the Court of Session could quash Reporter 2's decision if it was satisfied that it was not within the powers of the Act or that Mr C's interests were substantially prejudiced by a failure to comply with any requirement of the Act or other relevant legislation.

27. Mr and Mrs C, in consultation with Solicitor 2, decided against referring the matter to the Court of Session. They opted instead to pursue complaints against the SEIRU and Council.

28. Subsequently, Mr and Mrs C made arrangements with a local garage to park the two nine seater Mercedes vehicles they used for their business and the Vehicle and Operator Services Agency granted them a licence for five years to 30 April 2011.

**(a) Poor and/or incorrect advice was given by Council officers to Mr C**

29. Mr C alleged that Officer 1 had given him information at his visit to his home on 26 March 2004 (see paragraph 8) that was subsequently contradicted after Officer 1 had discussed the matter with Officer 2. He also complained that Officer 1 had declined an invitation to a site meeting and had embarked on the irreversible course of enforcement action.

30. The Council's response to the initial allegation made by Mr C was contained in a letter of 29 November 2004 by the then Chief Executive, in response to a complaint raised on behalf of Mr and Mrs C by their Member of the Scottish Parliament. The Chief Executive said that Officer 1 was adamant that he did not state to Mr C at their meeting that planning permission was not

required but recalled stating at his visit on 26 March 2004 that a requirement for planning consent for a change of use could sometimes be a grey area. Mr C had shown Officer 1 where he intended to carry out works. Officer 1 had not given Mr C the go ahead for those works to his driveway which had already been planned by Mr C and which were implemented a matter of days after their meeting.

31. Officer 1 recalled that Solicitor 1 had phoned him in late May 2004 seeking to arrange a meeting with Officers 1 and 2 on site to show the arrangements made for the parking of business vehicles in Mr and Mrs C's curtilage. Officer 1 had responded that the Council's concern was that a business was being operated from the site. He had explained to Solicitor 1 the process involved in a planning application for change of use. Officer 1 recalled that Solicitor 1 had then responded that he considered that there was probably no benefit from another meeting and that he would advise his client to submit the requested change of use application. Despite letters of 9 April, 19 May and 19 July 2004 Mr C had not submitted a retrospective application for planning consent for change of use (see paragraph 11) and Council officers had decided to submit a report to the Committee seeking authority to take enforcement action.

*(a) Conclusion*

32. I see no corroborated evidence that Officer 1 acted incorrectly. Mr C has mentioned the lack of a record being kept of the meeting by Officer 1, and this may have helped to settle the dispute over what was said at the time. In the event, Officer 1 followed up his visit by discussing the matter with his line manager, a qualified planner, and his subsequent written advice to Mr and Mrs C was that the use was not permitted and should be regularised by a planning application. Had Mr and Mrs C submitted such an application, then options available to the Council in considering the merits of the matter would have been to issue conditional retrospective consent or to refuse the application. In either event, Mr C would have retained an ability to appeal against the decision and any consequent enforcement action. Given the fact that the Council did not have the opportunity to consider the merits because an application was not submitted, a second visit would have been of no consequence. I do not uphold this complaint.

**(b) The Council issued the PCN and subsequently the PEN on the basis of insufficient evidence**

33. Mr C's second complaint emanates from issues raised by his agent, Solicitor 2, at the PLI on 21 and 22 June 2005 and remarks made by Reporter 2 in his determination letter of 25 August 2005 about deficiencies he perceived in the process leading up to the issue of the PEN. At paragraph 62 of his determination letter, Reporter 2 was critical of the clarity, fullness and consistency of reasoning provided in the Council's justification for the PEN and in the Council's statements both before and after the PEN was issued. At paragraph 66, he noted, in particular, that the report of 30 July 2004 (see paragraph 13) made no reference to any national or local policy or advice, even though there were relevant policies and advice. There was no indication that these had been reported orally to the Committee at its meeting on 17 August 2004. Reporter 2, in paragraph 79 of his determination letter also found 'difficulties' with the lack of specific dates and times and description of incidents in the complaints lodged by neighbours.

34. The Council, in their first response to my enquiries, did not deal with the criticisms levelled at them by Reporter 2, but concentrated on the fact the appeal against the PEN had been in large measure dismissed. The report to the Committee of 30 July 2004 narrated the background and the lack of a planning application, which provided the context within which Council officers sought authority to take enforcement action. In a later response the Council said that Officer 1 did acknowledge that, in retrospect, the report to the Committee was not as detailed as it could have been. However, it was the Council's view that the information set out in the report was accurate and not flawed as Mr C and Solicitor 2 contended.

*(b) Conclusion*

35. I have been guided in my conclusions by advice given to me by the Ombudsman's planning adviser. I see no grounds for challenging the principle of the Council taking enforcement action. They considered that there had been a breach of planning control and, as Mr C chose not to submit a planning application to regularise the change of use, as apparently advised by Solicitor 1, there was no supported case for a development proposal. Taking enforcement action and prompting an appeal was, therefore, the only way open to the Council, as planning authority, to bring the matter of the merits of Mr C's development into the appropriate decision-making arena. SEIRU, on behalf of Scottish Ministers, became the first decision-maker on the question of whether

planning permission should be granted, and not the Council. The appeal was, therefore, on the one hand a review of the first decision on the breach of control (the issue of the PEN) but it was also a de novo<sup>2</sup> consideration of the planning merits.

36. I note Reporter 2's views on the inadequacy of the report presented to the Committee. Mr C has also made his views very clear to me that the report to Committee was inadequate, and he supports Reporter 2's criticisms. I believe that the report format used by the Council was minimalist and should have referred to the policy framework for taking action against a breach of planning control, that is, the statutory development plan and material considerations such as government policy and guidance and precedent. This might have led to a better worded enforcement notice, avoided the criticisms levelled by Reporter 2, and removed the basis for this part of Mr and Mrs C's complaint to the Ombudsman. In the event, any injustice relating to a flawed PEN was remedied by Reporter 2 when he amended it in his decision letter of 25 August 2005, and dismissed the appeal (see paragraph 26). I partially uphold the complaint on the basis of the inadequacy of the report presented to the Committee and agree with a suggestion made by Mr C that some procedural improvement is required to provide better guidance on the background to the Council's case in enforcement situations in future.

*(b) Recommendation*

37. The Ombudsman recommends that the Council review the scope of information to be presented to the Committee on planning contravention when seeking authorisation to consider the expediency of taking enforcement action. The Council, in commenting on a draft of this report, advised me that steps have been taken to ensure better quality and consistency in enforcement reports to the Committee and that following a review a new style of report is to be used in the future.

**(c) There was poor and inconsistent handling of matters by the Council and a failure to follow appropriate procedures**

*(c) Conclusion*

38. This complaint to me arises from Mr and Mrs C's view that their business was singled out for enforcement action, that they felt was a form of harassment,

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<sup>2</sup> In general use de novo is a Latin expression meaning 'from the beginning', 'afresh', 'anew', or 'beginning again'.

which was expressed to me when I met with them at their home. I consider that their sense of dissatisfaction in large measure arises from matters surrounding the disputed oral advice given at the visit of 26 March 2004 by Officer 1. It also arises from matters surrounding the issue of the PCN and PEN, and the conduct and outcome of the PLI. They are aggrieved, for example, that a business van of a neighbour is allegedly often parked in their street overnight, when his business premises are elsewhere. However, this report deals with Mr C's case and does not deal with comparisons of other alleged cases, which would need to be considered on their own merits. Other than the issue already dealt with in section (b) of this report, I can find no evidence of maladministration relating to the Council's handling of this matter and, therefore, I do not uphold this complaint.

**(d) The SEIRU's initial appointment of Reporter 1 did not follow relevant guidance on conflict of interest**

39. Turning to Mr C's complaints against SEIRU, the first of these is that it was wrong initially to allocate this appeal to Reporter 1, who had in the recent past been a planning officer with the Council. Mr C stated that, from his information, Reporter 1 had by then dealt with some 70 appeals but his was the first in which he had been appointed to deal with an appeal against a decision of his former employer. It was apparently only after Solicitor 2 learned of the appointment that a possible conflict of interest was suggested and the case was reallocated.

40. As successors to SEIRU, I sought DPEA's comments on this complaint. They stated that at the time of Reporter 1's appointment to the particular appeal, reporters were appointed to cases on the basis of their suitability to deal with all the relevant issues and their availability. This remained the case. Reporter 1 was one of a panel of full-time reporters employed by the Scottish Executive. He had experience in dealing with all types of appeals casework and this appeal raised no specific issues that required specific qualifications or experience outwith those that he possessed. Although written guidance is issued to reporters on avoiding conflicts of interest, he himself raised no concerns about his appointment to the particular appeal.

41. DPEA informed me that representations were made by Solicitor 2 and the Council to the Chief Reporter at SEIRU regarding Reporter 1's suitability to deal with the case as he was previously employed by the Council, albeit in a different administrative area to the particular appeal. While the Chief Reporter wrote on 11 March 2005 to the parties stating that he found no objective basis for a

perception of possible conflict of interest or the concerns being raised, he agreed to appoint another reporter to determine the appeal to ensure that the perceptions being expressed at that stage did not lead to the potential for compromise of the interests of any other parties to the appeal.

*(d) Conclusion*

42. Mr C obtained and provided me with a schedule which was attached to the offer of employment to SEIRU reporters. It was left to the judgement of the individual as to whether they should declare an interest. It seems that SEIRU did not consider that Reporter 1's recent employment by the Council was an issue in relation to his selection to consider an appeal against a decision of his former employer. I find that surprising. It is now widely accepted that the standards of integrity and objectivity expected of office holders and public officials (as formulated in the 'Nolan' and 'Franks' principles) require them to avoid involvement in making decisions in respect of which they might reasonably be perceived as having an interest or grounds for bias. Not only Mr and Mrs C but the Council felt that this was the case here. I agree.

43. When Solicitor 2 and the Council raised the matter SEIRU took the correct action. However, SEIRU failed to acknowledge that there was a conflict of interest, real or perceived, when there clearly was. I uphold the complaint, but note that any injustice was obviated by the Chief Reporter's eventual decision to reallocate. Nevertheless, I believe that it is appropriate to make a recommendation.

*(d) Recommendation*

44. The Ombudsman recommends that the DPEA remind their staff and panel of reporters of the need to consider whether particular appointments may be perceived as involving a conflict of interest, and that DPEA take account of ethical standards in public life in relation to such appointments.

**(e) The PLI and related activity was handled poorly**

45. In addition to being aggrieved at Reporter 2's decision, Mr and Mrs C maintained that the PLI had been handled poorly. They maintained that SEIRU failed to ensure the Council met guidelines for submissions, that Reporter 2 failed to share letters submitted to him, and that he had allowed them to expend £323.13 abortively on providing a scaled drawing pursuant to the agreement of conditions with the Council at a time when he had already made up his mind to dismiss the appeal (see paragraph 25).

46. In response to my enquiries, the Head of Administration at SEIRU stated that the deadlines for relevant submissions were all met and the PLI had been conducted in terms of the code of practice set out in Scottish Office Development Department Circular 17/1998. He confirmed that Reporter 2 had not at any stage obtained legal advice. The procedure was that representations made to, and received by, SEIRU should have been forwarded by the authors to the appellant/agents and the planning authority. Reporter 2 confirmed that he did not consider letters that were not before the PLI. Reporter 2's notes had, in accordance with his normal practice, been destroyed some months after the decision letter had been issued on 25 August 2005. With regard to the preparation of a scaled drawing, Reporter 2 recalled someone, but could not recall who, had suggested a condition on minimising visual impact could be made more precise by reference to a drawing. SEIRU report that there is no drawing of this nature on file and, therefore, it was not considered as a new issue. Reporter 2 had no recollection of how far in advance of its eventual issue on 25 August 2005 he began to draft his decision and expense letters, and he had no dialogue with the Council after the conclusion of the PLI.

*(e) Conclusion*

47. The timescale for the PLI might have been shorter had the case been allocated from the outset to a reporter acceptable to the Council and Solicitor 2. However, I see no significant delays. The issue with regard to the letters was important but their significance in respect of the overall decision less so. In the interests of fairness and transparency, all information should be shared particularly where it is referred to in the determination letter. I partially uphold this complaint to the extent that not all letters were shared with Solicitor 2 at the PLI.

**(f) Reporter 2, in determining the appeal, did not adequately justify his decisions by demonstrating they were based on the available evidence**

48. Mr C provided me with a detailed analysis of how he considered Reporter 2's statements were inconsistent in the use of evidence.

49. In commenting on this aspect of Mr and Mrs C's complaint the Head of Administration at DPEA made the point that once a reporter has issued a decision on an appeal, that decision is final and neither he nor Scottish Ministers have any further jurisdiction in the matter. It is not possible for a reporter or DPEA to comment on the merits of the appeal other than to say that

the reporter's decision was based on the written submissions by the parties involved, on all representations received, and on the evidence presented at the PLI. Reporters' conclusions are a matter for their professional judgement based on the evidence before them and their experience as planners, and are summarised in the decision letter. The decision letter is intended to stand without further explanation or elaboration.

*(f) Conclusion*

50. This aspect of the complaint is framed in a way which effectively challenges Reporter 2's decision. I accept the validity of what the Head of Administration at DPEA has said about the status of reporters' decisions (paragraph 49). Mr and Mrs C could have referred Reporter 2's decision to the Court of Session if they considered that the decision taken by Reporter 2 was taken outside the powers under the Act, or if legislative requirements had not been followed (see paragraph 26). As noted in paragraph 4, the Ombudsman cannot generally consider matters in respect of which there is a remedy by way of court proceedings. In considering this aspect of Mr and Mrs C's complaint what I have looked at is whether it presents any evidence that Reporter 2 failed to fulfil his duties and responsibilities in a reasonable manner. I have reached the conclusion that the complaint presents no such evidence but rather is simply a statement of grounds for disagreement with Reporter 2's decision. Accordingly I do not uphold the complaint.

51. The Council and the DPEA have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council and the DPEA notify her when the recommendations have been implemented.



**Explanation of abbreviations used**

Mr C and Mrs C	The complainants
The Council	Fife Council
PCN	Planning Contravention Notice
The Committee	The Council's Development Committee
PEN	Planning Enforcement Notice
SEIRU/DPEA	Scottish Executive Inquiry Reporters Unit (now the Directorate for Planning and Environmental Appeals)
Reporter 1	A reporter contracted to SEIRU
Reporter 2	Another reporter contracted to SEIRU
PLI	Public Local Inquiry
Mr and Mrs Y, Mr and Mrs Z	Neighbours who complained about Mr and Mrs C's business activities
Officer 1	Planning Enforcement Officer
Officer 2	Section Leader Development services
Solicitor 1	Mr and Mrs C's initial solicitor
PSV	Public service vehicle
Solicitor 2	Mr and Mrs C's second solicitor

Officer 3

A solicitor in the Council's Planning  
and Environment team

The Act

Town and Country Planning (Scotland)  
Act 1997

**Glossary of terms**

Curtilage	The enclosed area of land around a dwelling
Feuing conditions	Conditions imposed in title of property