

You can contact me on:



Our reference:

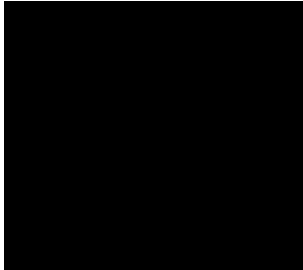


Your reference:



Parliamentary
and Health Service
Ombudsman

In Confidence
Mr Nicholas Hall



24 September 2020

Dear Mr Hall

Your complaint about the Planning Inspectorate

Thank you for taking the time to discuss your complaint with me. We have now completed our consideration of your complaint and I am writing to tell you the outcome. In order to reach this decision we reviewed the information you have provided and what you told us when we spoke. Having done this, we have decided not to consider your complaint further: this is because a challenge to a planning decision can only be made in court. While we can see that the Planning Inspectorate did make an error in handling your submission, we are satisfied that it has done what it can to put this right within the bounds of the complaints process.

I understand that our decision may not be the outcome you were seeking from your complaint, but I will explain the reasons for this and the factors we have considered in our assessment of your complaint.

Your complaint

You complain about the Planning Inspectorate's handling of a planning application for a large cattle barn near your home, approved in November 2018 and appealed in November 2019. You privately paid for a report from a planning consultant as your representations for the appeal. You complain that the Planning Inspectorate did not pass the report on to the council or appellant for their comments and failed to do so once you had highlighted the issue. You complain that the Inspector did not give due attention to your report and that the application should not have



Millbank Tower
Millbank
London SW1P 4QP

Enquiries: 0345 015 4033
Fax: 0300 061 4000

Email: phso.enquiries@ombudsman.org.uk

www.ombudsman.org.uk

been considered at all as the appellant does not own the land or have any connection to it.

You say you have lost both time and money in putting forward your representations which you feel were not heard and have lost faith in the government and justice system.

You would like the appeal voided and the decision reconsidered, service improvements and financial compensation.

Reasons for our decision

Inspector's considerations and decision

We are unable to look at your complaint about the Inspector's consideration and decision of the appeal as it is not appropriate for us to do so. The Parliamentary Commissioners Act 1967 sets out that we cannot investigate complaints where there was a remedy available through the courts, and it was reasonable for the complainant to pursue it.

The legislation which guides planning and development of land in the UK, the Town and Country Planning Act 1990¹, says that any challenge to a planning decision must be made through the courts.

It is not possible to address concerns about the considerations or decisions of planning applications through the complaint procedure. The Planning Inspectorate's website² says:

'Decisions by Inspectors (or decisions based on the recommendations of Inspectors) are final unless successfully challenged in the High Court on a point of law. Only the Courts can legally review decisions or recommendations by Inspectors and identify an error in law.'

The Planning Inspectorate can only reconsider a case if the High Court decides to cancel the decision and returns the case to the Planning Inspectorate for it to be decided again.'

We can look at complaints about maladministration, which does include whether the correct process was followed in considering an appeal. However, we cannot substitute our judgement for that of the courts or a planning inspector. Ultimately, the matters you have highlighted in whether the planning inspector gave appropriate weight to your submission, are matters that are more appropriately addressed through the courts, as intended by Parliament in the relevant

¹ <https://www.legislation.gov.uk/ukpga/1990/8/section/288>

² <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure#:~:text=Please%20contact%20us%20by%20email,working%20days%20to%20answer%20complaints.>

legislation. The complaints process is not intended to circumvent the statutory appeal route which is in place.

You said that you explored the possibility of making a legal challenge through the High Court but chose not to do so because of the cost associated with taking legal action. While we are sympathetic to this and understand that this would have been potentially very expensive, with no guarantee of recouping your costs even if your legal action was successful, we do not consider this in itself to be a strong reason why it would not be reasonable to follow the statutory appeal route as set out in law.

Report not passed on to council and appellant

We have looked at your concerns about the report you submitted to the Planning Inspectorate not being passed to the local council or the appellant. You have told us that, despite you notifying the Inspectorate about this in good time, the issue was not rectified.

As I have explained above, we cannot look at the merits of the inspector's decision and what impact this error had on the outcome of the appeal because you had a remedy available through the courts which could have addressed this. However, you have also said that you are seeking service improvements and financial redress for the Planning Inspectorate's acknowledged errors. As these remedies would not have been considered through a judicial review, we have looked at the Planning Inspectorate's response to your complaint to see if there is anything further we can add in terms of putting right its administrative error.

The Inspectorate have acknowledged the error and apologised for this. They have said that, whilst the council or appellant did not have opportunity to comment, the Inspector considered the report before making his decision. They have said that feedback will be given to the relevant team for potential training and process requirements.

Whilst we understand the error was frustrating and did not give opportunity for your voice to be heard by the appellant or the council, we think that the Inspectorate have dealt with your concerns appropriately. We would not be able to say whether the council or appellant would have made comment on the report and, if they had, that would have had bearing on the Inspector's decision. This point would be more appropriately addressed through the courts.

You have said that you believe there to be a more insidious reason for the report not being passed to the council or appellant. Whilst we understand your concern, there is no reason for us to doubt what the Planning Inspectorate have said. It upheld this concern and said that the issue came about through genuine error. We have decided that their response outlining the learning they will pass on to the individual concerned and apology are an appropriate resolution to your concern and all that could be achieved through the complaints process. We understand that you have applied to the Inspectorate for an ex-gratia payment in light of this upheld complaint aspect and this is currently being considered.

In summary, we will not be taking any further action on your complaint.

I have sent a copy of this letter to the MP who referred the complaint to us.

How did we do?

If you have any questions then please contact me using the details given at the top of this letter within one month.

Our independent research company may also invite you to take part in a survey to help us improve our services. If you would prefer not to take part please call us on 0300 061 4222, or email customersurvey@ombudsman.org.uk

If you have already told us that you do not want to take part, then you do not need to tell us again. Information passed to and collected by the research company is kept in the strictest confidence and used for research purposes only.

Yours sincerely,



Caseworker