

Case 200500954: North Ayrshire Council

Introduction

1. On 7 July 2005 the Ombudsman received a complaint from a member of the public (referred to in this report as Mr C) about North Ayrshire Council (the Council).

2. Mr C complained about the Council's handling of a planning application for the construction of a telecommunications tower on a site close to his property.

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

(a) Mr C's claim that the Council had advertised the planning application in the local paper over a holiday period in order to minimise coverage and reduce objector responses;

(b) Mr C's claim that the Council had been inconsistent in its notification of previous objectors to such a development;

(c) Mr C's claim that, as owner of a property whose aspect faced the development, the Council should have notified him of the planning application.

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

(a) not upheld, see paragraph 18;

(b) not upheld, see paragraphs 24 and 25;

(c) not upheld, see paragraph 29.

5. In summary, I do not uphold these complaints as I did not find evidence of maladministration in the way the Council handled the planning application.

Investigation and findings of fact

6. The investigation of this complaint involved the examination of the correspondence provided by Mr C, making enquiries of the Council and assessing the responses and documentary evidence provided by the Council, including copies of planning legislation and planning advice notes.

7. I have outlined the investigation and findings of fact for the three complaints below. The information provided by the Council in response to my enquiries and the conclusions are listed under individual headings. 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 had an opportunity to comment on a draft of this report.

Background

8. On 7 October 2001, Mr C wrote to the Council to lodge an objection to a planning application for the installation of telecommunications equipment and the erection of a 15 metre high tower, beside an existing tower, on land near a local landfill site. The Council acknowledged receipt of the letter of objection and on 20 February 2002 wrote to Mr C to advise him that the application had been withdrawn.

9. On 30 November 2004, Mr C wrote to the Council to express his dismay that 'construction has this week commenced on removing the existing original current small [tower] and replacing this with a much larger structure'. He asked the Council to clarify that they knew of the structure and, if not, that action be taken to halt the work immediately. He also pointed out that he had objected to the previous application for such a development at the site.

10. On 6 January 2005, the Council sent a full response to Mr C's letter. In it, they acknowledged that they had received an objection from Mr C to a previous application for the site but that the application had been withdrawn. They explained that another application for the site had been submitted in December 2002 for the replacement of the existing 15 metre communications tower with a 20 metre tower. They stated that three objections had been received from local residents. They claimed that the application had been withdrawn in

June 2003, at which time a further application for the erection of a new 17.9 metre high tower at the same site had been made. They said that the application was advertised in the local newspaper on 11 July 2003, no objections were received and the application was granted on 15 September 2003.

11. On 9 January 2005, Mr C wrote to the Council and stated that he felt that he should have been notified by the Council about the application in December 2002 as it was similar to the one in October 2001. He also claimed that the Council's timing of the advertising of the third application on 11 July 2003, between two local holidays, was done to 'minimize coverage and reduce objector response'. He stated that the Council should have put a condition in place to ensure that previous objectors or at least the properties whose aspect faced the development were notified.

12. On 3 February 2005, the Council wrote to Mr C. In their letter they explained that the third application was submitted in May 2003 and that the three objectors to the previous application were advised that the applicant had submitted a further amending application. They stated that the Council is required to 'advertise certain applications as soon as possible after the application is registered' and that they did not deliberately advertise the proposal during the holiday period. They explained that there is 'no legal obligation on the Council to notify previous objectors' but that the three objectors referred to previously were advised. A copy of the Planning Officer's report on the planning application which had been considered by the Planning Sub Committee prior to consent being granted was included with the letter.

13. Following this, Mr C sent a letter of complaint to this office, along with copies of all correspondence with the Council.

(a) Mr C's claim that the Council had advertised the planning application in the local paper over a holiday period in order to minimise coverage and reduce objector responses

14. In their responses to my enquiries, the Council provided a copy of the notice for the advertisement which appeared in the local paper on 11 July 2003 for the third planning application. This showed that the application had been advertised as being contrary to the Development Plans.

15. The Council stated that the planning application was registered on 27 May 2003. They stated, in a letter to Mr C, that the 'Council is obliged to determine planning applications as soon as possible and therefore there is a requirement to advertise certain applications as soon as possible after the application is registered'. Further, the Council advised me that they followed the requirements of the Town and Country Planning (Development Contrary to Development Plans) (Scotland) Direction 1996, when advertising applications. This states that the Council shall advertise the application in 'a local newspaper circulating within their district, giving details of the application and where it and any relevant plans and other documents may be examined'. They also referred to Planning Advice Note: PAN 41 which states 'the planning authority should advertise (the application) as soon as practicable after the date when the application has been received. This should normally be within 7 days...'. The Council also stated that the authority 'does not have regard to any local or public holiday when placing advertisements for planning applications'.

16. The Council advised me that 'there was no obvious evidence of activity regarding the application during the period 28 May to 11 July 2003'. As the date of receipt of the application was 28 April 2005, I questioned the Council further on this point. The planning officer explained that it is not always immediately apparent that an application is potentially contrary to the Development Plan and therefore requires to be advertised. He said that it is often after further exploration that the Council determines that the application may be contrary to the plan, and that it would be likely that this is what happened in this case.

17. The Council have explained that 'the planning process is resource intensive and that at times can be impacted by the volume and size of applications, sickness, absence and holidays'. They also stated that 'if the planning process were to take cognisance of every public and local holiday when advertising planning applications the process would...become unwieldy'. They claimed that they have 'never employed the tactic...of deliberately timing the placement of public advertisements in a way which would serve to deceive the public over planning or any other issue'.

(a) Mr C's claim that the Council had advertised the planning application in the local paper over a holiday period in order to minimise coverage and reduce objector responses: Conclusion

18. I have noted that there does appear to have been a lengthy delay between the date of receipt and date of advertising of the application by the Council and the Council's explanation for this. I cannot, however, find any evidence to suggest that the Council deliberately advertised the application over the holiday period in order to minimise coverage and reduce objector responses. I, therefore, have not seen grounds to uphold this aspect of the complaint.

(b) Mr C's claim that the Council had been inconsistent in its notification of previous objectors to such a development

19. The Council advised me that the practice of notifying objectors of subsequent planning applications is not standard Council policy. They also made reference to their letter to Mr C of 3 February 2005, which included the statement there is 'no legal obligation on the Council to notify previous objectors' (paragraph 12 above).

20. The Council provided information on the three applications for the construction of telecommunication towers on land near the local landfill site. They stated that the first application, made by Company 1, for the erection of a 15 metre high tower next to the existing tower, was received by the Council on 4 September 2001. The Council, in a letter to Mr C, said that this application was withdrawn on 20 February 2002. The Council stated in their response to this office that the second application, made by Company 2, to replace the existing 15 metre tower with a 20 metre tower, was received by the Council on 23 December 2002 and was withdrawn on 16 July 2003. The Council have said that the third application, made by Company 2, to replace the existing tower with a 17.9 metre tower, was received on 28 April 2003 and determined on 15 September 2003. The copies of the three planning applications provided by the Council confirmed the details of the developments, the applicants and the dates of receipt of the first and second applications.

21. The Council explained that the first and second applications were 'treated separately due to their nature and timing. One sought permission to erect a tower, while the other sought to replace the existing tower. In addition to this, the 16 month time lapse between the Company 1 and Company 2 applications was

deemed significant'. They have said that the third application was 'an amendment' to the second application and provided a copy of a letter from the agent for the applicant, dated 4 June 2003, in which the agent confirmed that the third application, a site share, incorporated the proposal for the second application, also a site share, and that the second application could be withdrawn.

22. In terms of their decision to notify previous objectors, the Council confirmed that Mr C had objected to the first application and that there had been three objectors to the second application. They stated that, while the second application was being considered, the third application was submitted by Company 2 which superseded their previous application. They said 'it was felt that in this case the planning application consideration process should continue and the Planning Section kept the three objectors to [Company 2's] original application informed of the changes made by them in their further application. Notwithstanding this, the revised planning application was advertised...and no formal objections were received from either new or previous objectors'. The Council clarified that it was the almost simultaneous withdrawal of the second application and the submission of the amendment proposals that had led them to deal with the notification in this way.

23. The Council have confirmed that this was not common practice but have said that it would be followed again should similar circumstances occur and 'this will now be adopted as formal Council policy'.

(b) Mr C's claim that the Council had been inconsistent in its notification of previous objectors to such a development: Conclusion

24. My investigation has established that, in terms of planning law and Council procedures, the Council are not required to notify objectors to a planning application of the submission of subsequent applications. In this case, the Council did more than they were legally obliged to do and, accordingly, I have not seen grounds to be critical of the Council.

25. I accept the Council's reasons for notifying the previous objectors and commend their inclusion of this practice in future Council policy. I have not seen evidence of maladministration by the Council and cannot therefore uphold this complaint.

(c) Mr C's claim that, as owner of a property whose aspect faced the development, the Council should have notified him of the planning application

26. The relevant planning legislation which I have considered (Town and Country Planning (General Development Procedure) (Scotland) Order 1992) states that the Council are required to ensure that the neighbour notification form is complete and accompanied by a plan showing the location of the neighbouring land in respect of which such notification has been carried out.

27. The Council stated that 'the responsibility for carrying out the neighbour notification in relation to planning applications rests with the applicant, however the Council does carry out a cursory inspection of the neighbour notification form/plan submitted with each application'. The checklist for this, provided by the Council, shows that the Council are required to check that the neighbour notification certificate is complete and that it lists the names and addresses of those who have a notifiable interest in neighbouring land.

28. The copy of the neighbour notification certificate provided by the Council in their responses to this office contained the details of the sole neighbour who required to be notified. The plan which accompanied this document indicated that she was the owner of all the surrounding land. The Council confirmed that Mr C was not a notifiable neighbour.

(c) Mr C's claim that, as owner of a property whose aspect faced the development, the Council should have notified him of the planning application: Conclusion

29. I consider that the evidence shows that the Council processed the neighbour notification information in accordance with the law and Council procedure. Mr C was not listed as a notifiable neighbour and even if he had been it would have been the applicant, not the Council, who would have been required to carry out the notification. The Council were not required to notify Mr C of the planning application and my investigation has found no evidence of maladministration by the Council in this regard. Accordingly, I do not uphold this complaint.

27 June 2006

Explanation of abbreviations used

Mr C

The complainant

The Council

North Ayrshire Council