

Case 200501634: South Lanarkshire Council

Summary of Investigation

Category

Local government: Calls for enforcement action, stop and discontinuation notices

Overview

The complaint concerned the way in which the Council handled a planning application for the installation of a mobile phone mast.

Specific complaints and conclusions

- (a) Failure to exert due care (*not upheld*)
- (b) Failure to carry out sufficient enquiries to ensure correctness of a planning application (*not upheld*)
- (c) Unreasonable action in considering a planning application (*not upheld*)
- (d) Failure to give proper weight to objections (*not upheld*)
- (e) Failure to give objectors an opportunity to comment (*not upheld*)

Redress and recommendation

The Ombudsman has no recommendation to make.

Introduction

1. On 12 January 2006 the Ombudsman received a complaint from Mr C about the way in which South Lanarkshire Council (the Council) handled a planning application for the installation of a mobile phone mast.

2. The complaints which I have investigated are:

- (a) the Council failed to exert due care to ensure that a Declaration of Conformity (the Declaration) with International Commission of Non-Ionising Radiation (ICNIRP) Public Exposure Guidelines was properly completed;
- (b) the Council failed to carry out sufficient enquiries to ensure the correctness of the planning application and they failed to take action on identified errors;

- (c) the Council acted unreasonably in considering the application and dismissed alternative sites;
- (d) the Council failed to give proper weight to objections;
- (e) the Council failed to give opponents to the application an opportunity to comment on the Planning Officer's Report and address to Committee.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have also had sight of Mr C's correspondence with the developers; the planning application for the mobile phone mast dated 20 May 2005; the Executive Director's (Enterprise Resources) Report (the Report) dated 22 August 2005; the Declaration referred to in paragraph 2(a) above and Scottish Executive Guidelines on mobile phone masts (the Guidelines). I also made a formal enquiry of the Council on 14 February 2006 and received their detailed response on 13 March 2006. While this report does not include every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given the opportunity to comment on the draft of this report.

(a) The Council failed to exert due care to ensure that a Declaration of Conformity (the Declaration) with International Commission of Non-Ionising Radiation (ICNIRP) Public Exposure Guidelines was properly completed

4. Mr C said that the Council did not exercise due care to ensure that the Declaration reflected the correct legal basis of the application by omitting to make the appropriate deletions to the form. He said that this made a nonsense of the Declaration and was misleading to the public. In their response to me, dated 13 March 2006, the Council maintained that the Declaration was made in terms of the Guidelines and was in the exact form prescribed. They said that the model given as an example in the Guidelines did not identify any deletions required. In view of this, and as the Declaration stated that it complied with ICNIRP guidelines as required, there was no reason for the Council not to accept it.

(a) Conclusion

5. I have had sight of all the appropriate documents referred to and I have seen no evidence to suggest that, in accepting the Declaration, the Council failed to exert due care. They were satisfied that it had been completed in terms of the

Guidelines. In all the circumstances, I do not uphold this aspect of the complaint.

(b) The Council failed to carry out sufficient enquiries to ensure the correctness of the planning application and they failed to take action on identified errors

6. The address on the planning application refers to the application site being at the Bowling Club at 53 X Street. Mr C said that this address and the accompanying postcode were both incorrect and that, although he pointed this out to the Council, they did not take action. It is the Council's view that, while the address and postcode were not accurate, there was never any doubt about the precise location of the site. They have confirmed that the details sent to all notified neighbours included a plan which outlined the location and identified it as being the Bowling Club. They said that the representations they received from the public about the proposals demonstrated their awareness and confirms their view. They did not believe that it prejudiced the way in which the application was considered or determined.

(b) Conclusion

7. I have had sight of the application and the number of representations subsequently received on it. In all these, it is clear that the application site is the Bowling Club. Therefore, while Mr C is correct in maintaining that the address and postcode are not precisely correct there is no evidence to suggest that this affected the consideration process detrimentally. Accordingly, in the absence of any evidence showing that there was any injustice as a consequence of the applicant's errors, I do not uphold this part of the complaint.

(c) The Council acted unreasonably in considering the application and dismissed alternative sites

8. In making his Report to the Area Committee Meeting held on 30 August 2005, the Executive Director (Enterprise Resources) addressed, as he was obliged to do, the application made to the Council. In their response to me, the Council said that it was not for them to suggest or consider alternative sites. Nevertheless, the Report made reference to information provided by the applicant about the reasons for alternative sites being discounted. In connection with this, the Executive Director expressed himself as being satisfied with the information provided.

(c) Conclusion

9. While it was Mr C's view that there were other, more suitable sites upon which to place a mobile phone mast, the developer did not agree. The Council were aware of the developer's reasons and considered the application subsequently made. I am of the opinion that in doing so the Council acted appropriately. To have done otherwise would have been unreasonable. There are no grounds to uphold this part of the complaint.

(d) The Council failed to give proper weight to objections

10. Mr C and 21 others wrote objecting to the planning application. A petition of 68 signatures was also received and these were all referred to in the Report which went to the Area Committee on 30 August 2005. The Executive Director summarised the 31 different points raised by the objectors and detailed his response to each of them. There is, therefore, no doubt in my mind that before making a decision on this application, the Committee responsible were fully apprised of local opinion. Nevertheless, they decided to approve the application as was their right.

(d) Conclusion

11. From the information before me, I have seen no evidence in support of Mr C's contention that the Council failed to give proper weight to objections. This aspect of the complaint is not upheld.

(e) The Council failed to give opponents to the application an opportunity to comment on the Planning Officer's Report and address to Committee

12. The Council have confirmed that it is their policy to offer objectors the opportunity to address the Planning Committee where a planning application is contrary to the approved development plan. However, the Council's view was that the application was not contrary to the development plan, as it satisfied the criteria set out in the Council's policy on telecommunications developments. The Report submitted to the Area Committee assessed the application in terms of the relevant criteria.

(e) Conclusion

13. In all the circumstances, I have seen no grounds to suggest that the Council incorrectly assessed this application. Accordingly, objectors to the application did

not have the right to comment on the Report or to address the Committee. Nevertheless, I am fully satisfied that their opinions were taken into account when the matter was considered and therefore, do not uphold this aspect of the complaint.

14. In summary, despite Mr C's strong and sincerely held objections to the planning application concerned, I have not seen evidence to suggest that there was anything improper or incorrect in the way the Council handled the application and, therefore, I do not uphold this complaint.

Summary

Specific complaints and conclusions

- (a) Failure to exert due care (*not upheld*)
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- (c) Unreasonable action in considering a planning application (*not upheld*)
- (d) Failure to give proper weight to objections (*not upheld*)
- (e) Failure to give objectors an opportunity to comment (*not upheld*)

Redress and recommendation

The Ombudsman has no recommendation to make.

25 July 2006

Explanation of abbreviations used

Mr C	The complainant
The Council	South Lanarkshire Council
The Report	The Executive Director's (Enterprise Resources) Report
The Guidelines	The Scottish Executive Guidelines on mobile phone masts