

Scottish Public Services Ombudsman Act 2002

Report by the Scottish Public Services Ombudsman of an investigation into a complaint against

Perth and Kinross Council (the Council)

Complaint as put to the Ombudsman

1. The complainant (Mr C) is the former owner of a substantial detached house (The House) and farm steading buildings in a rural part of the Council's area. In late 2002, prior to marketing his property, Mr C commissioned an architectural practice (The Practice) to obtain planning consent on his behalf for demolition of some existing buildings and residential development in the farm courtyard area. The complaint made by The Practice on Mr C's behalf is that salient information was omitted in a written response to a pre-application planning enquiry and that Mr C incurred substantial abortive costs in design fees (£7,000) and that the planning application fee (£880) was also lost when Mr C decided, six months later on 12 June 2003, that the application should be withdrawn. Mr C subsequently sold the property in August 2003.

Consideration of the complaint

2. The legislation governing my work states that 'The Ombudsman may take such action in connection with [a] complaint ... as the Ombudsman thinks may be of assistance in ... resolving the complaint'. The action taken by my office in seeking to resolve Mr C's complaint is outlined in paragraphs 25 - 27 of this report. As this action did not seem to me to resolve the complaint I decided to institute an investigation under Section 2 of the Scottish Public Services Ombudsman Act 2002. In considering the complaint my Complaints Investigator interviewed Mr C's architect, Mr A of The Practice. He also visited the environs of the property and interviewed officers of the Council.

3. Mr C lives in London. According to Mr A, Mr C's selling agents introduced him to Mr A in the context of a planned sale of the property which it was hoped could be enhanced through obtaining planning consent for residential development.

4. Prior to making a written pre-application enquiry on 29 November 2002 Mr A spoke on the telephone with one of the Council's Development Control Managers (Officer 1).

5. Officer 1 told my Complaints Investigator that he was one of two Development Control Managers and that his geographical responsibility covered the southern half of the Council's area. He normally had three development control case officers each with their own territorial responsibilities but a vacancy in the Department had occurred when the case officer for the particular area left and it was not until 2 December 2002 that a replacement case officer (Officer 2) commenced working with the Council. Officer 1 stated that the Perth and Kinross Council Development Control office was one of the busiest in the country, in terms of the number of applications, and officers had high associated caseloads (see paragraph 31). The loss of the case officer for the area in which The House is located, had meant that he had 'covered' the gap and had himself dealt with both planning applications and pre-application enquiries. If these were substantive with regard to a particular case, he would have requested a follow-up by the enquirer in writing. To keep abreast of the increased workload he had resorted to taking some work home.

6. Having spoken earlier with Officer 1, Mr A submitted the following written enquiry with a drawing showing eight proposed units:

[The House]

'I refer to the above and to our recent telephone conversations and now enclose a copy of our drawing number SK01. It is our Client's intention to retain [The House] complete with its Coach House and garden grounds, but to demolish the existing farm buildings, stables and brick built garages to recreate the original steading. This new building will include the retention of the existing original stone

external walls with the original window and door opening retained and recreated as far as possible, to provide a variety of 1½ storey houses in the style of the original steading. This new courtyard will be accessed from a new opening on to the roadway which will also provide access to a new 1½ storey cottage in the existing walled garden. [The House] will retain both of its existing accesses onto the roadway.

'Our Client wishes to make an Application for Detailed Planning Permission in the near future, and therefore we would be grateful for your formal Planning comments in terms of the Local Plan Policies, etc on these proposals, and whether or not such an Application would gain your support.

'We trust the above and enclosed are in order and we look forward to hearing from you soon'.

7. Officer 1 dealt with this written pre-application enquiry himself. He responded on 5 December 2002 in the following terms:

'Proposed Housing Development

'I refer to your letter of 29 November 2002 concerning the above.

'I enclose a copy of the Council's Policy on Housing in the Countryside by which any proposal would be judged. In my opinion the proposal for a new house in the garden would not fall within any of the possible categories listed. Similarly the proposal to replace the modern farm buildings without stone walls would not fall within any of the categories. Converting the modern buildings with stone walls may be acceptable even if perhaps not strictly in accordance with policy. However the design should be of traditional steading farm and use of stonework should be maximised. Your plans seem to imply that stonework will be retained on the external walls of the new courtyard but that the interior of the courtyard will all be render. This is unlikely to be sufficient stonework to be acceptable.

'In addition you should ensure that the new houses each have adequate privacy and private garden space. This may be a particular problem for the east most unit in the courtyard which should perhaps be split and added to the houses to the north and south to avoid these problems.

'You should also be aware of the need to comply with the drainage policies in the Finalised Local Plan (copy extract enclosed).

'I trust these points and enclosed policies are some help in deciding how to proceed. I would be willing to comment further on a more detailed revised scheme which took account of these comments.

'The above points are the views of an official based on a preliminary assessment without visiting the site and without consulting other Council Services, such as Road officials, about access or outside statutory consultees such as the Scottish Environment Protection Agency concerning drainage. Accordingly these views are without prejudice to any consideration of a formal planning application by the Council'.

8. Omitted from the response was a general reference to the finalised Local Plan being available on-line on the Council's website and a specific reference to Policy 3 of the Kinross Area Finalised Local Plan relating to Health and Safety Consultation Zones. That policy is detailed on page 27 of the Local Plan as:

'Health and Safety Consultation Zones

'Policy 3

'The Proposals and Inset Map identify pipeline consultations zones where the Council will seek the advice of the Health and Safety Executive (HSE) on development proposals. The Council will also seek the advice of the HSE on the suitability of any proposals for new notifiable installations within the Plan area or any proposals for development within the consultation distances of any notifiable installations'.

9. For his part Mr A, whose own home is in the Council's area but whose practice is based in Edinburgh, stated that he was unaware from his visits to the site or from information passed on by his client that The House and the existing agricultural buildings were within a pipeline consultation zone.

10. Mr A received Officer 1's letter on 11 December and believes he may have spoken again with Officer 1 before sending a copy with a covering letter to his client on 12 December 2002. That letter commented on the consequences of Officer 1's suggestions for building materials and drainage and indicated that it 'leaves us with the stone courtyard and approximately four reasonably sized houses, each of which will have its own garden ground, and dedicated parking'. Mr A, however, continued that no comments from the Transportation Department had been included in the response and it remained to be clarified as to whether the proposed new access was acceptable.

11. Mr A, when questioned by my Complaints Investigator, stated that had the need to consult with the Health and Safety Executive been revealed he would have required to consult again with his clients.

12. As a result of Mr C's consideration of what was relayed to him, Mr A was instructed to proceed with preparing the necessary plans to secure detailed planning consent for four units. Some three weeks prior to undertaking neighbour notification and submitting a planning application with the requisite fee on 25 March 2003, Mr A spoke again with Officer 1. He also purchased from the Council a copy of the Loch Leven Catchment Area Management Plan and spoke with an officer at the Scottish Environmental Protection Agency on drainage requirements.

13. Questioned by my Complaints Investigator as to whether, had the need to consult with the Health and Safety Executive been revealed earlier, it might have been possible for Mr A to have first submitted an application for outline planning consent, Officer 1 indicated that in order to meet the Council's Housing in the Countryside Policy (policy 66) it would have been necessary to have prepared detailed plans of what was

being proposed in terms of units, materials, drainage and access. Without such detail the application could not properly be determined.

14. The application for full planning permission for the demolition of part of the farm buildings and conversion of the remaining stone buildings to form four courtyard dwellings was submitted under cover of a letter of 25 March 2003 which enclosed plans, the requisite fee (£880) and certification of neighbour notification.

15. The application was passed to the officer responsible for checking that all the information necessary to validate the application was available and he wrote to the agents on 4 April 2003 requesting information on five specific matters. This information was subsequently furnished by Mr A and the Head of Development Control wrote to Mr C care of his agents on 23 April 2003 indicating that the application for demolition of part of the farm buildings and conversion of remaining stone buildings to form four courtyard dwellings had been registered.

16. The file was passed to Officer 1 as line manager of his team on 24 April 2003 and he allocated it to the new territorial case officer (Officer 2). In so doing he noted to her that there had been a pre-application enquiry response to Mr A.

17. Officer 2 told my Complaints Investigator that she was passed the application file on 25 April 2003 and immediately undertook the necessary consultations. Since upon checking the Finalised Local Plan Maps she noted that The House was within a pipeline consultation area, she consulted with the Health and Safety Executive (HSE) and with BP Plc who had responsibility for the Forties Pipeline System.

18. The response dated 6 May 2003 from the HSE on the proposals stated:

'The Health and Safety Executive (HSE) is a statutory consultee for certain developments within the Consultation Distance (CD) of major hazard installations/complexes and pipelines.

'This individual consultation, which is within at least one such CD, has been considered using the details provided by you and HSE's assessment methodology. HSE's advice is that there are sufficient reasons, on health and safety grounds, for advising against the granting of planning permission in this case.

'Major hazard installations are subject to the requirements of the Health and Safety at Work etc Act 1974 which specifically includes provisions for the protection of the public. However, the possibility remains that a major accident could occur at an installation and that this could have serious consequences for people in the vicinity. Although the likelihood of a major accident occurring is small, it is felt prudent for planning purposes to consider the risks to people in the vicinity of the hazardous installation.

'HSE's assessment methodology indicates that the risk of harm to people at the proposed development, from the hazardous substances at the major hazard site, is sufficiently high to justify advising against the granting of planning permission on grounds of safety ...

'If you decide to refuse planning permission on grounds of safety, HSE will provide the necessary support in the event of an appeal ...'.

19. The letter which was received on 7 May also detailed the procedures to be adopted in the event that the authority were minded to grant planning permission against HSE's advice and also referred to the pipeline operator providing further information on pipeline design.

20. The pipeline operator for the Forties Pipeline System response, also dated 6 May 2003, was received on 12 May 2003 and stated:

'We thank you for your recent consultations regarding the (above) application and advise you that, as the safety and engineering integrity of our BP Forties Pipeline will not be affected, we have no comment to make on the proposal'.

21. Officer 2 told my Complaints Investigator that this was the first time in her career that she had encountered a consultation response from the HSE which recommended outright refusal of an application. She had gone back to the HSE and had spoken to one of their officers (Officer 3) who explained the basis on which the risk assessment was made; that it was not a preclusion on any development but it had regard amongst other things to uses intended and the density of occupation within the consultation zone. It was not simply either a 'no build zone' or the case of drawing a bisecting line across the site indicating a 'safe' and a 'non-safe' area. She had, after the initial response, discussed the matter with Officer 3 and he had indicated that it might be possible to allow two but not four houses. She said that she had tried to contact Mr A after 7 May but had not been successful until 20 May 2003 when she telephoned him. She told my Complaints Investigator that with the outcome of the consultation from HSE, officers could, under delegated powers, have refused the application outright. She had sought to be helpful to see if a resolution could be found which salvaged at least part of the proposals. This would have required withdrawal of the then current proposals and re-submission with a lesser number of units. There would in that circumstance be no additional fee provided the re-submission was made within twelve months. If the application was taken forward to determination (and inevitable refusal) then the refusal could be appealed to the Scottish Ministers.

22. Mr A told my Complaints Investigator that 'the first he knew' that the pipeline provided an obstacle to development had been during Officer 2's telephone call to him on 20 May. He said that his reaction had been 'what pipeline?'. He spoke again with Officer 2 and she gave him the name of the contact officer (Officer 3) at the HSE. He had been unable to speak to Officer 3 but spoke to a colleague who had indicated that possibly three houses might be permissible. On 29 May 2003 he sent the following letter to the Director of Planning and Development Services marked for Officer 2's attention:

'I refer to the above and to our recent telephone conversations regarding the presence of the Forties Oil Pipeline near to the application site. In my written pre-application enquiry of

29 November 2002, I wrote, 'Our Client wishes to make an Application for Detailed Planning Permission in the near future, and therefore we would be grateful for your formal Planning comments in terms of the local Plan Policies, etc on these proposals'. As I had not had sight of the Local Plan at that time I asked quite clearly for your guidance as to the Local Plan issues regarding this site. I received a written reply from [Officer 1] dated 9 December 2002, which made absolutely no reference to the existence of this pipeline. I spoke with [Officer 1] subsequent to receiving his letters on 11 December 2002 and 4 March 2003 and prior to making the formal Planning Application on 25 March 2003, and we agreed that 4 units would be the maximum number that your department would support. Again absolutely no mention was made of the presence of the Pipeline.

'I find it quite extraordinary that at this late stage you have come back and informed us of the Pipeline and that its presence now effectively reduces the number of permissible dwellings. You have informed me verbally that the HSE will only allow 2 dwellings, and I have been informed directly by the HSE verbally that they will allow 3 dwellings, further confusing this application. My Client is currently marketing [The House] and the associated buildings and this recent revelation will surely affect the possible sale value of the whole.

'I recognise that the existence of the Pipeline does indeed affect our Application, but I am unable to accept that, when asked for all Local Plan issues affecting [The House], your department was unable to inform us of this vital information. We have now wasted over 2 months processing the Application, which, from the outset, would not have met the HSE's requirements and the time involved in producing a design for 4 dwellings as agreed between myself and [Officer 1].

'Before I formally withdraw this application as you have requested, I require a full explanation why you failed to inform me, when asked, of the presence of this vitally important restriction. I also require to see a full explanation in writing as to the grounds for the HSE's objection.

'I am copying this letter and the previous correspondence to the Public Services Ombudsman for her opinion'.

23. Although the letter referred to omissions by Officer 2's line manager (Officer 1), Officer 2 consulted with him but she drafted and signed the response of 9 June 2003 to Mr A.

'I note your disappointment at the response you received from this office at the pre-application stage in December 2002.

'It is regrettable that the existence of the pipeline was not specifically highlighted and I apologise for the omission. However, the Council's pre-application advice is informal, does not involve contacting statutory consultees and does not bind the Council in any way. Between your initial contact with this office and the submission of the proposal, some four months had elapsed which would have afforded ample time for you to have taken sight of the local plans and acquaint yourself with the local plan issues affecting your client's site.

'A written consultation response was received from the HSE on 7 May 2003. Following several unsuccessful attempts to contact you, contact was eventually made on 20 May 2003 advising you of the HSE's recommendation. As discussed during that conversation, I contacted the HSE for clarification and enquired whether or not they would support any residential development at this site. I duly relayed the content of that conversation to you, which has now unfortunately caused you some confusion. I was not obliged to contact the HSE but I nevertheless regarded this as a courtesy to yourself and apologise for any confusion. My recollection is, however, that we were in agreement that you should contact the HSE directly to discuss the matter. I should also remind you that even if an agreement is reached with the HSE in terms of the number of units they would allow, this does not necessarily mean that planning permission would be automatically approved for a re-submission.

Any further application would have to be considered on its own merits and the Council would re-consult the HSE.

'I have the permission of the HSE to provide you with a copy of their response to this Department. A copy is enclosed.

'The Council is now in a position to decide this application and unless I receive written confirmation that you wish the application to be withdrawn, the application will be refused before 18 June 2003'.

24. On receipt of this letter, Mr A telephoned my office on 11 June 2003. He spoke with his client (Mr C) on 12 June and Mr C signed and submitted his form of complaint to my office. At this time Mr A was instructed to withdraw his client's application and this was done on the same day (12 June 2003). The application was not re-submitted before Mr C sold his interest.

25. My Complaints Investigator made enquiry of the Council's Chief Executive on 20 June 2003. In her response of 28 July 2003 to that enquiry and following consultation with the Head of Development Control, the Council's Secretary emphasised that it had been acknowledged and regretted that the existence of the pipeline was not specifically highlighted in the letter of 9 December 2002 which formed a response to a pre-application enquiry. That letter had indicated there had been no consultation with outside statutory consultees and carried the rider that the views expressed were 'without prejudice to any consideration of a formal application by the Council'. The Council's Secretary asked me to note her following comments:

'1. An apology has already been made to [Mr C's] agent in the letter of 9 June 2003.

'2. Pre-application consultation is an important, but not statutory, part of the planning process. Officers do attempt to respond to pre-application consultations, though in the light of the heavy workload which they carry, such consultations do not necessarily receive the priority which prospective applicants or the officers would

find ideal. [Officer 1's] letter of 9 December 2002 is in accordance with our normal form and practice in such situation.

'3. It is acknowledged that the letter of 9 December 2002 while going into some detail on the policy on Houses in the Countryside for instance, did not specifically assess the proposal against any other policies and, quite specifically, made no reference to the existence on the Development Plan of a pipeline consultation zone and policy. To that extent, it is admitted that the officer did not specifically bring to the attention of the prospective applicant's agent at that time the possible implications for the proposed development of the proximity of the site to a pipeline.

'4. It may be argued that it cannot reasonably be expected that pre-application consultation with the Council will necessarily raise every single issue which might conceivably impact upon the subsequent determination of any planning application. There must surely be some responsibility upon the applicant and, where a professional agent has been appointed, that agent on behalf of his client, to identify himself. Scottish Executive Development Department Planning advice Note 40 on Development Control, at Para 61, places obligations on applicants and any perusal of the Development Plan by the agent, bearing in mind the importance of the Development Plan, would have identified to the agent the pipeline and policy implications.

'5. When the Health and Safety Executive consultation objecting to the planning application was received, the planning officer did discuss alternative potential development prospects with the Health and Safety Executive which confirmed that there might be scope for a reduced scale of development. This may be of some consolation to the complainant, in terms of both the fact that the development potential of the site may not be entirely sterilised and also because it will demonstrate that the Council did make some effort on his behalf to compensate for any earlier failing.

'6. It should also be noted that, in withdrawing the planning application, the applicant has lost any right of appeal to the Scottish Executive Development Department against any refusal of planning permission on the basis of the Health and Safety Executive's advice.

'In light of this incident, it is proposed that an additional sentence should be inserted into our pre-application consultation written responses (please note that many are verbal) to the effect that 'This letter does not claim to identify or address every issue which might potentially impact upon the determination of any subsequent planning application. It is recommended that you consult the Development Plan for the area as this will be the single most important issue in the determination'.

26. My Complaints Investigator ascertained at this stage that the cost of the design work on the planning application was £7,000. It was noted that an apology had been tendered and the Council's 'disclaimer' in such responses had been tightened. However, it was considered in the circumstances that a monetary payment was also appropriate. My Deputy informed the Council Secretary by response of 25 September 2003 that the apology and changed procedures were wholly appropriate but that the question of the costs to the complainant had not been addressed. He indicated that while the complaint merited investigation a decision on that would be deferred to enable the Council to consider making an appropriate payment to the complainant.

27. The Council's Secretary responded on 21 October 2003 as follows:

'Having consulted the Executive Director (Planning and Transportation), I would like to make the following points:

'1. The complaint relates to a pre-application consultation which is not a statutory part of the planning process.

'2. The letter sent in response to the pre-application enquiry was in fact more comprehensive than is often the case with enquiries of this nature.

'3. The letter did contain a 'standard' disclaimer (the last paragraph of the letter of 9 December 2002) which has been in use for many years.

'4. Experience has shown that potential applicants do not always follow pre-application advice.

'5. The executive Director (Planning and Transportation) considers that there is no evidence that reference in the response to the pipeline would have resulted in the applicant not pursuing his proposals.

'6. The executive Director (Planning and Transportation) believes that there should have been some 'duty of care' or responsibility on the professional agent employed by the complainant.

'As the Council has already expressed regret at the absence of reference to the pipeline in the pre-application response, the Council would be willing to offer compensation for the complainant's inconvenience. The sum which has been suggested is £500'.

28. I decided that this response did not resolve the complaint. In these circumstances, I decided to institute an investigation of Mr C's complaint under Section 2 of the Scottish Public Services Ombudsman Act 2002. On 27 January 2004, I notified the Council of that decision and, as required by the Act, gave them the opportunity to comment further on the complaint.

29. The Council had no additional written comments to make at this stage. However, at interview my Complaints Investigator was informed that on 30 January 2004 the Council's Head of Development Control had decided in the light of current workloads to limit responses to pre-application enquiries and he circulated members, regular applicants, and agents of the Council with the letter below. New standard letters for responding and not responding were also formulated. Copies of these

were given to my Complaints Investigator when he interviewed the Head of Development Control.

'Pre-application consultations on Proposed Developments

'As you know, pre-application consultation, whilst helpful to potential application for planning permission, is a discretionary activity and not a formal part of the planning system. The 'incomplete' service which I have provided in the past has also often given rise to complaint.

'In addition, the number of planning applications currently being submitted to Perth and Kinross Council has reached such a high level that I have been obliged to review the pre-application service which I offered to applicants, potential applicants and their agents.

'Consequently, and with immediate effect, I intend only to respond to pre-application consultations for proposed developments which are either of potential economic significance to Perth and Kinross Council (such as a business development) or which, by their scale and nature, are likely to be environmentally significant (such as a large housing development), or which follow the refusal of a planning application (so that the applicant may attempt to resolve those reasons for refusal).

'This will allow me to give priority to the statutory part of the planning process by concentrating my resources on the consideration and determination of formal applications for planning and other permissions.

'I would emphasise that it is only by submitting a formal application for planning permission that a measured and comprehensive response to a proposed development can be given as quickly as possible, as a formal application involved considering a proposal in terms of the Development Plan and the Council's policies, inspecting the site and the surrounding area, researching the planning history of the site, carrying out any necessary consultations and taking account of any comments received from neighbours or the general public.

Finally, I consider that the proposed practice is fair to those who actually submit formal planning applications.

'Potential applicants can obtain guidance by examining the policies of the Council and the Scottish Executive, and in particular the Development Plan for the area, which comprises Perth and Kinross Structure Plan and the appropriate area Local Plan. These Plans may be inspected at Pullar House and at the Council's area offices and libraries. Most of the Plans can also be viewed on the Council's internet page at www.pkc.gov.uk.

'Potential applicants may also wish to consider employing the services of a planning consultant, architect or lawyer to obtain advice on whether or not to submit a formal application for planning permission.

'I will continue to review the service I am able to offer to potential applicants in the light of emerging circumstances.'

My Complaints Investigator's Visit

30. My Complaints Investigator took the opportunity prior to visiting the Council's offices in connection with interviews to inspect the surroundings of The House from the public highway. The line of the pipeline is marked out by poles in a surrounding field on the approach to the group of buildings at The House. Some eighty metres past the entrance to The House the route of the pipeline crosses under the road and is marked with a prominent pressure point with emergency number.

31. My Complaints Investigator was provided with information subsequent to his visit to the effect that planning officers in Perth and Kinross Council dealt with significantly more applications per officer than comparable Councils with which the authority had completed a recent benchmarking exercise. This was supported by a Scottish Executive planning audit of March 2002. A study published by the Society of Scottish Directors of Planning for the year 2001/2 recorded the Scottish average number of planning applications per main grade development

control officer was 137. For the same year in Perth and Kinross it was 282 but this had increased to 309 applications per officer for 2002/3.

Mr C's Position

32. Before issuing a draft of my report for comment, my Complaints Investigator sought information on the complainant's awareness of the pipeline. He confirmed that his father and mother had resided at The House from 1960 until their respective deaths in 1978 and 1989 and that his mother had been a councillor with the predecessor planning authority. Mr C's sister had purchased a cottage across the road in 2002 and had applied for planning consent for an extension. While Mr C was aware that the pipeline had been constructed in the early 1970s it had not been an issue with his sister's construction work. Mr C stated that his father would have dealt with any negotiations with regard to the pipeline construction prior to his death but they had never sold the land through which the pipeline runs. Mr C confirmed that he had discussed the pipeline with his selling agents. The architect (Mr A) had been brought in at a very early stage and well before the details of sale were prepared. It had not been envisaged that the pipeline would be a major issue as Mr C's sister's house was much nearer the pipeline and there had been no issues raised with construction at the site, although his sister subsequently told him that her solicitors had told her she could not build within 50 yards of the pipeline. The pipeline operator had, however, taken an interest when a fence had been erected over the pipeline in delineating the land she had purchased. Mr C confirmed that had he known that there would have been a need to consult with the HSE when a planning application was submitted, it would not have affected his instructions to Mr A. He pointed out that the farm buildings had been used for agricultural purposes since the pipeline was built and they were further distant from the pipeline than his sister's property.

Findings

33. The Practice sought to obtain planning consent on behalf of their client (Mr C) and Mr A from the architectural practice followed up an earlier telephone conversation with Officer 1 of the Council with a specific written enquiry. I believe that Officer 1 endeavoured to be helpful in responding to this written enquiry. However, there was an important

omission in his letter of 5 December 2002, namely the failure to make reference to Policy 3 of the Council's Kinross Local Plan relating to Health and Safety Consultation Zones. In my view the initial enquiry merited either a careful detailed reply, or alternatively a response that Mr A's request could not be researched fully given that existing staff resources were stretched to the limit and that Mr A as Mr C's agent should himself undertake initial research into salient Local Plan issues.

34. I note that a written apology was subsequently issued by the Council on behalf of Officer 1 (paragraph 23) on 9 June 2003. However, it is unlikely that the proposals would have progressed in the way they did to a full blown application for detailed planning consent with associate agents' costs of some £7,000 and planning fee of £880 had the need for consultation with the Health and Safety Executive been identified at the outset. Whether Mr A could have devised an amended viable scheme with two or possibly a maximum of three houses will not now be known as the planning application was withdrawn, and not resubmitted, before Mr C sold his interest.

35. I uphold Mr C's complaint and consider that he suffered injustice in that he expended money on the basis of incomplete information which he would not reasonably have expended had he known that the number of units was in effect being dictated by what the HSE considered to be an acceptable risk. The Council's omission was serious, and I do not regard the amount of £500 previously offered as adequate. On the other hand, the remedy to the injustice does not in my view equate with reimbursing the full abortive design costs and fee. In seeking to market The House, and given the obvious visual signs of the route of the pipeline, Mr C and his agents could, and in my view should, have been prepared to undertake greater preliminary research of the potential implications of the pipeline. I believe, therefore, that a sum of £2,500 would be an appropriate figure in recognition of the abortive expenditure paid by Mr C to his agent and the time and trouble involved in pursuing the complaint.

Recommendations

36. I recommend that, in addition to the apology already given, the Council makes a payment of £2,500 to Mr C for the reasons outlined in paragraph 35.

37. I also consider that pre-planning application enquiries have an important role to play in the planning process. Indeed, sound advice and clarification at the informal stage before an application is submitted will almost inevitably reap its rewards in the smoother formal consideration of an application. I can understand why, given the caseload pressures on its planning officers (paragraph 31), the Council has sought to restrict the range of pre-application enquiries to which they will respond. However, with the widespread availability of salient planning documents on line, I would expect the need for detailed responses to open requests such as the ones made on Mr C's behalf could be curtailed. An applicant's agent could and should initially be directed to the policy document on line and then invited, if circumstances demand, to seek more clarification. I recommend that the Council review their recently introduced policy, taking account of this report, with a view to ensuring that they provide a service of the standard to which I am sure they aspire and that would properly serve their needs and those of applicants.

Professor Alice Brown
Scottish Public Services Ombudsman

29 July 2004

GLOSSARY

Mr C the Complainant

Mr A the Architect

The House substantial detached house formerly owned by the Complainant

The Practice the architectural practice acting for the Complainant

Officer 1 Council's Development Control Manager

Officer 2 Council's Development Control Case Officer

Officer 3 Health & Safety Executive Officer