

Scottish Parliament Region: Highlands and Islands

Case 200501263: The Highland Council

Introduction

1. On 5 September 2005 the Ombudsman received a complaint from Mrs C about the way in which The Highland Council (the Council) dealt with two planning applications for sites close to her home. She alleged that they failed to protect the amenity of listed buildings within the vicinity of the development area or to respect the sensitive nature of a near-by ancient monument.

2. The complaints from Mrs C which I have investigated concerned:

- (a) failure to take action on alleged improperly carried out neighbour notification and advertising procedures;
- (b) the number of changes to plans which were not re-advertised;
- (c) failure to view the applications as departures from the local plan and deal with them accordingly, in particular by arranging a hearing;
- (d) the allegation that Council officers prepared contradictory reports but that only one recommending approval was presented to the appropriate committee;
- (e) the allegation that the Council's failures in dealing with the outline planning consent rendered it void;
- (f) failure to protect the amenity of the neighbouring listed properties and the general sensitivity of the site; and
- (g) failure to give timely responses to correspondence.

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

- (a) not upheld, see paragraph 11;
- (b) not upheld, see paragraph 13;
- (c) not upheld, see paragraph 15;
- (d) not upheld, see paragraph 18;
- (e) not upheld, see paragraph 19;
- (f) not upheld, see paragraph 22;
- (g) upheld, see paragraph 25.

Investigation and findings of fact

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mrs C and the Council. I have also had sight of the Skye and Lochalsh Local Plan; the Town and Country Planning (Scotland) Act 1997; the planning applications concerned (03/00312/OUTSL and 04/00229/FULSL); and reports by the Area Planning and Building Control Manager dated 27 February and 12 August 2004, and 22 August 2005. I also made written enquiry of the Council on 9 January 2006 and their reply was received on 15 February 2006.

5. My findings of fact and conclusions for the complaint are set out below and, while I have not included very detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mrs C and the Council have also had the opportunity to comment on a draft of this report.

Background

6. The complaint concerns the handling of two planning applications; one in outline and the other for full consent for the erection of a house on land adjacent to Mrs C's property. Outline planning consent was granted in March 2004. Following this, a full application with similar site boundaries was submitted in May 2004. Planning permission was refused on 13 September 2005. As this application was

submitted in full, it was not subject to the terms of the outline permission previously granted.

(a) Failure to take action on alleged improperly carried out neighbour notification and advertising procedures

7. In terms of planning legislation, when making a planning application it is the duty of the applicant to notify all interests in neighbouring land and to certify that this has been done. If the applicant knowingly makes a false declaration, any subsequent decision is open to legal challenge. In this connection, the Council maintained that, while it had a duty to scrutinise neighbour notification, it was not expected to conduct an investigation into the correctness of that notification.

8. An outline application for the erection of a house was received by the council on 9 September 2003 and was advertised as affecting the setting of a listed building and a scheduled monument. The Council said that they had no reason to question the certification of neighbour notification, as the application was accompanied by a plan showing that all neighbouring land was either owned by the applicant or by one or the other of the two parties notified. However, Mrs C did not consider that all those affected had been notified and she complained to the Council. In response, the Council referred her concerns to the developer's agent, who responded disputing Mrs C's opinion. It is clear to me that Mrs C had strong opinions on this matter but it is equally clear, from the information available, that the Council made enquiries of the developer as a consequence of her representations. A dispute, therefore existed, but the Council were not satisfied that the applicant or his agent had knowingly made a false declaration and the matter rested.

9. The Council maintained that the outline application was publicly advertised and, even although the press advert stated that the plans were available for inspection in what was a closed post office, did make them available in another local post office. They said that no problem was subsequently raised by the postmistress or by the public and they refuted any allegation that the interested public were unaware of the application or where to find related information.

10. In their response to me of 15 February 2006, the Council said that, at the time the amended plans for the full application were submitted, the Council advised the

applicant's agent that, regardless of any argument as to whether this was necessary, all those identified by Mrs C as neighbours should be notified. The Council said that their advice was followed and that neighbours were notified.

(a) Failure to take action on alleged improperly carried out neighbour notification and advertising: Conclusion

11. It is unfortunate that the wrong post office was mentioned but from the evidence available it does not appear that anyone was prevented from making representations as a consequence of this error. Also, I have noted that, while there was a dispute about neighbour notification, interested parties continued to make their opinions known and Mrs C's representations were summarised in the Report to the Area Committee on the outline planning application. The Council raised the complainant's concerns with the developer, who disputed them. However, it was not their responsibility to investigate the legality of the various claims made. Nevertheless, they have confirmed that when amended plans were submitted by the applicant, they ensured that all those identified by Mrs C as requiring to be notified were notified by the developer in response to her concerns. In all the circumstances, I do not uphold this aspect of the complaint.

(b) The number of changes to plans which were not re-advertised

12. The Council said that, despite advice to the developer that a high standard of design and siting should be demonstrated as part of any submission, the original outline application included 'only a 1:1250 scale plan with red line'. To address this deficiency, the Area Office agreed that a further opportunity should be given to the developer to provide required details and a letter was sent in this regard on 28 October 2003. Details were subsequently received, which the Council considered were sufficient to demonstrate how a house could be satisfactorily accommodated within the site and the application was recommended for approval. Mrs C was made aware of the drawing and given an opportunity to comment. She later made further representation. I have also noted that the full planning application was re-advertised on 5 November 2004 following receipt of amended plans.

(b) The number of changes to plans which were not re-advertised: Conclusion

13. The Council took the view that the addition of a 1:200 scale drawing following a site survey was not such as to require them to re-advertise the outline

application, as it did not alter the terms of the application but rather provided further information. In reviewing this aspect of the matter, I can see no reason to disagree with the Council's approach. I do not uphold this aspect of the complaint.

(c) Failure to view the applications as departures from the local plan and deal with them accordingly, in particular by arranging a hearing

14. In his report to the Area Committee, dated 5 September 2005, the Area Planning and Building Standards Manager advised that the outline planning application was advertised due to its impact on listed buildings and the nearby scheduled monument. He said it was not advertised as a development plan departure. He also took the view that, although the house site lay within amenity woodland as identified in the local plan, this was not an automatic conflict with conservation policy which required advertisement as a departure. The Manager said that he had assessed the facts and circumstances of the application and it was his opinion that, while the nearby woodland and hedge were important, the proposed development was not detrimental to their integrity.

(c) Failure to view the applications as departures from the local plan and deal with them accordingly, in particular by arranging a hearing: Conclusion

15. The Council contended that neither application needed to be viewed as a departure from the local plan requiring a hearing. This was a decision for the Council to take, having regard to the facts. Mrs C disputed this decision but it appears to me that the relevant factors were taken into account when reaching a decision, including the local plan and Council policy. As I have seen no evidence to suggest that the decision was not properly taken, I am unable to uphold the complaint.

16. However, because of the high level of representation received in respect of the second (full) application, and unlike the first application, the area Planning and Building Standards Manager recommended that a hearing be held. This advice was then accepted by the Area Committee who also viewed the site.

(d) The allegation that Council officers prepared contradictory reports but that only one recommending approval was presented to the appropriate committee

17. Mrs C said that Council officers prepared two contradictory reports, dated

3 November 2003 and 8 March 2004, but only the latter recommending approval was presented to the appropriate committee. In their response to me of 15 February 2006 the Council acknowledged that the case officer handling the outline application, in consultation with his manager, prepared a draft adverse report. They explained that this was because, in informal discussions prior to the application being submitted, the manager had, without commitment, advised the applicant's architect of the sensitivity of the site and advised that any application should pay due regard to the local circumstances. However, the application as submitted was considered to be inadequate (see paragraphs 12 and 13). When the new scale plan was submitted as a result of the site survey, both the case officer and the manager agreed, on balance, that they now had sufficient information. The Council said that this allowed them to present a favourable recommendation to Committee but subject to stringent controls on the siting and size of the house, control of tree felling and the removal of permitted development rights.

*(d) The allegation that Council officers prepared contradictory reports but that only the one recommending approval was presented to the appropriate committee:
Conclusion*

18. It was the Council's view that these circumstances represented an internal officer debate and they denied that they withheld appropriate information from the Committee. I have had sight of both reports and that which Mrs C said was withheld is clearly marked as a draft. It was the complainant's contention that if the Committee had seen this they may well have taken a different view but I consider that what I have seen is a work in progress reflecting the situation at the time. More complete information formed the basis of the second report and, appropriately, it was this that was submitted to Committee. I can see no grounds to criticise the Council for this and do not uphold the complaint.

(e) The allegation that the Council's failures in dealing with the outline planning consent rendered it void

19. Mrs C believed that the failures she identified in complaints (a) to (d) (see paragraph 2) represented sufficient failures in the process to render the outline planning consent void. However, since I have already found that there were not failures in dealing with the outline planning application, it follows that I am unable to uphold Mrs C's complaint that such failures would render the application void.

(f) Failure to protect the amenity of the neighbouring listed properties and the general sensitivity of the site

20. The site appraisal for the outline application, which formed part of the Report to Committee dated 8 March 2004, made reference to the site being 'very sensitive given its proximity to the adjacent listed buildings and the Scheduled Ancient Monument'. Reference was also made to the mature woodland and beech hedge and their importance to the site. Nevertheless, the Area Planning and Building Control Manager took the view that, '...with careful consideration in terms of design, siting, materials, landscaping and servicing, a single house could be located on this site that would not adversely affect the setting of the listed buildings and the ancient monument'. His recommendation to Committee was that, on balance, outline permission should be granted but subject to restrictive and carefully thought out conditions.

21. His report on the full application dated 5 September 2005 made very similar references and he remained satisfied that a house could be built without threatening the integrity of such a sensitive site. However, he said that the issue of the suitability of the submitted house for the site was extremely finely balanced and he recommended a site visit. He also recommended approval subject to conditions and, as mentioned in paragraph 16, a hearing was arranged. Planning permission was ultimately refused on 13 September 2005 on grounds of overdevelopment and adverse impact on amenity.

(f) Failure to protect the amenity of the neighbouring listed properties and the general sensitivity of the site: Conclusion

22. I acknowledge that Mrs C had strong opinions about the development of sites close to her home, the listed buildings and the ancient monument. She disagreed with the Council, who believed that it was possible to develop the site without destroying the amenity of the site. While noting the situation, I do not agree that the evidence available illustrates any failure on the Council's part. They were fully aware of the sensitivity of the site; they dealt properly with the outline planning application (see paragraph 19 above) and the full application was refused. Accordingly, I see no grounds to uphold the complaint.

(g) Failure to give timely responses to correspondence

23. On 2 July 2004, Mrs C wrote to the Director of Planning and Development maintaining her representations about the development of the site, but she did not receive a reply until 29 October 2004, nearly four months later. This reply responded to the points she raised and made a sincere apology for the delay. The Council acknowledged to me in their response of 15 February 2005 that this was unsatisfactory and I agree. However, an apology has been made and, in the circumstances, I do not consider that there is merit in pursuing this aspect of the matter.

24. The complainant sent a further letter, this time to the Area Planning and Building Control Manager dated 12 April 2005, making her objections to the full planning application. This was sent a standard acknowledgement on 18 April 2005 and advised that Mrs C's representations would be taken into account when the application was determined. At the same time, the Council said that a copy of her letter was sent to the applicant's agent for comment, in accordance with their usual practice, in the hope that points of contention could be addressed. A summary of Mrs C's representations was also passed to the Area Committee as part of the Area Planning and Building Standards Manager's report on 6 June 2005. That report was deferred to the Hearing held on 5 September 2005 when the application was refused. A decision notice was sent to Mrs C on 13 September 2005.

(g) Failure to give timely responses to correspondence: Conclusion

25. The Council said that they also received a bundle of papers from Mrs C on 14 April 2005. These were labelled 'legal submission to accompany representation delivered by hand 14 April 2005'. The Council said that on receipt of these the Area Planning and Building Standards Manager sought legal advice but, due to pressure of work, the advice was delayed. Meanwhile, as the Council were satisfied that there had been no deficiency in the way in which the full application was handled, its consideration continued. However, after the application was refused Mrs C wrote again seeking comment on the papers. It appears that a reply was not sent and although the Council said that they regretted this (in their response of 15 February 2006) and that the matters had already been addressed by them in previous correspondence, copies of which I have seen, a direct apology does not appear to have been made to Mrs C. I, therefore, uphold this aspect of the complaint and the Ombudsman recommends that an apology should be sent to

Mrs C.

Further action

26. Since issuing the draft report, I am pleased to record that the Council have apologised to Mrs C for their failure to reply to her submission of 14 April 2005.

27 June 2006

Explanation of abbreviations used

Mrs C

The complainant

The Council

The Highland Council