

# Planning and Environmental Appeals Division

## Complaints



The Planning and Environmental Appeals Division (DPEA) takes all complaints very seriously. We try hard to ensure that everyone involved in the appeals system (or other cases that we deal with) is satisfied with the service they receive from us. However planning appeals and other casework often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of a case. This can lead to a complaint about the decision itself or the way in which the case was handled. Sometimes complaints arise due to a misunderstanding about how the system works. When this happens we will try to explain things as clearly as possible. Once a decision has been made, we cannot re-open an appeal or other case to reconsider the merits of the case or add to what the reporter has said. All the same we will answer any queries about the decision as fully as we can. A complaint can arise at any stage in the proceedings and you should raise any issues when they occur, rather than waiting for the final decision to be issued.

DPEA cannot however

- change the reporter's decision
- re-open the appeal once the decision has been issued
- resolve any issues you may have with the planning authority about the planning system or the implementation of a planning permission

The Court of Session is the only authority that can ask for the reporter's decision to be reconsidered. Anyone aggrieved by a planning appeal decision can appeal to the Court of Session within 6 weeks of the date of the decision notice. Different procedures and time limits apply to other case work such as environmental appeals. Appeals can only be made on a point of law and we would suggest that you seek professional advice if you wish to appeal to the court.

In dealing with complaints, DPEA will follow the Scottish Government Complaints Handling Procedure (SGCHP), a copy of which can be found at <http://scotland.gov.uk/Contacts/Have-Your-Say/Making-Complaints/complaintshandling>

Complaints and requests for a review can be submitted by post, by e-mail, in person or over the telephone (see contacts below)..

## **1. How to lodge a complaint (Stage 1)**

In the first instance you should always try and resolve the complaint with the case officer dealing with your case. If you are unable to do so then you should write to the Head of Performance and Administration setting out the reasons for your complaint and any actions you consider DPEA should take to resolve matters.

## **2. Investigation (Stage 2)**

If you remain dissatisfied with the response you have received, you can ask for a Stage 2 investigation of your complaint and the response you received.

## **3. What action will DPEA take at Stage 1**

DPEA will deal with all complaints at stage 1 regardless of the complexity of the complaint.

DPEA will aim to respond to your complaint or request for a review within 5 working days but no later than 10 working days in more complex cases. If we are unable to meet this target, we will write to you explaining why this cannot be done and informing you of when you will receive a response. Our response will address fully the issues you raise and set out any action we will take to deal with this.

## **4. What action will the Scottish Government take at Stage 2**

The Scottish Government will ask an Investigating Officer (IO), independent of DPEA, to carry out an investigation of your complaint and the response you received. The IO will;

- acknowledge receipt of your complaint within 3 working days
- where appropriate, discuss your complaint with you to understand why you remain dissatisfied and what outcome you are looking for, and
- give you a full response to the complaint within 20 working days

The IO will inform you if the investigation will take longer than 20 working days. They will agree revised time limits with you and keep you updated on progress.

## **5. Reporting of complaints**

From April 2011 DPEA will publish the number of complaints received in the Division's Annual Review and also the number that were upheld. Complaints will also be recorded centrally by the Scottish Government

## 6. Taking it further

If you remain dissatisfied with the responses you have received, you may wish to contact the Scottish Public Services Ombudsman (SPSO). The SPSO (see Contacts below) deals with complaints about the Scottish Government, its departments and its agencies. They normally consider complaints only after they have been through the formal complaints process of the organisation concerned.

## 7. Frequently asked questions

***“Why is the right of appeal against a decision by a planning authority to refuse planning permission restricted to the applicant?”*** – The Town and Country Planning (Scotland) Act 1997 sets out the legal basis for the right of appeal, which rests solely with the applicant. The reporter will, however, consider all the evidence submitted by all parties before reaching a decision.

***“How will a planning appeal be dealt with?”*** – The reporter will decide what, if any, further information he/she will require to decide an appeal. This may take the form of further written submissions, a site inspection, a hearing session or an inquiry session. The reporter will also decide which party is best placed to provide this information. In some cases the reporter will decide that no further information is required.

***“Can the decision on a planning appeal be reviewed if a mistake has happened?”*** – We cannot reconsider a reporter’s decision or his/her reasoning in reaching the decision. The decision can only be changed following a successful Court of Session challenge. Any party aggrieved by the reporter’s decision can appeal to the Court of Session. This appeal can only be made on a point of law and you may wish to seek professional advice before taking any action in this regard.

***“On what basis does a reporter make a decision on a planning appeal?”*** – The reporter is required to make his/her decision in accordance with the development plan unless material considerations indicate otherwise. Further information on what constitutes material considerations can be found at <http://www.scotland.gov.uk/Publications/2009/07/03153034/11>.

***“Why did an appeal succeed when local residents were all against it?”*** – Local views are important but reporters have to determine an appeal on the basis of all the evidence submitted and on the planning merits of the case.

***“How can a reporter know about local feeling or issues if they do not live in the area?”*** – Appointing reporters who do not live locally ensures that they have no personal involvement in any local issues or any ties with the planning authority or its policies. However reporters will be aware of local views from the representations people have made on a case and will, in the vast majority of cases, have carried out an inspection of the appeal site.

***“I submitted representations on this appeal, why did the reporter not mention this in the decision notice?”*** – Reporters must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

***“Why did my appeal fail when similar appeals nearby succeeded?”*** – Although two cases may be similar, there will always be some aspect of a case that is unique. Each case must be decided on its own particular merits.

***“My appeal has just been dismissed, is there anything else I can do to get my permission?”*** – You should approach your local planning authority to discuss what development they might consider appropriate for the site.

***“Who is responsible for ensuring compliance with conditions attached to an award of planning permission by a reporter?”*** – Once a reporter has issued a decision he/she has no further jurisdiction in the case. Responsibility for ensuring compliance with any conditions rests with the local planning authority.

## Contacts

### 1. Planning and Environmental Appeals Division

Planning and Environmental Appeals  
4 The Courtyard  
Callendar Business Park  
Falkirk  
FK1 1XR

- Telephone - 01324 696400
- Fax - 01324 696444

E-mail - [dpea@gov.scot](mailto:dpea@gov.scot)

### 2. Scottish Government Complaints Handling

E mail - [sgcomplaints@gov.scot](mailto:sgcomplaints@gov.scot)

### 3. Scottish Public Services Ombudsman

Scottish Public Services Ombudsman  
Freepost SPSO  
(Yes, the above is all that's required for the postal address)

- Telephone - 0800 377 7330 (free from UK landlines)
- Fax - 0800 377 7331 (free from UK landlines)

E-mail - [ask@spsso.org.uk](mailto:ask@spsso.org.uk)

