

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200501852: Perth and Kinross Council

#### Introduction

1. On 10 October 2005 the Ombudsman received a complaint online from a resident in the Perth and Kinross Council area (Mr C) who complained about the arrangements made by the Council for publishing their Draft Eastern Local Plan.

2. Mr C alleged that Perth and Kinross Council (the Council), in publishing their draft Eastern Local Plan for public consultation, had deliberately made it impossible to print the relevant maps and that this had prevented him from considering carefully the draft plan. The investigation found that there had been no maladministration by the Council. The complaint was not upheld.

#### Background

3. Section 5 of the Scottish Public Services Ombudsman Act 2002 sets out matters which the Ombudsman is entitled to investigate namely, any action taken by or on behalf of a listed authority in the exercise of administrative functions of the authority to provide a service which it is a function of the authority to provide. The person aggrieved must be a member of the public who claims to have sustained injustice or hardship as a result of maladministration in connection with the action in question or failure in service. Section 7(10) of the 2002 Act stipulates that the Ombudsman must be satisfied that a complainant has invoked or exhausted a listed body's complaints procedure or that in the particular circumstances, it is not reasonable for those procedures to be invoked or exhausted.

4. The Town and Country Planning (Scotland) Act 1997 does not require planning authorities to put Local Plans on their websites but does require a planning authority to make copies of a draft Local Plan available locally for consultation and for a hard copy to be published for which the planning authority are entitled to make a charge (sections 11 and 12 of the 1997 Act).

5. In November 2004 the Scottish Executive Development Department produced a Planning Advice Note (PAN 70) on Electronic Planning Service Delivery. The Advice Note encourages all planning authorities to display both

their written statements and Local Plan proposal maps online (paragraph 51 of PAN 70). Annex B of the Advice Note explores technical options available to achieve the latter.

### **Investigation and Findings of Fact**

6. The investigation was based on examining information provided by Mr C and considering the Council's response to my enquiry.

7. On receipt, Mr C's complaint was premature in that there was no evidence that he had invoked the complaints procedure. He had, however, been present at a local meeting on 5 September 2005 when the issue had been raised orally with Council representatives. On 11 October 2005 I sent Mr C a copy of our leaflet and details from the Council's website of their recently introduced complaints procedure.

8. Mr C thereafter telephoned the Council's Planning and Transportation Service and spoke to the Support Services Manager (Officer 1). Officer 1 researched the matter and responded to Mr C. Mr C forwarded that email to me on 14 October 2005. The reply from Officer 1 confirmed that the draft Local Plan was available to purchase for £15 and the charge, which was standard, was to cover printing and Ordnance Survey copyright charges. While the existing Eastern Local Plan could be printed, the format for the new plan did not have the option to print in Adobe and the website advised it could not be printed. Officer 1 provided Mr C with instructions on how to download and print a page at a time. Mr C did not find the reply acceptable. However, by following the advice Officer 1 had provided, I was able to download and print particular pages of the draft Local Plan including maps. In a subsequent email of 25 October 2005 Mr C informed me that his concern was that the draft Local Plan could not be printed from the Council's website, other than by one page at a time. In my reply I informed Mr C that he had not exhausted the Council's complaints procedure. Given that the period for public consultation was to expire on 31 October 2005, I also reminded Mr C that the report was available for purchase.

9. Mr C subsequently emailed the Council again and forwarded the response he received from the Council's Governance and Scrutiny Officer (Officer 2) on 29 October 2005. That response viewed the complaint as a disagreement about a reasonable decision the Council had taken to make the draft plan available in the way it had chosen, within the copyright constraints relating to

mapping. In Officer 2's view, the Council had not failed in its duty to ensure consultation on the draft Local Plan, by making it available to be viewed in the complainant's local library.

10. Mr C forwarded this reply to me on 31 October 2005 with the comment that not only had the Council refused to make their draft Eastern Local Plan printable in the normal way, but they did not even wish to follow their own complaints procedure. Additionally Mr C said that he was able to download maps from the Adopted Eastern Area Local Plan which the draft Local Plan sought to replace.

11. Given that the Council had indicated that they would not themselves pursue the matter further, I decided that the case was not premature. In terms of our process it fell to be investigated and an enquiry was made to the Council on 8 November 2005. The Council's comments were forwarded to me with a letter dated 7 February 2006. The Council commented as follows:

- (a) The Council acknowledged that there was a slight delay getting the maps for three towns onto the Council website in respect of the draft Local Plan; this was due to late receipt of the plans in PDF format from the printers. The Council's priority, however, was to ensure that paper copies of the draft Local Plan were available in all Local Council Offices and public libraries throughout the Consultation period, which ran for a period of two months (in excess of the statutory six week requirement). The matter was dealt with expeditiously, and maps were available to view on the Council's website for a period in excess of the statutory six week consultation period. The action was not at all deliberate on the part of the Council.
- (b) Maps from all the Council's Local Plans, in both adopted and draft form, which are on the Council's website are downloadable, but not printable. The complainant's claim, however, that maps from the adopted Eastern Area Local Plan are downloadable, whereas those of the new draft Local Plan are not, was incorrect at the time of his statement. The plans which accompany the Adopted 1998 Eastern Area Local Plan were only made available on line for the three largest settlements of the Plan Area in early December 2005, whereas all the plans from the new draft Local Plan were available from mid September onwards. This is

an area in which the Council are striving to improve the quality of information available to members of the public.

- (c) The Council have complied with, and exceeded, the requirements of statute and relevant guidance. The Council are supportive of PAN 70, and whilst the Council are not obliged to put the Local Plans on their website, they have chosen to do so for increased public accessibility.
- (d) The Council state that Ordnance Survey copyright does apply to on line plans and the Council have paid the appropriate licence fee. Ordnance Survey copyright was not an issue in this case.
- (e) The draft Local Plan was posted in a format which enables it to be downloaded in its entirety.

12. The Council additionally assured me that they are seeking to improve the presentation of their Development Plan, both in hard copy and the web version and are also in the process of reviewing their charging structure and policy on printing copies.

13. I gave Mr C the opportunity to comment on the Council's response and he replied on 9 February 2006 stating that his original complaint was not that the draft Eastern Local Plan could not be downloaded (that is viewed online), but that it was only printable by printing the whole screen (toolbars and all) one page at a time. Given that the average screen would only display a portion of a page, printing a single page involved printing the whole screen at least twice. He regarded this as a waste of paper and ink. He noted at 11(d) that copyright did not appear to be an issue.

14. In commenting on the draft report, Mr C stated that it should be as easy as possible for people to access and use information relevant to the public interest. He considered that that should extend beyond making the information viewable on a computer or publishing a hard copy at a cost which is impractical for most people.

### **Conclusions**

15. While I accept Mr C's claims to be inconvenienced, I do not consider there was maladministration or service failure by the Council in exercising their powers under the Town and Country Planning legislation. I, therefore, do not

uphold this complaint. I am pleased to note the Council's assurances at paragraphs 11 and 12 that they are committed to improving the quality of information they provide to the public and that they are supportive of the Guidance in PAN 70.

28 March 2006

**Explanation of abbreviations used**

Mr C	The complainant
The Council	Perth and Kinross Council
PAN 70	Scottish Executive Development Department Planning Advice Note on Electronic Planning Service Delivery
Officer 1	A Support Services Manager at the Council's Planning and Transportation Service
Officer 2	The Council's Governance and Scrutiny Officer