

SPSO decision report

Case: 201202855, Directorate for Planning and Environmental Appeals
Sector: Scottish Government and devolved administration
Subject: handling of application (complaints by opponent)
Outcome: not upheld, no recommendations

Summary

Mr C complained on behalf of a local preservation trust about the actions of the Directorate for Planning and Environmental Appeals (DPEA). The trust had objected to an application to the local council for outline planning consent for a residential development. A planning officer recommended that the application should be granted conditional approval, but the application was refused. The developer appealed this decision to the DPEA. The council had told the DPEA that, should the DPEA's reporter be minded to grant consent, the conditions recommended by the council's planning officer should be taken into account. Unfortunately, there was an error in the council officer's report with reference to access to an adjoining field, in which the word 'east' had replaced 'west'. The DPEA reporter visited the site and issued a letter with his intentions and proposed conditions. This included an incorrect reference to access being to the east. Six months later, after a legal agreement had been concluded, the DPEA reporter issued his decision granting conditional approval to the development. His decision repeated the error.

The error was brought to the DPEA's attention more than six weeks after the appeal decision letter was issued. It was discussed with the reporter, who accepted the error, and sent a letter of correction to interested parties including Mr C. The letter confirmed that there had been a typographical error, substituted what the condition should have stated, and apologised for any confusion this might have caused. Mr C and an associate then pursued this with the DPEA over two years. Mr C first complained that it was inappropriate for the DPEA to have issued the letter of correction; and also that, when requested, they failed to notify all parties to the appeal that the correction letter had no legal status and did not change the original decision.

We did not uphold Mr C's complaints. Our investigation found that, although recent planning legislation has introduced procedures to correct errors made by or on behalf of Scottish Ministers, this was not in place at the time of these events. The DPEA did not regard the error as significant, and on that basis issued the letter of correction. We found that issuing the letter was a proportionate and timely response and was in accordance with DPEA practice. On the second complaint, we found that such decisions can be referred to the Court of Session within six weeks. However, as the error was pointed out to the DPEA more than six weeks after the decision, that course of action was no longer available. We took the view that in the circumstances the legal status of the correction letter was a matter for those who received it and that there was no need for the DPEA to issue a further letter.