

Case 200400870: Aberdeenshire Council

Summary of Investigation

Category

Local government: Planning, handling of complaint

Overview

The complaint concerned an incident on a public road where improvements had been carried out as part of a planning consent granted for an equestrian centre. The complainant was dissatisfied with the Council's handling of her complaint. She alleged also that there were breaches in the planning consent which had not been dealt with properly by the Council. The complainant was aggrieved because she considered that the incident was related to the planning consent granted and the Council should, therefore, have undertaken a full inquiry into the matter.

Specific complaints and conclusions

- (a) Handling of an incident on a public road (*not upheld*)
- (b) Allegation of breaches in planning consent (*not upheld*)
- (c) Failure to undertake a full inquiry or assist complainant in problems of road safety she encountered when using the public road (*not upheld*)

Redress and recommendation

The Ombudsman has no recommendation to make.

Introduction

1. In May 2005 the Ombudsman accepted a complaint from a person who is referred to in this report as Mrs C. She complained that Aberdeenshire Council (the Council) failed to ensure that planning conditions were adhered to by the applicant (the tenant of a local farm) for an equestrian centre, as a result of which road safety issues had arisen.

2. Mrs C was a co-complainant in an earlier complaint to this office about the

Council's decision to grant planning consent, despite road safety issues which had been highlighted in a Scottish Executive Inquiry Reporter's decision on an appeal for an earlier (but similar) application for development at the local farm. The complainants had contended that work commenced on site, despite assurances by the Council that all road safety issues relating to the planning decision would have to be addressed first. The Ombudsman found no evidence of fault and, therefore, an investigation, leading to the publication of a report, was not initiated by her, in accordance with the reporting practices at that time.

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

- (a) the Council's handling of Mrs C's complaint about an incident in November 2004 on the public road involving Mrs C and her husband;
- (b) the alleged breaches in the planning consent and how the Council dealt with Mrs C's allegations;
- (c) the Council's failure to undertake a full inquiry into the matter or assist in the problems which Mrs C and her husband encountered when using the road.

Investigation

4. A horse float became stuck on the public road (a minor road taking access off the main B road and leading to the access to the farm) and Mrs C claimed that this incident had resulted in both her car and her husband's car being blocked by the float, which had to reverse onto the main road. The police became involved and she stated that complaints and counter complaints were made by the driver of the float and the owner of the horse against her and her husband. Mrs C and her husband were aggrieved with the action taken to address the incident and both made formal complaints to the police about the matter.

5. Mrs C also complained to the Council. In response to the matters she raised, she was informed that the roads service were satisfied that the road improvements had been built in accordance with the road construction consent attached to the planning consent for the equestrian centre. The Council also advised that it was not clear why the horse float had been unable to pass; the road was wide enough for it to travel up to the equestrian centre, particularly if there was no other vehicle coming the other way. It was pointed out that there are stretches on the road which are wide enough for two vehicles to pass, and 'any parked cars should be left in such a way that they do not cause an obstruction to other road users'. The

Council could not comment or respond on any action by the police. Mrs C was informed that the roads service would liaise with the police to discuss responsibility for enforcing good driver behaviour on public roads (at one of their regular liaison meetings).

6. Further, Mrs C was informed that the planning inspector had visited the equestrian centre and was satisfied that the relevant conditions had been met and the applicant could now proceed to implement the planning permission, including any horse livery on site (Mrs C claimed that the horse float was delivering a horse for livery). It was explained that the condition requiring signage to discourage horse users from using the road had been met by notices being placed in the tack room (where riders would see them) and that there was no requirement for additional signage at the farm entrance.

7. Mrs C was disappointed with the Council's response and in her formal complaint to the Ombudsman she highlighted the incident with the horse float and stated that, despite what the Council had informed her, she was not satisfied that the conditions relating to road safety issues had been addressed by the Council. She maintained that the applicant was in breach of the conditions of planning consent for the equestrian centre (by failing to ensure that horse riders did not use the public road and restricting the number of vehicles which used the road to access his site) and that the Council had failed to respond to her request to undertake a full inquiry into the matter or assist in the problems which she and her husband had encountered when using the road.

8. In his response to my enquiry, the Area Manager referred to the history of the site and the previous complaint Mrs C had raised with the Ombudsman on road safety issues. He enclosed an extract from the relevant minutes of the Area Committee meeting where the proposed equestrian centre was granted full planning permission and referred to one of the conditions:

'that no works whatsoever in connection with the development hereby approved shall commence unless signs have been erected within the site directing horse riders to use the proposed track through the site and not the public road. No works shall commence on site unless details of all proposed signage in connection with the equestrian centre have been submitted to, and

approved in writing by, the Planning Authority.'

The Area Manager commented that, while Mrs C had apparently interpreted this as being a condition preventing horses from the equestrian centre using the public road, this was not the case and it could be legitimately used by any road user, including horse riders. Like any road user, they should behave responsibly and act in accordance with the law and the Highway Code, however, he added that it would not be competent of the Council to try to impose a condition preventing horses from the equestrian centre from using the road as it would not be enforceable.

9. The Area Manager noted that Mrs C had stated that the planning officer who presented the report to committee had indicated that signs would be erected at the entrance to the farm at its junction with the public road, but he had no recollection of that statement and it was not recorded in the minute or approved as a planning condition. The relevant planning condition required signage to be erected to the satisfaction of the planning authority. The planning inspector had confirmed that there was such signage in the tack room and that enforcement action was not required. In response to my further enquiries requesting details of the number of signs erected, the size and wording, and clarification of the purpose of the signage, the Area Manager stated that there was a sign in the tack room, printed on an A4 sheet, which advised riders to use the track rather than the minor road, on health and safety grounds – see Annex 2. The sign had been submitted for approval in July 2004 and was considered by the Council to be sufficient to satisfy the relevant planning condition: approval was given in September 2004. Correspondence was provided which confirmed that the Council had explained the position clearly on this point to Mrs C in October 2005.

10. With regard to the improvements to the public road leading to the access to the farm, the Area Manager clarified that, in requiring the road to be widened, the Council had not taken on a responsibility to ensure the road was wide enough for any vehicle. Planning consent was conditional on specific road improvements being carried out to the Council's 'road construction standards and completed to the satisfaction of the Planning Authority in consultation with the Roads Authority' which included widening of a section of the public road and other improvements.

11. The Area Manager explained that this, effectively, provided an additional

passing place along one stretch of the road, to assist vehicles to get past each other. However, he commented that it was not 'a two lane road nor is it capable of taking vehicles of any size' and that 'as with any country road of restricted width, drivers of excessively large vehicles need to judge for themselves whether or not it is safe to proceed'. He added that, while widening the road served to ease the situation for passing vehicles, it did not remove from the driver of a large vehicle the duty to assess if it was safe to proceed along the road.

12. The Area Manager summed up with advice that the two relevant planning conditions (signage and road widening) had been met to the satisfaction of the planning service. Although Mrs C appeared to believe that the conditions require that the Council can prevent any horse from the farm using the public road, or any vehicle of any size using a country road of restricted width, the Council had no such powers.

13. With regard to the incident giving rise to the complaint, the Area Manager commented that he had:

'... no direct knowledge of the incident or what took place, and it is not for the Council to comment on the decision of the Police to take a certain course of action following investigation. [Mrs C] raised with me her concerns for road safety and asked that they be discussed with the Police, and I can confirm that that was done at one of the regular liaison meetings on roads matters between the Council and the Police.'

14. The Area Manager stated that he had reviewed the complaint and the responses made to Mrs C and he concurred with the advice which had been given, that is, that it was not appropriate for the Council to comment on the alleged offences which were being investigated by the police, nor to comment on any actions which the police decided to take. The Council's responses to Mrs C had tried to be clear that they did not consider there to be a breach of planning conditions. I asked the Council to consider whether they would be able to erect a sign at the junction with the B road advising motorists of a narrow road which was unsuitable for large vehicles. The Council's Chief Executive has confirmed that the matter is in hand and a sign is being erected.

(a) The Council's handling of Mrs C's complaint about an incident in November 2004 on the public road

15. It is indisputable that the minor road in question is restricted in width but it has been described by the Area Manager as not dissimilar to many others in the area. Planning consent was granted with conditions relating to improving the visibility at the junction with the B road. In the view of the roads authority, the roads could cope with the traffic which it was likely would be generated by the development. The circumstance in which a horse float was stuck in a section of the road was attributed by Mrs C to the shortcomings of the road for vehicles of this size. However, the Area Manager clearly did not accept that the incident was related to this, or had anything to do with the Council, and he considered that it was a matter for the police; although he confirmed that, as promised, Mrs C's concerns on road safety were discussed by the roads authority with the police.

(a) Conclusion

16. I am sympathetic to Mrs C, who is clearly upset by the circumstances which led to her complaint on this issue. However, I am unable to see fault in the way that her complaint to the Council was handled. I am satisfied that the Council gave a clear explanation why they could not become involved formally and I do not uphold this complaint.

(b) The alleged breaches in the planning consent and how the Council have dealt with Mrs C's allegations

17. The information from the Council clarifies that Mrs C's understanding of the requirement placed on the applicant by the condition relating to use of the road by horse riders and others is not correct: the condition relates to the provision of signs which give direction to horse riders on using the track, not the public road.

(b) Conclusion

18. I am satisfied that the Council have given consistent advice on this but it appears that the information provided in response to my enquiry could have been given to Mrs C at an earlier date. A better understanding of the situation might have saved Mrs C and the Council from the need for some of the exchanges of correspondence which took place. This is an observation for the Council to consider, made with the benefit of hindsight, rather than criticism with a recommendation of some specific action on their part. I do not uphold the

complaint.

(c) The Council's failure to undertake a full inquiry into the matter or assist in the problems which Mrs C and her husband encountered when using the road

19. The Council's responses to Mrs C's complaint have been consistent throughout and are to the effect that this is not a planning matter. The reason why Mrs C has linked the incident to planning issues – and considers the Council have a responsibility – is because she claims that the planning consent granted has generated heavier use of a country road.

(c) Conclusion

20. I am satisfied that the Council have demonstrated that they have considered the situation and explained the extent of their responsibility. While Mrs C may believe that more should be done to alleviate the situation, I have seen nothing to suggest that it is incumbent on the Council to act and I do not, therefore, uphold this complaint. However, I appreciate the Council's positive response to my suggestion to try to improve the situation and agreement to erect a suitably worded sign.

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Redress and recommendation

The Ombudsman has no recommendation to make.

25 July 2006

Explanation of abbreviations used

Mrs C

The complainant

The Council

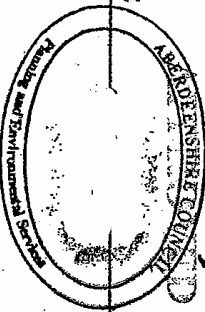
Aberdeenshire Council

DEAR RIDERS

ON THE GROUNDS OF ROAD SAFETY
WE STRONGLY ADVISE YOU TO USE
THE TRACK RATHER THAN THE
ROAD.

Aberdeenshire Council
Planning and Environmental Services
LETTERS REQUESTED BY
APPLICATION NO.

DATE



7/14