

Planning Committee

10.00am, Thursday, 6 August 2015

Appeals and Ombudsman Decisions 2014-15

Item number	7.1
Report number	
Executive/routine	Executive
Wards	All

Executive summary

The purpose of this report is to inform the Committee of the outcomes of decisions made by the Directorate for Planning and Environmental Appeals and the Scottish Public Services Ombudsman on planning matters over the previous financial year. The scrutiny of the planning authority's decisions and procedures by external bodies is an important learning opportunity and helps to set planning policy and guidance and review working procedures to embed a culture of continuous improvement.

The report sets out the number of appeal decisions on planning cases received by the Council from 1 April 2014 to 31 March 2015. These are statistically analysed and sorted into relevant categories. The analysis of the appeal decisions informs reviews of policy and guidance.

The report then sets out the number and details of Ombudsman decisions on complaints, which are also analysed statistically. This assists consideration of what service improvements are required.

Links

Coalition pledges	P27
Council outcomes	CO24, CO25, CO26,
Single Outcome Agreement	SO1

Report

Appeal and Ombusman Decisions 2014-15

Recommendations

- 1.1 It is recommended that the Committee notes the outcomes of the decisions highlighted in this report.

Background

- 2.1 The Directorate of Planning and Environmental Appeals (DPEA) is the body responsible for determining appeals against the refusal of all planning application types other than local developments determined under delegated powers. In 2014-15, this planning authority received 52 appeal decisions.
- 2.2 The Scottish Public Services Ombudsman (SPSO) is the body responsible for the final stage of complaints. The SPSO looks into complaints where a member of the public claims to have suffered injustice or hardship as a result of maladministration or service failure. In 2014-15, eight planning related decisions were received from the SPSO.

Main report

Appeals

- 3.1 In 2014-15 there were 52 appeal decisions issued by the DPEA, which represents a small proportion of planning decisions made by the City of Edinburgh Council each year. There were 3832 determinations of applications made by the Council in the same period. Appeals decisions represent approximately 1.5% of overall decisions made by the Council. Appendix 1 contains a table displaying these decisions.
- 3.2 Of the 52 appeals, 32 were dismissed, 18 were allowed and two were partially allowed. This represents a success rate of 62% for the City of Edinburgh Council.
- 3.3 The decisions are discussed in terms of the different types of appeal and whether there are any implications for policy or procedure in the following sections.

Listed Building Consent

- 3.4 There were 17 appeals relating to applications for listed building consent. Of those decisions nine appeals were allowed, two were partially allowed and six were dismissed.

- 3.5 Nine of the cases where the appeals were allowed or partially allowed related to internal alterations including slappings between principal rooms and kitchens in principal rooms.
- 3.6 The reporters dealing with these appeals noted that in some cases there were conservation gains associated with some of the alterations and in other cases that the benefits to occupants would help the longer term prospects of the listed building.
- 3.7 In a significant proportion of cases, the reporter has overturned the Council decision. As a result, the guidance and approach the Council is taking will be reviewed. This will be added to the work programme and will be taken forward at the earliest opportunity.

Planning Permission

- 3.8 In relation to appeals against the refusal of planning permission, four appeals were allowed and six were dismissed.
- 3.9 Of the four that were allowed two related to housing on greenfield sites. One was for a small housing development at Ratho and the other dealt with the principle of housing on a site at Old Dalkeith Road.
- 3.10 The principle and spatial distribution of housing development forms part of the Local Development Plan and will be addressed as part of that process.
- 3.11 The other two planning applications that were allowed at appeal related to changes of use. One of those involved changing a residential house to a House in Multiple Occupancy (HMO). The other related to a change of use from a printing works to a cash and carry warehouse. There is no discernible trend or identifiable issue with policy or guidance. There is not considered to be any need for a further review.

Enforcement Notices

- 3.12 In relation to appeals against enforcement notices, two appeals were allowed and fourteen were dismissed. Of the two allowed one related to a digital advert and one to a fence.
- 3.13 There are no concerning trends here and the approach being taken towards the use of enforcement powers is clearly proportionate. There were 764 cases investigated over this period and 50 enforcement notices were served. The majority of cases are resolved without formal action being required. The comparable figures from other authorities are not yet available for this period, although this level of enforcement activity is considered normal.

Advertisement Consent

- 3.14 There were six appeals relating to advertisement consent. Two appeals were allowed and four were dismissed. The two appeals allowed related to digital

advertisements although in one case a condition was added stating that the advert must be static.

- 3.15 Digital advertising is a relatively new format and the criteria used for assessment of proposals was agreed by Planning Committee on 27 February 2014. These appeal decisions provide an input to the existing monitoring of issues arising from proposals.

Planning Obligations

- 3.16 There were three cases relating to applications to revise planning obligations (legal agreements) put in place in connection with planning permissions. One was allowed and two were dismissed.
- 3.17 The appeal which was allowed, related to the Council's Developer Contribution and Affordable Housing Guidance and, in particular, contributions to public realm improvements. A revision to the guidance is proposed in the report, 'Developer Contributions and Affordable Housing Guidance – update for consultation', on the agenda of this meeting of the Planning Committee. It recommends that financial contributions to public realm improvements are not pursued as a planning requirement at the current time. However, developers are still required to provide public realm improvements as part of their development proposals.

Ombudsman Decisions

- 3.18 In 2014-15, there have been eight Ombudsman decisions issued by SPSO. Of the eight decisions, four did not uphold the complaint, a success rate of 50%. There were four decisions that were partially upheld. No decisions were fully upheld.

Decisions not Upheld

- 3.19 These related to the following subjects:
- Failed to take reasonable account of the character and appearance of the conservation area in determining a planning application;
 - The Council did not act reasonably in relation to their powers of enforcement;
 - The Council did not reasonably handle complaints;
 - The Council did not fully explain the requirements of works requiring a Certificate of Lawfulness;
 - Failure to deal reasonably with a planning application for a new driveway and dropped kerb access;
 - Officer's failure to take relevant planning considerations and guidelines into account in deciding the application;
 - Information on planning documents was inaccurate or provided after representation period;

- Inappropriate relations between the Council and developers.

Partially Upheld Decisions

3.20 Four decisions that were partially upheld related to procedural oversight. These were as follows:

- Failing to respond to questions raised in representations and, despite the Council acknowledging the error, there was no apology issued or recommendations on how we would improve as a result of this.
- Failing to make clear the interpretation and justification for not applying Scottish Government Guidance in the head of service's report to the Development Management Sub-Committee.
- Inaccurate and misleading information in Committee reports.
- Documents not made available as required by legislation.

SPSO Recommendations

3.21 The SPSO normally makes recommendations when complaints are upheld. In the cases above, the following recommendations were made:

- The head of service's reports to Committee should contain the relevant application and justification of Scottish Government guidance to ensure that the transparency of the decision-making of the case officer and committee is clear.
- Case officers should be made aware that any questions of fact or requests for further information relating to an application raised in representations should be provided with a response to ensure the customer is fully aware of the determining issues of the application.
- A standard apology letter should be issued to the complainant where a decision has identified failings of the Council.
- Officers involved in a complaint are briefed on the outcome of the decision if a failing is identified to avoid future errors.
- Staff should be reminded that all relevant parts of the planning register should be available to the public as required in legislation.
- The Council's website is amended to ensure that the complaints procedure for planning complaints is accurate.
- Finally, further report training for Planning staff was recommended.

Learning from Complaints

3.22 As a result of the recommendations by the Ombudsman highlighted above, a number of actions have been undertaken:

- Every case where a complaint is upheld and a recommendation made is reported in a team briefing so all staff can learn about the outcomes of these;
- Yearly training on complaints is held for all staff so they can learn about the main issues to be aware of;
- The Council website has been updated to reflect changes in the planning complaints process;
- Where the internal investigation response upholds a complaint, an apology is always offered: standard letters have been made available;
- The records management system is currently being reviewed and this will make it clear which documents are available for public view and for how long;
- The complaints system has been reviewed and improved recording of outcomes, recommendations and associated actions has been introduced; and
- Further training on report writing is being arranged.

The Measures of success

- 4.1 A reduction in the number of complaints and appeals registered with external planning bodies.
- 4.2 A reduction in the number of ombudsman reviews and appeal decisions upheld and allowed.

Financial impact

- 5.1 There is no direct financial impact arising from this report.

Risk, policy, compliance and governance impact

- 6.1 The report is focused on reviewing our performance to identify potential areas of improvement, which will reduce the number of appeal decisions and complaints raised to the SPSO. There are no perceived risks associated with this report.

Equalities impact

- 7.1 This report has been assessed and has no impact in terms of equalities or human rights.

Sustainability impact

8.1 The impact of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties has been considered, and the outcome is summarised below.

- The proposals in this report will not increase carbon emissions because it focuses on impact of planning decisions made by external bodies.
- The need to build resilience to climate change impacts is not relevant to the proposals in this report because it is focused on informing committee members of the current statistics relating to planning appeal and ombudsman decisions.
- The proposals in this report will help achieve a sustainable Edinburgh in terms of Social justice because it will influence a review of current policies and practices by the City of Edinburgh Council, which will increase customer satisfaction and raise performance levels. Economic wellbeing and Environmental good stewardship are not considered to impact on the proposals in this report because the report will not have any impact on economic or environmental policies as its purpose is to learn from current appeal and ombudsman decisions.

Consultation and engagement

9.1 This report is a summary of decisions by external bodies. There has been no consultation or engagement on these.

Background reading/external references

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Links

Coalition pledges P27 - Seek to work in full partnership with Council staff and their representatives

Council outcomes CO24 – The Council communicates effectively internally and externally and has an excellent reputation for customer care
CO25 – The Council has efficient and effective services that deliver objectives
CO26 – The Council engages with stakeholders and works in partnership to improve services and deliver agreed objectives

Single Outcome Agreement Edinburgh’s economy delivers increased investment, jobs and opportunities for all

Appendices None

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