

Scottish Parliament Region: Central Scotland

Case 200501647: South Lanarkshire Council

Summary of Investigation

Category

Local Government: Planning; Handling of application

Overview

The complainant raised concerns regarding the handling of a planning application and an application for listed building consent for the conversion of a ground floor property into a bar/bistro in a block of flats in which she resides. She claimed that the Council had failed to ensure that neighbour notification was carried out in accordance with current requirements and that planning permission had been granted to include a beer garden as part of the development, when, to the complainant's knowledge, this had not been included in the application.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) that the Council did not ensure that neighbour notification for the applications was carried out in accordance with current requirements (*not upheld*); and
- (b) that planning permission had been granted to include a beer garden as part of the development when, to Ms C's knowledge, this had not been included in the applications (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. On 20 September 2005 the Ombudsman received a complaint from a member of the public, referred to in this report as 'Ms C' against South Lanarkshire Council (the Council).

2. Ms C complained about the Council's handling of a planning application and an application for listed building consent for the conversion of a ground floor property into a bar/bistro within a block of flats in which Ms C resides.

3. The complaints from Ms C which I have investigated are:
 - (a) that the Council did not ensure that neighbour notification for the applications was carried out in accordance with current requirements; and
 - (b) that planning permission had been granted to include a beer garden as part of the development when, to Ms C's knowledge, this had not been included in the applications.

Investigation and findings of fact

4. The investigation of this complaint involved examination of the correspondence provided by Ms C, making enquiries of the Council and assessing the responses and documentary evidence provided by them. Consideration has also been given to the relevant planning legislation.

5. I have set out my findings of fact and conclusions. Although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked.

Background

6. On 6 May 2005, Ms C phoned the planning officer at the Council to advise that the applicant for the conversion of the ground floor property of her building into a bar/bistro had not carried out neighbour notification for her or any of the other neighbours in the property. She stated that she was advised by the planning officer that he would contact the applicant and ask them to carry out the neighbour notification process again.

7. Ms C claimed that, a few days later, she and some of her neighbours visited their local Councillor to complain about the proposed development and the lack of neighbour notification. Ms C claimed that she later received a telephone call from her Councillor to advise that she had telephoned the planning officer at the Council and had passed on the residents' concerns.

8. On 12 May 2005, Ms C sent a letter of objection about the applications to the Head of Planning at the Council. In her letter, Ms C again raised the matter of neighbour notification. She stated that she had already advised the planning officer of the fact that it had not been carried out and stated that she 'was advised that the applicant would re-issue the neighbour notification'. Ms C said that she had consulted other residents in her building and claimed that the neighbour notification had still not been carried out. She stated that it was her understanding that an application could be halted if this had not been complied with and asked why the Council had not considered this.

9. On 1 September 2005, the Council wrote to Ms C to advise her that both applications had been granted by the Committee and that her 'comments were taken into account'.

10. On 8 September 2005, Ms C complained to the planning officer about the approval of the applications and on 16 September 2005, after reading an article in the local newspaper relating to the applications in which Ms C claimed that the Executive Director of Enterprises and Resources (the Executive Director) at the Council stated that neighbour notification was 'carried out in accordance with current requirements', Ms C wrote to him. She claimed that, contrary to the statement made by him in the article, the neighbour notification had not been carried out in accordance with current requirements. She explained that on three separate occasions she had advised the planning officer and her local Councillor that the notifications had not been carried out. She asked why the Council had not 'put procedures in place to halt this application until this had been complied with, which as you are aware, they had the ability to do'. Ms C also asked where the 'beer garden' referred to in the article would be located.

11. On 17 October 2005, the Executive Director responded to Ms C's letter. He explained that 'there is a requirement for neighbour notification to be undertaken in

respect of a planning application, and...under current legislative requirements the onus is on the applicant, or their agents, to undertake such work and complete the appropriate section of the application form'.

12. He confirmed that the 'appropriate Neighbour Notification Certificate was completed in support of the application submission. Whilst this information is generally accepted in good faith by the Planning Authorities, it is checked to ensure that those parties requiring notification are detailed on the application form. The information submitted was accepted as being correct in this instance'.

13. He said: 'It is advised that when concerns raised by the residents with regards to non-notification of the proposal, these were highlighted to the applicants and a request for the process to be redone. The applicants subsequently confirmed verbally that this request was carried out'.

14. He added: 'On the basis of the above, the Area Office were satisfied that the notification of neighbours had been carried out in accordance with current requirements. In addition, this particular application was advertised in the local press as Development Affecting the Character or Appearance of a Conservation Area and having seen this, residents lodged objections to the proposal'.

15. He confirmed that the application made no reference to the provision of a beer garden.

16. The Executive Director concluded that 'the concerns raised by the neighbouring proprietors were taken into consideration and presented within the report to Committee which supported the recommendation to grant consent'.

Legislative Requirements

17. There is no legal requirement for the Council to carry out neighbour notification in respect of planning applications. Under current planning legislation, this responsibility lies with the applicant.

18. The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 required the Council to ensure that a completed Neighbour Notification Certificate and a plan showing the location of the neighbouring land in respect of

which such notification has been carried out were supplied by the applicant as part of the planning application process.

(a) That the Council did not ensure that neighbour notification for the applications was carried out in accordance with current requirements

19. In their responses to my enquiries, the Council provided copies of the planning application for the development and the application for listed building consent. The Council also provided copies of the advertisements for the two applications.

20. The Council stated that planning legislation required them to display a notice, referred to as a site notice, indicating the nature of the development in question and providing details of where and when the application, plans and other relevant documentation may be inspected by the public. The Council said this notice was displayed on the wall beside the entrance to the building which was the subject of the planning application on 19 or 20 April 2005, although, they said that site notices put up in city centre locations can often be removed by passers-by.

21. The Council were, however, unable to provide a copy of the site notice. They explained that it was normal procedure for a copy to be held on file but it had not been done in this case. They said that this could sometimes happen when they were particularly busy.

22. Ms C advised that she did not see the notice displayed on the wall of her building. She claimed that she walked past the location every day and that she never saw the site notice. She said that the first that she was aware of the proposed development was when she saw the notice in the local newspaper on 28 April 2005.

23. The Council stated in their response that they took all reasonable steps to ensure that the requirements of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 had been carried out. They stated that neighbour notification was only necessary for the planning application and not for the application for listed building consent.

24. The copy of the Neighbour Notification Certificate provided for the planning application showed that the 'domestic/residential property' owners or occupiers

listed as having been notified were those residing in the 16 flats in the block within which Ms C resides and that the notification was stated to have taken place on 13 April 2005.

25. The Council stated that a street plan provided by the applicant had been marked to show which properties had been notified. They advised that this plan was checked against an Ordnance Survey map for the area, which confirmed that the correct addresses were listed on the Neighbour Notification Certificate; the correct properties being those within four metres of the application site boundary. One of the addresses marked on the plan was for Ms C's block of flats. The Council stated that a 'Planning Application Registration Sheet' records that 'the officer validating the application has carried out this check'. The relevant sheet was provided by the Council with the entry for 'Neighbour Notification' complete.

26. The Council advised that there is no agreed procedure, within the Council or in law, to deal with the situation where a resident claims that the applicant has not carried out the neighbour notification process. However, they said that the Council would normally contact the applicant and 'ask for this to be done' (or re-done). If the applicant advises this has been done, the Service accepts this'. They claimed that 'it is often difficult for the Council to determine the exact nature of the allegations of non-notification as it is not unusual for applicants to insist that they have hand delivered notifications and objectors to claim that they never received them'. They went on to say that an internal group within the Planning Service was considering this matter with a view to formalising standard guidance on neighbour notification and that planning officers have now been informally advised to write to the applicant when non-notifications are brought to their attention and to get the applicant to write back to verify that the process has been carried out. They also pointed out that the Scottish Executive is proposing to make neighbour notification the responsibility of the Local Authority in the future.

27. In relation to this complaint, the Council advised that they received two written and at least one verbal representation that the neighbour notification process for the residents in Ms C's block of flats had not been carried out. They provided copies of the two letters, dated 10 and 12 May 2005, and a copy of a 'Record of Discussion' sheet, which noted a verbal representation had been made on 6 May 2005. The record of the verbal representation and the letter of 12 May 2005

showed that it had been claimed that no-one in the building had been notified. The letter of 10 May 2005 indicated that none of the neighbours spoken to had been notified.

28. The Council provided a further 'Record of Discussion' sheet which showed that 'the applicant was advised verbally of the concerns raised' and that 'the applicant advised, also verbally, that re-notification had been undertaken, on or around 20 May 2005'. The sheet recorded that the Council were advised by the applicant on 20 May 2005 that the re-notification had taken place. When asked, the Council confirmed that they had not informed the resident who had complained of this re-notification.

29. The copy of the report provided by the Council for the planning application stated that seven letters of representation had been received from residents in the flats above the development, including a letter from Ms C. One of the grounds of objection was lack of neighbour notification. The planning officer stated in the report: 'Concerns raised in respect of failure to notify all relevant parties were highlighted to the applicants. I am satisfied that the Neighbour Notification process was carried out in accordance with current requirements.'

30. With regard to the application for listed building consent, although there was no requirement for neighbour notification in the report to committee, the planning officer stated: 'Statutory Neighbour Notification was undertaken in respect of this proposal.'

31. When questioned on this point, the planning officer said that this was a mistake and that the report on Listed Building Consent should not have contained a statement on neighbour notification. He explained that the Council used to issue joint reports for planning applications and Listed Building Consent, which would have included a statement about neighbour notification but that they now produced separate reports.

32. The records showed that both applications were granted, subject to conditions, on 31 August 2005.

33. The documentation provided by the Council also showed that four residents at

in the block of flats, including Ms C, wrote to the Council in September 2005 and complained that the neighbour notification process was never carried out.

(a) Conclusion

34. There is no legal requirement for the Council to ensure that neighbour notification has been carried out. The Council have shown that they had received the correct paperwork on neighbour notification from the applicant and checked to ensure that it was completed as required.

35. There would appear to be no specific procedure in law or Council policy which details the process which should be followed by the Council when they are advised that neighbour notification has not been carried out by the applicant. In my view, the Council's actions on receipt of the complaints about the lack of neighbour notification were reasonable in the circumstances.

36. I note the Council's comments on the steps being taken by them to formalise standard guidance for dealing with complaints about non-notification of neighbours by the applicant and agree that this would be advisable.

37. I have noted that the report on the planning application shows that the committee were made aware of the grounds of objection of seven of the residents in the block of flats above the development, including Ms C. I therefore believe that the lack of neighbour notification was not crucial to the decision to grant planning consent in this case and am satisfied that there was no question of prejudice to Ms C in this particular respect.

38. I have been unable to find evidence of service failure or maladministration by the Council and, therefore, I do not uphold this complaint.

39. I would, however, draw the Council's attention to the slight discrepancy in the report to the committee on the listed building consent and the failure to include a copy of the site notice in the planning file and ask that they ensure that a more robust checking system is put in place in an effort to prevent such occurrences in the future.

40. The Council have advised that procedures have now been put in place for

re-notification of neighbours and provision of site notices. I am pleased to note that these steps have been taken.

(b) That planning permission had been granted to include a beer garden as part of the development when, to Ms C's knowledge, this had not been included in the planning application

41. The Council stated in their response, 'it is advised that planning permission was granted for the formation of a lounge bar/bistro and that no consent was given for a beer garden. In addition, the Planning Service has no records of having been asked about the potential for forming a beer garden at this location'.

42. The copies of the planning applications for the development provided by the Council made no reference to a beer garden.

(b) Conclusion

43. Having studied the evidence provided, I am satisfied that the development does not include the provision of a beer garden. Accordingly, I have not seen grounds to uphold this aspect of the complaint.

29 August 2006

Explanation of abbreviations used

Ms C	The complainant
The Council	South Lanarkshire Council
The Executive Director	The Executive Director of Enterprise and Resources