

## Scottish Parliament Region: South of Scotland

### Case 200500957: Scottish Borders Council

#### Introduction

1. On 7 July 2005 the Ombudsman received a complaint from a man (referred to in this report as Mr C) that Scottish Borders Council (the Council) failed to take his objections into account and had acted unreasonably in granting his neighbour's retrospective application for planning permission for two areas of decking in his rear garden which affected Mr C's privacy.

2. Mr C complained that his neighbour had erected decking initially without seeking planning permission. Two applications were then made for retrospective planning permission but were refused. A third application was approved but Mr C claimed that the approval was granted inappropriately and unreasonably and that he had suffered a loss of privacy as a result.

3. The complaints from Mr C which I have investigated concerned:

- (a) whether the Council took Mr C's objections into account; and
- (b) whether the Council acted unreasonably in granting planning permission.

4. Following the investigation of all aspects of this complaint I came to the following conclusions:

- (a) not upheld, see paragraph 17;
- (b) not upheld, see paragraph 18.

#### Legislative Background

5. Legislation and policy used to decide the retrospective planning application:

The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended). The effect of this legislation on the question of

decking is adequately explained for general purposes in Scottish Borders Council's website page *Life in the Borders* which is attached to this report (Annex 1).

6. The Council confirmed to me that the decking required planning permission as it is closer to a public road (at the rear where the garden adjoins the road) than the house itself.

Roxburgh Local Plan 1995 Policy 18:

'In established residential areas there shall be a presumption in favour of retaining existing uses. To protect the amenity and character of these areas any development should meet the following criteria:

1. Appropriate form of development for a residential area;
2. Appropriate scale of development for a residential area;
3. No unacceptable increase in traffic or noise;
4. Not visually intrusive'.

### **Investigation and findings of fact**

7. Mr C's initial complaint was received at our office on 7 July 2005. On 8 July 2005 I wrote to Mr C. I explained that we will not normally consider a complaint until all stages of the Council's own formal complaints process have been completed. Mr C completed the Council's complaints process when he received the Chief Executive's letter of 9 August 2005. Mr C enclosed a copy of this letter with his letter of complaint to the Ombudsman which he sent on 10 August 2005. Mr C complained that the Council had not considered his representations worthy of consideration and asked that his complaint be taken forward.

8. On 16 August 2005 I asked the Council to provide me with the planning papers in respect of each of the applications including the applications themselves, the Planning Officer's assessments and recommendations and any notes of the discussions or decisions of the Committee. I also asked for a copy of the Local Plan. The Council sent these documents to me on 29 August 2005.

9. These documents enabled me to examine the history of the application. Mr C's

neighbour installed areas of decking consisting of linked timber platforms in the form of two hexagons contained by balustrades. When his neighbour applied for retrospective planning permission Mr C objected on the grounds that his privacy had been lost. The application was refused on the grounds that the decking was contrary to policy 18 of the Local Plan in so far as it was inappropriately sited and would result in a loss of privacy and amenity. A second application submitted in similar terms was also refused on the same grounds.

10. The Council received a third application on 16 March 2005. It differed from the other applications in that the southerly hexagon had been lowered by 250 mm and balustrade reduced from 900 mm to 600 mm in height. The balustrades on the other hexagon had been removed. Both Mr C and another neighbour submitted further objections. This application was considered by the Area Committee on 20 April 2005 but the application was continued to allow the Committee members to visit the site. The Area Development Control Officer wrote to both objectors to seek permission for the Committee members to view the decking from their property. All six members of the Committee visited the site on 3 May 2005. The members entered the gardens of both neighbours and two Councillors viewed the decking from Mr C's first floor windows at his invitation.

11. The Head of Development Control wrote a report on the application for consideration by the Area Committee at their meeting on 18 May 2005. This report said that the main planning issue was the extent of loss of privacy for the neighbours. In the assessment of the application the Head of Development Control noted that changes had been made to the decking which reduced its visual impact, although the neighbours remained concerned at the prospect of being overlooked by people standing or sitting on it. The report also considered assurances about the use of the decking by the current owners and the possible impact of any change of ownership. The report concluded that on balance the application could be approved subject to two conditions to help protect the neighbours' privacy. The Committee approved the application with the two conditions which were:

1. Proposals for tree and shrub planting along the south west boundary of the applicant's rear garden to be submitted for approval by the Planning Authority and the planting carried out within 9 months of the date of the

decision notice.

2. The northernmost timber hexagon to be maintained without balustrades being re-installed.

12. Mr C complained to the Ombudsman that the alterations made no difference to his position and that the application had been dealt with inappropriately.

13. I visited the site and there is no doubt that Mr C's property is affected by the presence of the decks. The builders of the houses formed banks at the end of several gardens in order to support the road. The end of Mr C's garden is at the same level as the road as is his neighbour's. The addition of the lower deck has, therefore, not resulted in a significant rise in height. It can clearly be seen that it is standing on the earth. The other deck whilst slightly higher is not significantly higher than the land surface. If Mr C's neighbour had chosen to do so he could have placed a seat in those positions without requiring any planning permission and been in the same position as he would be now sitting on the deck. It would appear to me, therefore, that Mr C is more a victim of the geography of the area than of the Council's planning decision. Mr C is substantially in no worse position than he was before the installation of the decking.

14. I made enquiries regarding the steps taken to implement the planning condition concerning the screen planting which will reduce the impact of the decking from Mr C's point of view. The Area Development Control Officer has now agreed planting details which will fulfil the condition of the planning consent. He has written to Mr C's neighbour stating that the planting must be carried out within nine months from the date of consent which was 18 May 2005. The Area Development Control Officer has told me he will visit the site in March 2006 to confirm that the planting has been completed.

15. I issued my draft investigation report to Mr C and to the Council on 11 October 2005 requesting comments by 8 November 2005. No comments were received from the Council. Mr C disagreed with my report but did not produce any further evidence which would alter my conclusions. This report is, therefore, in similar terms to the draft investigation report.

## **Conclusions**

16. I now deal with the two heads of complaint identified at paragraph 3.

### **Whether the Council took Mr C's objections into account**

17. Mr C's main complaint is that his objections were not given appropriate weight by the Council. Before the decision was taken, however, all the members of the Area Committee visited the site. In his letter to Mr C on 25 July 2005 the Head of Planning and Building Standards told Mr C that in determining planning applications Committees have to balance the legitimate rights of a property owner to carry out alterations to their own property and to maximise their enjoyment of their own garden with the rights of neighbours to a reasonable degree of privacy. I note in his report that the Head of Planning and Building Control said that the main planning issue was the extent of loss of privacy for the neighbours. The Council has taken appropriate steps to ensure that the conditions of the planning permission will be met. I am satisfied that the Council did take appropriate notice of Mr C's objections and, therefore, I do not uphold this complaint.

### **Whether the Council acted unreasonably in granting planning permission**

18. I am satisfied that the appropriate legislation and policy were used to determine the application and the correct procedure was followed. I, therefore, do not consider that the Council acted unreasonably in the way that they dealt with the application and, therefore, I do not uphold this complaint.

## **Recommendations**

19. As I have not upheld Mr C's complaints I do not have any recommendations.

28 March 2006



## Life in the Borders

### **Other structures including: decking (where the decking is raised above ground level) and pergolas**

#### **Attached to house**

You will not need planning permission for the above provided all of the following are met:

- The property is a house, not a flat
- The property is not located within a Conservation Area
- The proposal will be no closer to any public road or path which borders your property than the house itself - unless that road or path is more than 20 metres away from the proposal
- The proposal does not exceed your garden ground area allowance of 30% of your garden ground
- No part of the proposal which would be within 2 metres of the property boundary would exceed 4 metres in height
- The proposal is not higher than the highest part of the house roof
- No part of the proposal involves an alteration to the house roof (including building out from a roof slope or flat roof)

**NB altering or extending any part of a Listed Building may require a separate application for Listed Building Consent, even if planning permission is not required.**

#### **Detached**

You will not need planning permission provided all of the following are met:

- The property is a house, not a flat
- The property is not located in a Conservation Area
- The proposal is located wholly within the garden ground of the property
- The proposal will be no closer to any public road or path which borders your property than the house itself - unless that road or path is more than 20 metres away from the proposal
- The ground area of proposal does not exceed your garden ground area allowance of 30% of your garden ground
- The height of the proposal does not exceed 3 metres