

## Scottish Parliament Region: South of Scotland

### Case 200402195: East Lothian Council

#### Introduction

1. On 4 March 2005 the Ombudsman received a complaint from a man (Mr C) against East Lothian Council (the Council). The complaint concerned the Council's handling of a planning proposal to demolish a listed building and erect a new housing development in the town of X where he lived. Mr C contended that the Council failed to deal with the proposal in accordance with the proper planning procedure; and that, as a consequence, the development would have an adverse effect on the amenity of the locality. The complaint was not upheld.

#### The complaint

2. Mr C made a formal complaint to the Council to which they replied on 2 May 2005, contending that they had complied properly with the required planning procedure. Mr C subsequently made a request for an external review by the Ombudsman, alleging that there was administrative fault or service failure by the Council, as a result of which he was caused injustice.

3. The complaints from Mr C which I have investigated are that:
- (a) the approval of planning permission for demolition and erection of the new development was prejudiced and biased; and assumed approval at the outset;
  - (b) the application should have been formally referred to the Scottish Ministers because the Council, as the local planning authority, had a vested interest in that they owned the site; and there were objections to the proposal; and
  - (c) the Scottish Civic Trust should have been notified of the proposal to demolish the listed building

#### The investigation and findings of fact

4. The investigation included examination of documentary evidence supplied by Mr C. A written enquiry was made of the authority, whose Chief Executive

provided relevant background papers which included:

- the relevant correspondence with Mr C
- the planning report
- the documentation on their Committee Expedited List procedure

5. Towards the end of 2004 Mr C approached his local councillor about the proposal in question. The Councillor made representations on his behalf to the Council's Planning Department. I have set out below my findings and conclusions regarding Mr C's complaint. Although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

6. A senior officer of the Planning Department (Officer 1) wrote to Mr C on 8 December 2004 in the following terms:

'I would advise you that I was the case officer for the planning application and so I have a full working knowledge of the proposal and all related planning matters. I can confirm that the Planning Authority is well aware of the legislative duties placed on it in respect of Listed Buildings and Conservation Areas. I can also confirm that Historic Scotland were (informally) consulted on the proposal, and that they raised no objection to any aspect of it. In respect of the point you raise on notification to the Scottish Ministers I would advise you that East Lothian Council did not own the land at the time the planning application was lodged and that there is no requirement to notify the proposal to the Scottish Ministers under the provisions of Circular 4/1997 or indeed under any planning legislation or guidance.

As I am sure you are aware, the application was reported to the Members through the Expedited Committee List on the 2

December 2004. The planning assessment assesses all the relevant planning considerations material to the determination of the planning application. I enclose a copy of the report for your information. I can confirm that planning permission for the development was granted today.

In accordance with statutory requirements, the application for listed building consent has now been notified to the First Minister by way of Historic Scotland. Until a reply has been received from Historic Scotland listed building consent cannot be granted. Notwithstanding that planning permission has been granted, the applicant cannot commence work to the salt store building until listed building consent has also been granted.

I trust that this letter and attached report clearly sets out for you all the material planning considerations considered in coming to the decision to grant planning permission in this case.'

7. Mr C replied to Officer 1 on 16 January 2005, claiming that there were anomalies in the background information supplied by him; and he sought further clarification of the authority's position on the planning situation, in particular on the question of ownership of the site and other related issues. Mr C contended that the application cited the Council as the owner; he questioned the validity of the feu disposition; he pointed out that members of the Council were represented on the developer partnership; and he drew attention to the volume of objections, some of which were critical of the design of this proposal.

8. Officer 1 replied on 18 January 2005 confirming that planning permission had been granted on 9 December 2004. He explained that:

'Circular 4/1997 requires that planning authorities notify the Scottish Executive of applications for development where the planning authority has a financial interest in that development.

As I previously stated the Council did not own the land at the time the planning application was registered.

Please see the attached documentation detailing the sale of the land to [the developer]. As the Council did not own the land the Council had no financial interest in the land and there was no requirement to notify the application to the Scottish Executive under the provisions of Circular 4/1997.

The matters you raise in respect of Feu Dispositions and membership of councillors on committees do not constitute a financial interest.

The purpose of the land ownership form is to ensure that the owners of the land are made aware of proposed development on that land. As the land was sold to (the developer) and they were obviously aware of their own development they suffered no prejudice by their incorrect Land Ownership notification. The Land Ownership form has no bearing on the ability of the public to make representations on a planning application. As such, there is no basis to revoke the planning permission.

I have already provided you with a copy of the planning assessment for the proposed development, which clearly sets out all material planning matters considered. I have no further comment to make in respect of the planning merits of the development.'

9. On 21 February 2005 Mr C wrote to the Chief Executive of the Council intimating his intention to make a formal complaint of maladministration to the Ombudsman's Office. He indicated that the grounds of complaint were that:

- the approval of the planning application was biased;
- the application should have been referred to the Scottish Ministers because the authority had an interest; they were the named owners of the site; and the planning report stated that a large number of objections had been received;

- the Scottish Civic Trust should have been notified of the listed building consent.

10. The Chief Executive acknowledged this and the complaint was subsequently made to the Ombudsman's Office on 4 March 2005. At that point it was apparent that, although Mr C had made the earlier intimation to the Chief Executive, he had not actually gone through the Council's own internal complaints procedure. He was duly advised to do so and, thereafter, confirmed that he had received a formal reply to his complaint from the Council's Director of Environment (who had copied this to the Chief Executive).

11. The Director's reply (dated 2 May 2005) answered the complaint as below:

'The assessment of the applications for planning permission and Listed Building Consent were not prejudiced, biased, or with an assumption of approval. You have been provided with copies of the reports prepared on the applications; these show, as required by Section 25 of the Town and Country Planning (Scotland) Act 1997, that the applications were assessed against the policies of the Development Plan and all other material considerations. The fact that you disagree with the conclusions reached does not provide a basis for a charge of maladministration.

The application file also shows that all relevant procedures were followed.

[Officer 1] explained to you in his letter of 18 January 2005 that on the date the application was registered as valid the site was owned by [the developer] and, as such, the Council no longer had a financial interest in the proposal for any requirement to notify the Scottish Executive.

The Scottish Civic Trust has no formal status, as such the Council is not required to consult them. The Council did consult Historic Scotland who had no comment to make on the application for

planning permission and, after commissioning a survey of the buildings, decided that the application for Listed Building Consent need not be referred to them for a decision.'

12. The council explained their administrative procedure for deciding planning applications in the following terms. The decision on whether to approve or refuse a planning application rested with the elected members of the Council. The authority for that was vested in the Council's Planning Committee. The responsibility of the Council's planning officers was to report on, and make recommendations on planning applications. The Committee had delegated to the Director of Environment the power to issue without reference to the Planning Committee, decisions on applications that promoted development consistent with the provisions of the Development Plan and other material considerations; raised no other policy issues; and were not the subject of any public objection.

13. In other cases applications were reported to the Committee for their decision. This was done either through an expedited procedure known as the Committee Expedited List or by presenting reports on applications to meetings of the Planning Committee.

14. The Committee Expedited List was presented to all members of the Council on the Thursday of each week. It gave a full planning assessment report with a recommended decision (including recommended refusals) for each application included on the List. In cases where there were letters of representation in respect of an application the grounds of representation (usually objection) were addressed in the report and the letters were copied in full to the members along with the list. Members had until the following Thursday to decide whether or not to accept the terms of the planning report and the recommendation made for each application.

15. If the recommendation was accepted, then the Development Control Manager would, on the Thursday expiry date, instruct administration staff to issue the decision on the application or instruct further action required prior to the decision being issued (for example, drawing up and concluding a Section 75 Agreement).

16. Otherwise, at the request of a member, the report would be 'pulled off' the list and placed on the agenda for the next available meeting of the Planning Committee. In such cases the Committee would visit the application site before meeting to determine the application.

17. The Council confirmed that with regard to the proposal in question full consideration was given to the public representations – including those from Mr C – made against the proposal before it was determined in accordance with the Committee Expedited List procedure.

### **Conclusion**

18. I am satisfied that, in response to Mr C's representations about the administrative handling of the applications for planning permission and listed building consent, the Council as the responsible planning authority explained fully the background to the processing of the proposal and the reasons why there was no need for referral to the Scottish Ministers nor for notification of the Scottish Civic Trust. I consider that there was no administrative fault or failure in the processing of the proposal.

19. The Council's decision-making on the proposal was taken in accordance with their Committee Expedited List procedure and took account of the public representations received – including those made by Mr C. It was evident from the available documentation that all the relevant planning factors were given proper assessment by the Council before they made the award of planning permission and listed building consent. This was something on which the Council were entitled to exercise their judgement as they saw fit and, as such, was not open to challenge. In these circumstances the complaint of maladministration could not be upheld.

27 June 2006

**Explanation of abbreviations used**

Mr C	The complainant
Officer 1	Senior Officer of Planning Department
The Council	East Lothian Council
Town of X	Town where the complainant lived