

Case 200501654: Falkirk Council

Introduction

1. On 20 September 2005 the Ombudsman received a complaint against Falkirk Council from the owners of a house (Mr and Mrs C) who were concerned about aspects of their neighbours' rear extension. At that stage, the Council's complaints procedures had not been completed. After considering the Council's response which they received on 26 September 2005, the complainants asked this office to pursue matters on their behalf.

2. Mr and Mrs C first raised concerns with the Council when work started on their neighbours' rear extension in May 2004 without them having been notified. They complained that:

a. they were given misleading advice by a council officer on 10 June 2004 as to whether their neighbours needed planning consent and whether the neighbours had a building warrant; and

b. that the Council did not fully respond to their concerns about the nature of the foundations of the extension and unreasonably refused to provide them with an assurance that their neighbours' extension would have no long term effect on the structural condition of their home.

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

a. Partially upheld, see paragraphs 23 and 25;

b. Not upheld, see paragraph 26.

Investigation and Findings of Fact

4. The investigation was conducted on the basis of information supplied by the complainants in writing and the Council's response to a written enquiry. It was not

considered necessary to visit the site or to interview the complainants or officers of the Council. Mr and Mrs C and the Council have had an opportunity to comment on a draft of this report.

5. Mr and Mrs C are owner-occupiers of a semi-detached property at 1 X Street that was built in 1982. The Council have confirmed that the building is constructed on land that was subject to vibro replacement/floatation treatment (see Annex 2). The soil report submitted with the original application for building warrant in 1981 stipulated that the foundations to the dwellings required to be reinforced concrete strip foundations with a minimum width of 600 mm and depth of 150 mm.

6. In early 2004 the owners of the adjoining property at number 3 (Neighbour 1) decided to construct an extension to the rear and submitted an application for building warrant to the Council which was received on 24 March 2004.

7. Under the Building Procedures Regulations neither the Council nor Neighbour 1 required to notify Mr and Mrs C of the application for building warrant.

8. In May or early June 2004, Neighbour 1's contractor started building the conservatory extension. This entailed the construction of a four metre (13 foot) brick wall built some 60 cm from Mr and Mrs C's own patio doors and 5 to 7 cm from the shared fence.

9. Mr and Mrs C, who had had no forewarning of the development, contacted the Council on 10 June 2004. This had caused them some concern as they were due to marry the next day and to go off on two weeks' honeymoon. They said they were told that Neighbour 1 did not have a building warrant and that the Planning and Transportation Department would get someone to visit and make sure all building work stopped. Work, however, continued. On their return, and after numerous telephone calls, they said they were told that planning permission was also required. Towards the end of June 2004, when the extension was three quarters built, they said they were informed that a building warrant had in fact been issued. No planning application was apparently sought from Neighbour 1 at that time.

10. The Council confirmed that clarification of a list of points on the building

warrant application was sought from Neighbour 1's agents on 13 April 2004. These points were discussed at an office meeting with the applicants and agent on 16 June 2004, and the building warrant was issued on 21 June 2004. Following a request for a completion certificate, the works were inspected on site on 20 July 2004. The officers were satisfied that the works were complete and in accordance with the approved plans. The completion certificate, relative to the building warrant, was issued on 22 July 2004.

11. In the spring of 2005, Mr and Mrs C spoke with a Planning Enforcement Officer (Officer 1), and followed that contact up with an email on 2 May 2005. In that email, they referred to the structure being more of an extension than a conservatory and pointed out that an old kitchen window had been bricked up. Officer 1 visited 3 X Street and from his site visit established that the conservatory, as built, required planning permission. In confirming this to Mr and Mrs C by letter of 13 May 2005, Officer 1 stated that planning permission was needed because of the existence of a garage within the garden of 3 X Street. Officer 1's letter also dealt with parking issues which have not been pursued by Mr and Mrs C in their complaint to this office.

12. On 9 June 2005, the complainants received notification that Neighbour 1 had applied to the Council for (retrospective) planning permission for the conservatory.

13. On 22 June 2005, Mr and Mrs C submitted a form of complaint to the Council. They expressed concern about:

- a. notes on the plan stating that the extension would be constructed upon a strip foundation, as they assumed number 3 was built on a similar foundation. The notes indicated that, if this was not the case, a specialist report would be submitted to building control. To their knowledge, number 3 shares with number 1 a floating concrete foundation which abuts the building line by 18/24 inches (45 cm to 60 cm). They expressed concern about the possible effect the brick wall on the boundary side of the extension (some 4 metres high) would have on the foundations and their alarm that a small section of the foundation, inches from the party wall, was seemingly supporting a much greater weight than it was designed for.

b. the proximity of the wall to the mutual boundary.

14. Mr and Mrs C stated that while they had no objection to the erection of a conservatory in principle, they sought an assurance that the construction would not have a long term effect on the structural condition of their house and the foundation supporting it.

15. This form was treated as an objection to planning application and was acknowledged on 13 July 2005. In that acknowledgement the Planning Case Officer (Officer 2) stated that Mr and Mrs C's concern with respect to the foundations of the property was primarily a building standards issue. Since the floor area of the conservatory exceeded eight square metres, the extension required a building warrant and, as part of that process, the applicant had to ensure that the proposal had sufficient foundations and that there would be no detrimental effect on foundations of adjacent properties. Officer 2 stated that, in planning terms, there was no reason for refusal of planning permission and that permission was likely to be granted. Planning consent was granted on 13 July 2005, it being adjudged by the Council that all material planning issues were within acceptable standards.

16. On 1 September 2005, Mr and Mrs C sent an email to the Chief Executive complaining that they had been pursuing the issue of their neighbours' extension for over a year and that they had been given contradictory advice on the planning and building control positions. They stated that notwithstanding the note on the plans for retrospective planning permission which they had viewed, their concerns about the effect of their neighbours' extension on their own foundations and property had not been dissipated. They asked specifically why the foundations had not been investigated properly in 2004 when the building warrant was awarded and sought written assurance that there would be no detrimental effect to their property or foundations caused by this extension.

17. This email was received by the Chief Executive, acknowledged, and passed to her Director of Development Services, who also acknowledged receipt and informed the complainants that she had sought a report from the Council's Development Control Manager. He, in turn, acknowledged receipt and asked Mr and Mrs C to contact him if they had not received a reply by 12 September 2005.

18. Mr and Mrs C wrote to the Ombudsman on 19 September 2005. On 26 September 2005, they received a reply from the Director of Development Services dated 20 September 2005 which stated that an application for building warrant had been received on 24 March 2004, and that the applicant had been contacted after a visit by the complainants to the Council's offices on 10 June 2004. Building warrant had been approved on 22 July 2004 (sic) and planning consent was granted on 13 July 2005. The Director stated that the applicant had confirmed the foundation design as concrete strip foundations and as far as could be ascertained the conservatory was constructed accordingly. The requirement for a specialist engineering report had not, therefore, been required. The Director responded to Mr and Mrs C's concerns as follows:

'The structure as constructed is an approved method of construction and should not have any adverse effect on your property as it is not directly linked to your wall or foundation. The bearing pressure of a conservatory is far less than that of the existing two-storey dwelling. However, I am not in a position to provide you with a categorical assurance that the extension will never have a detrimental effect on your property or on any other site where an extension is being added.

I can only assure you that it is reasonable to assume that if any movement occurs it will result in differential settlement between 3 X Street and their conservatory. This would normally be highlighted through separation between the new wall and the existing. If such movement should occur then my Building Standards Unit will inspect and assess the situation and if required instigate enforcement action against the owners to rectify the movement.

The majority of extensions to existing properties result in minor settlement cracking in the initial phase and then no further.

I trust this will reassure you as far as is reasonably practical with regards to the safety of the as-built conservatory/wall and your property'.

19. Mr and Mrs C took issue with this letter and stated that they had been told during the week commencing 21 June 2004 that building warrant had been granted, when it appeared from the letter not to have been approved until work

was complete (22 July 2004). They contradicted the applicants' assertion that the foundation to the two houses was a strip foundation when they believed both properties to be served by a floating concrete foundation. They were aggrieved that the Council could accept the applicants' statement at face value and then not provide them with the assurance they requested. They stated that they still thought a specialist report should be sought as mentioned on the note attached to the plans for planning consent. They requested that they receive an assurance that the extension would have no detrimental effects on their property and maintained that if the Council found out the true facts rather than taking the applicants' word on things they should be confident to provide this.

20. In response to my enquiry, the Council provided me with the details of the construction of 1 and 3 X Street (paragraph 3) and of the processing of the applications for building warrant and planning consent for Neighbour 1's extension. They corrected the mistake in their letter of 26 September 2005 (paragraph 17). Building warrant for the extension had been approved on 21 June 2004, the works inspected on site on 20 July 2004, and a certificate of completion for the works had been issued on 22 July 2004.

21. The Council stated that the conservatory foundations as approved are 700 mm and 200 mm deep reinforced concrete strip foundations as per the original house design. The larger surface area of the conservatory foundation ensures that the load bearing pressure of the conservatory on the ground in direct contact with the concrete strip foundations is less than that of the existing dwellings. Also the loading imposed on the ground by the conservatory due to its construction is approximately 50% less than that imposed by the two storey dwellings at 1 and 3 X Street. On the available evidence the Council regarded any detrimental effect of the conservatory on existing properties as highly improbable. The Council were unable to give Mr and Mrs C the categorical assurance they sought due to potential future circumstances that might occur that would be outwith the control of the Council for example, a burst water pipe might cause soil erosion, or landscaping by the owners might undermine the foundations. At the time of the Council's inspection on 20 July 2004 prior to issuing the certificate of completion on 22 July 2004 all works appeared to be satisfactory.

The Council's Response to the Draft Report

22. The Council said that Mr and Mrs C were made aware when they visited the

Council offices on 10 June 2004 that the application for building warrant would be assessed in terms of relevant legislation and procedures. Their current practice was not to involve a third party further in the process but to inform them when their Building Standards Unit were satisfied that all requirements relating to a specific application had been examined and concluded. The Director of Development Services accepted that there had been a breakdown in communication between the Building Standards Unit and Development Control Unit rather than the latter ignoring the matter. She conceded that it was not acceptable that the enforcement officer was not involved until the spring of 2005. She stated that a new recording system in the form of Uniform IT system will allow all verbal and written complaints to be recorded electronically. She acknowledged that the situation had been frustrating for Mr and Mrs C and would be happy to issue a letter of apology.

Conclusions and Recommendations

23. The evidence before me demonstrates that a full assessment of the planning status of the extension was not carried out in 2004 when Mr and Mrs C first expressed concern at the works underway next door. There also appears to be some evidence of fault in communication with Mr and Mrs C with regard to the progress of their neighbours' application for building warrant.

24. Neighbour 1 had applied for a building warrant before the commencement of works and since that process does not require neighbour notification there was no requirement for Mr and Mrs C to be notified of that application. They had also, however, commenced works before the warrant was issued, and continued building although the complainants say building control officers told them Neighbour 1 had been advised to stop. Commencing work in advance of the warrant was a decision for Neighbour 1 and their contractor and carried the associated risk that the warrant might not be issued. However, they and the contractor met with the Council on 10 June 2004 and 11 days later, on 21 June, the warrant was issued. The building authority issued a certificate of completion a month later. I see no administrative fault regarding the processing of the warrant. I am less certain whether information on the current status of the warrant application was clearly communicated to or understood by Mr and Mrs C. While I cannot regard this as service failure, I note the Council's clarification of their communication with third parties in such situations.

25. I criticise the delay in properly assessing and regularising the planning position. The Council's planning service should have assessed the situation next door in June 2004 and requested an application for planning consent at that time rather than a full year later. I would regard that lapse as maladministration. Any injustice to the complainants has, however, been resolved through Mr and Mrs C being notified of the application, having the opportunity to make representation, and the award of retrospective planning consent by the Council.

26. Finally, while the complainants may be disappointed that they have not received the type of guarantee they sought that their home will not be adversely affected by their neighbours' extension, the assurances given about the possible effect of that extension on Mr and Mrs C's home are at the limit of what the Council can competently provide. They are not responsible for the civil liability of Mr and Mrs C's neighbours or the quality of the contractor's workmanship, or possible eventualities.

28 March 2006

Explanation of abbreviations used

Mr and Mrs C	The complainants
Neighbour 1	The owners of the adjoining property to the complainants
Officer 1	The Planning Enforcement Officer who spoke to Mr and Mrs C in spring 2005
Officer 2	The Planning Case Officer who acknowledged the objection on 13 July 2005

Glossary of terms

Strip foundation	A strip foundation for a building involves laying a continuous level strip of concrete which supports and distributes the load down to the subsoil. The strength of the concrete will depend on the load of the building and a deeper level of concrete or mild steel reinforcement may be inserted.
Raft foundation	A raft foundation is used where the subsoil is not capable of supporting the imposed load of the building on a strip or other type of foundation due to its excessive weight or the poor load-bearing capacity of the soil. It consists of a flat concrete slab with mild steel reinforcement usually with a thickening around the perimeter where the walls are supported. The amount of reinforcement will depend on the loads and the bearing capacity of the ground.
Ground stabilisation	Ground stabilisation involves measures to improve the load-bearing capacity of the subsoil on which the building is to be built. The process of ground improvement relies on compaction and consolidation to increase density, shear strength and load-bearing performance. Several methods or combinations of methods may be employed including dynamic compaction, vibro compaction, vibro replacement, vibro floatation, jet grouting and pressure grouting.
Vibro replacement	With vibro compaction a large poker 30 cm to

40 cm in diameter and weighing up to four tonnes is vibrated using compressed air to agitate loose soil to a more compact and dense state. Vibro replacement uses a similar technique but stone fill is added to the holes during compaction to create compacted stone columns of up to one metre in diameter.

Vibro floatation

Vibro floatation differs in that high pressure water jets are used to form the initial penetration. The vibrating action is later used to compact the stone columns.