

Scottish Parliament Region: South of Scotland

Case 200401921: South Lanarkshire Council

Summary

Category

Local government: Planning

Overview

The complainant (Mr C) complained that South Lanarkshire Council (the Council) failed to enforce a planning condition that would have provided him with access to the rear of his property and failed to explain why; that the Council failed to progress alternative arrangements; and failed to respond effectively to his complaint.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to enforce a planning condition (*not upheld*);
- (b) failed to provide appropriate explanations (*upheld*);
- (c) failed to progress alternative arrangements (*not upheld*); and
- (d) failed to respond appropriately to a complaint (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for their failures; and
- (ii) review their procedures to ensure that complaints are dealt with through the complaints process and that staff are reminded of the need to ensure accuracy in replies.

Main Investigation Report

Introduction

1. The complainant (Mr C) wished to gain vehicular access to the rear of his property in order to park his car in his back garden. He approached his local Councillor for help. When South Lanarkshire Council (the Council) granted outline planning permission to develop land to the rear of Mr C's property a condition was imposed that an area of land should be reserved for a potential vehicle access. The houses were eventually built but the road was not. Mr C complained that the Council failed to enforce the planning condition and failed to explain why.

2. Mr C later identified other ways in which he believed he could obtain access but the Council did not progress these. When Mr C complained he received a response from the Chief Executive but he remained dissatisfied and complained to the Ombudsman.

3. The complaints from Mr C which I have investigated are that the Council:

- (a) failed to enforce a planning condition;
- (b) failed to provide appropriate explanations;
- (c) failed to progress alternative arrangements; and
- (d) failed to respond effectively to Mr C's complaint.

Investigation

4. In investigating this complaint I received documents from Mr C, corresponded with the Council and have had access to the background planning papers. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both Mr C and the Council have had the opportunity to comment on a draft of this report.

5. It became clear during the course of the investigation that there were at least two separate sites behind Mr C's property for which planning permission applications were made over the years, and that this created confusion in the Council's responses to Mr C. To avoid similar confusion in this report, I have identified these sites separately as Sites 1 and 2. Site 1 is shown on the Site Plan that is attached to this report as Annex 2.

(a) The Council failed to enforce a planning condition

6. Mr C approached his local Councillor (Councillor 1) in 1996 to see if the Council could help him gain access to the rear of his property. He said that he and his neighbours were finding parking increasingly difficult and parked cars were being damaged by vandals. They wished to park their vehicles in their back gardens.

7. Councillor 1 later sent Mr C a decision notice dated 30 May 1996. This showed that the Council had granted outline conditional planning permission to a developer for land (Site 1) lying at a distance behind Mr C's property. The permission was for a residential development and one of the conditions was that an area of land should be reserved for a potential vehicular access and that this should form part of any subsequent detailed application. Mr C complained that, although the houses were eventually built, the access road was not, and so the Council had failed to enforce the condition in the outline planning consent.

8. In answering my enquiries, the Council accepted that they granted outline consent for Site 1 in May 1996 and that they placed a condition on the consent. This reserved an area for potential vehicle access between two points (A and B) indicated on the site plan originally provided by Councillor 1 (appended as Annex 2). The Council gave me a copy of the planning application report. This makes no reference to the proposed vehicular access. They also produced a copy of the site plan but were unable to confirm how the access was intended to work in practice given that Site 1 is not adjacent to Mr C's property. Officers involved in the proposal have subsequently left or retired from the Council.

9. Planning permission for the land that lies immediately behind Mr C's property (Site 2) was granted in 1991. When built, that development effectively cut off access to the rear of Mr C's street from Site 1.

10. The detailed planning application for Site 1 was finally submitted in March 2002 and received planning consent in October 2002. The potential vehicular access was not included in the application. The issue of access to the rear of Mr C's property did not appear in representations made in response to that application. The Council questioned whether the condition on the outline planning

consent granted in 1996 could ever have been intended to facilitate access to Mr C's property.

(a) Conclusion

11. Councillor 1 had told Mr C that the area shown on the plan between points A and B was for vehicular access and he (Councillor 1) had marked (with a cross) a spot on the plan for access. There is little doubt that Councillor 1 thought that this would give Mr C the access he sought, but how this was to be achieved in practice is not clear from the evidence I have seen. The outline planning consent for Site 1 does not state the purpose of the vehicular access and it is not mentioned in the report. The access indicated does not appear to join any other roads and so would not necessarily give Mr C direct access to his property.

12. In any event, Councillor 1 said that he expected a detailed planning application to be submitted within 14 days but in fact it was six years before the Council actually received this. Councillor 1 had died by then and the issue of vehicular access was not raised when that application was considered.

13. The outline conditional planning permission for the site was granted on 30 May 1996 in terms of section 39 of the Town and Country Planning (Scotland) Act 1972. Such permission is valid for three years. When the detailed planning application was submitted to the Council in 2002 the site, therefore, no longer had valid outline consent.

14. I cannot find out what Councillor 1 intended but the route of the vehicular access is not clear from the documents. Mr C did not raise the issue when the detailed planning application was eventually submitted. I am satisfied that when considering the detailed application the Council was not obliged to carry forward or enforce the condition in the expired outline conditional planning consent. I, therefore, do not uphold this complaint.

(b) The Council failed to provide appropriate explanations

15. On 20 March 2004, Mr C wrote to his Councillor (Councillor 3) about various matters, including his wish to have vehicular access to the rear of his property. He referred to the 1996 outline conditional planning permission granted for Site 1. Councillor 3 passed the letter to the appropriate department to reply direct to Mr C.

Mr C received no reply and eventually asked the Leader of the Council to explain why the access road had not been built.

16. In his reply, the Leader of the Council said that outline planning consent was in fact refused. He referred to the 1991 planning consent granted for Site 2.

17. In his complaint to the Ombudsman, Mr C complained that the reply he received referred to a different application and that he had failed to receive appropriate explanations from the Council.

18. In response to my enquiries, the Council said that the Planning and Building Control Service had mistakenly thought that in his original enquiries Mr C was referring to Site 2 (which had indeed been refused outline planning permission before detailed consent was granted in 1991). When I made enquiries of the Council, the Planning and Building Control Service checked their archives and additional information was found. The Head of Administration apologised for that misunderstanding.

(b) Conclusion

19. Mr C has obviously been very frustrated by his failure to receive appropriate explanations from the Council. I accept that the Council have already apologised for the failure to respond and for the misunderstanding but they have had many opportunities to investigate this properly and explain to Mr C why the access road he was expecting was not built. They failed to do so, as shown by their assumption that Mr C was enquiring about Site 2, when in fact he was referring to Site 1. Given the location of the sites relative to Mr C's property, I can understand how this might have happened. However, had the Council given closer consideration to Mr C's enquiries, particularly when he clearly remained dissatisfied, this misunderstanding could have been resolved. I can find no evidence that the Council did so, or that they gave Mr C this explanation, and I, therefore, uphold this complaint.

(b) Recommendation

20. The Ombudsman recommends that the Council apologise to Mr C for the frustration caused to him by their failure to provide him with appropriate explanations.

(c) The Council failed to progress alternative arrangements

21. After Councillor 1 died Mr C identified an alternative route through the back of a local car park. Mr C took the matter up again with Councillor 2, who was the councillor for the street from which it was proposed to take access. In 2001 Mr C attended a meeting with Councillor 2, a Council official and Mr C's neighbour. Mr C's recollection of the meeting was that Councillor 2 and the Council official did not see any great problem with the proposal. There was a small triangle of land they were not sure the Council owned but said, if necessary, the Council could compulsory purchase it. On 2 April 2001, Councillor 2 wrote to Mr C to say that some progress had been made and that using the Council's land to allow him access could be possible. He was passing the matter to Councillor 3, whom he expected would get in touch with Mr C. Mr C said that he heard nothing further.

22. The Estates Service confirmed that a meeting took place but said that the Council did not own all of the land and no specific agreement had been made to progress a compulsory purchase acquisition. They apologised for the lack of response from the Council's officials but said that there appeared to be no prospect of rear access being provided to Mr C's property.

23. Mr C said that a further opportunity to gain access to the rear of his property arose in August 2004, when new dining halls were being installed at the adjacent primary school. He approached the Council to ask if the Council would allow him access across a narrow strip of land. When he received no reply Mr C contacted the Council repeatedly but did not get an answer until January 2005 when he was told that the Council declined to give him access.

24. Mr C complained to Councillor 3 on 1 February 2005 and copied the letter to the Leader of the Council shortly afterwards. He again raised the question of why the access road had not been built. He referred to his 2001 attempt to gain access via the car park but said that he had heard nothing further about that.

25. The Leader of the Council replied on 11 March 2005. He apologised for the fact that no-one had contacted or replied to Mr C. He said that there appeared to be no prospect of a rear access being provided in the short to medium term.

26. Mr C considers that a further opportunity will arise when the school is scheduled for redevelopment in 2010. The Council said that the Planning and Building Control Service had made project managers at the Council's School Modernisation Team aware of Mr C's concerns. Their prime remit, however, is to deliver modern school buildings and campuses and, therefore, they are unwilling to constrain an already tight site by trying to accommodate a private access to rear gardens.

(c) Conclusion

27. Mr C has complained that the Council reacted as though they did not know what the problem was. Mr C did suggest different alternatives to try to resolve the problem and raised these with the Council. He clearly also received considerable support from local Councillors for his plan to gain access to the rear of his property and I can see why this might have raised his expectations.

28. It is apparent from my investigation that the Council is under no obligation to provide Mr C with this access. Despite this, they have considered his requests that they provide it, and I am satisfied that they did so appropriately. I, therefore, do not uphold this complaint. I note, however, that Councillor 2 has now raised the matter with the Enterprise Resources Department to see if it might be accommodated within the Council's plans to improve the area.

(d) The Council failed to respond effectively to Mr C's complaint

29. On 26 April 2005, Mr C wrote to the Chief Executive of the Council. He said that he complained in writing to the Leader of the Council in February 2005 but was dissatisfied with the reply, as the information did not tie up with his original letter of complaint. The Leader's office told Mr C that the information was supplied by the planning department.

30. The Chief Executive replied to Mr C on 23 May 2005. He said that he had investigated Mr C's complaint and was satisfied that all the planning issues had been addressed in the Leader of the Council's letter. In his complaint to the Ombudsman, Mr C said that he did not understand why the letter from the Leader of the Council referred to a different application.

31. In response to my enquiries, the Council explained that this was a misunderstanding and apologised.

(d) Conclusion

32. Some of the confusion in responding to this complaint clearly related to the fact that there were at least two local sites for which planning permission was granted, and that this was not identified when the issues raised by Mr C were considered. The Council have a four stage complaints process. There is no evidence that Mr C's complaint was dealt with in terms of the first three stages of that procedure. Had they done this, the Council would have had the opportunity to investigate the complaint properly. They could then have spotted that there had been a misunderstanding and would have been able to provide Mr C with the information and explanations he sought. This might have prevented him having to complain to the Ombudsman. However, the Council did not deal with Mr C's complaint in accordance with the complaints process. I, therefore, uphold this complaint.

(d) Recommendation

33. The Ombudsman recommends that the Council apologise to Mr C for their failure to deal with his complaint appropriately.

34. The use of appropriate and transparent complaints processes enables a member of the public to see and understand how their complaint is handled. In turn, addressing issues identified through the process can help improve processes, administrative practice and good governance within the organisation. The Ombudsman further recommends that the Council review their procedures to ensure that complaints are dealt with in terms of the complaints process, and that staff replying to enquiries and complaints are reminded to check the detail and facts of the case to ensure the accuracy of replies.

35. The Ombudsman asks the Council to notify her when the recommendations have been implemented.

31 October 2006

Explanation of abbreviations used

Mr C	The complainant
Site 1	The site at some distance behind Mr C's home
Site 2	The site immediately behind Mr C's home
Councillor 1	Mr C's Councillor at the time of the 1996 decision to grant outline conditional planning permission, who subsequently died
Councillor 2	The Councillor for the street from which Mr C proposed to take access
Councillor 3	The Councillor who succeeded Councillor 1
The Council	South Lanarkshire Council

A

Area 2

