

Scottish Parliament Region: Central Scotland

Case 200501874: Scottish Executive Inquiry Reporters Unit

Summary of Investigation

Category

Scottish Executive & Devolved administration: Planning; Handling of application (complaints by opponents)

Overview

The complaint concerned the Reporter's handling of a planning appeal against the refusal of planning permission by Perth and Kinross Council (the Council) for the change of use from an established traveller pitch to form three permanent traveller pitches near the village in which Mr C lives (referred to as village X). Mr C contended that the Reporter failed to deal with the appeal in accordance with the proper procedure and that, as a consequence of the flawed decision to uphold the appeal and grant planning permission, the development would have an adverse effect on his property.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Reporter failed to consider properly the planning history of the use of site (*not upheld*);
- (b) the Reporter failed to gather and consider properly all relevant planning factors before deciding the appeal (*not upheld*); and
- (c) the Reporter failed to consider properly issues relating to amenity and road safety (*not upheld*).

Redress and recommendation(s)

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complaint was made by a man (referred to in this report as Mr C) against the Inquiry Reporters Unit. The complaint concerned the Reporter's handling of a planning appeal against the refusal of planning permission by Perth and Kinross Council (the Council) for the change of use from an established traveller pitch to form three permanent traveller pitches near the village in which Mr C lives (referred to as village X). Mr C contended that the Reporter failed to deal with the appeal in accordance with the proper procedure and that, as a consequence of the flawed decision to uphold the appeal and grant planning permission, the development would have an adverse effect on his property.

2. Mr C made a formal complaint to the Inquiry Reporters Unit to which they replied on 8 November 2005, contending that the Reporter had correctly determined the appeal in compliance with the statutory requirements. Mr C subsequently made a request for an external review by the Ombudsman, alleging that there was administrative fault by the Reporter, as a result of which he was caused injustice.

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

- (a) the Reporter failed to consider properly the planning history of the use of site;
- (b) the Reporter failed to gather and consider properly all relevant planning factors before deciding the appeal; and
- (c) the Reporter failed to consider properly issues relating to amenity and road safety.

Investigation

4. The investigation included examination of documentary evidence supplied by Mr C. A written enquiry was made of the authority, whose Head of Department provided relevant background papers, including the Reporter's decision letter and the relevant correspondence with Mr C.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Scottish Executive Inquiry Reporters Unit have been given an opportunity to comment on a

draft of this report. Because of the interrelationship between the different heads of complaint, I have addressed these together.

(a) the Reporter failed to consider properly the planning history of the use of site;

(b) the Reporter failed to gather and consider properly all relevant planning factors before deciding the appeal; and

(c) the Reporter failed to consider properly issues relating to amenity and road safety

6. The appeal which was the subject of the complaint was determined by the Reporter appointed by the Scottish Ministers under delegated power derived from Schedule 4 of the Town and Country Planning (Scotland) Act 1997.

7. The Reporter's decision on the appeal was final, subject to the right of any aggrieved person to apply to the Court of Session within 6 weeks of the date of the decision, as conferred by section 237 and 239 of the Town and Country Planning Act; on any such application the Court may quash the decision if satisfied that it is not within the powers of the Act or that the applicant's interests have been substantially prejudiced by a failure to comply with any requirement of the Act or of the Tribunals and Inquiries Act 1992 or of any orders, regulations or rules made under these Acts.

8. In this context, the Ombudsman, in exercise of her discretion under the terms of the Scottish Public Services Ombudsman Act 2002, decided that it was not reasonable to expect Mr C to pursue such a legal remedy to the Court of Session, on the grounds that it was disproportionate in terms of time and cost.

9. The Reporter's decision – consisting of a 10 page letter with 32 paragraphs issued on 6 October 2005 – was reached after the consideration of written submissions from the appellant's representative; the planning authority; and local residents. The Reporter made an accompanied inspection of the appeal site and the surrounding area on 11 August 2005.

10. The decision letter described the location of the appeal site, its physical features and neighbouring uses, including residential. The description made reference to the vehicular access arrangement. The proposed change of use

related to an existing traveller pitch to form three permanent traveller pitches on the site. The site was surfaced with loose chippings and enclosed by wooden fencing, and was already being used by the travellers for residential purposes. On each of the three defined plots there was a static caravan or chalet and on one of the plots there was also a touring caravan. Each of the plots had a storage container (or other ancillary structure) and a parking area. There was also a gated visitor car park and a lock-up storage container.

11. The Reporter noted that planning permission was refused for the following reason:

'The development, particularly its commercial and business elements would be incompatible with the surroundings in land use terms and could cause unacceptable environmental impact, given the nearby location of houses. Approval would, therefore, be contrary to Policy 1 of the Perth Area Local Plan 1995 incorporating Alteration No. 1 Housing Land 2000.'

12. He also described the criteria of the adopted Local Plan, noting that generally development in the landward area was restricted to agriculture, forestry, or recreational and tourism projects for which a countryside location was essential.

13. The Reporter made reference to the appellant's stated grounds of appeal, and their contention that the proposal satisfied the Local Plan criteria and was compatible with the surrounding environment with no adverse impact. Particular note was made of the revised proposals for access to the site, which they contended were acceptable to the Roads Authority. He also noted the argument that the site was effectively screened from neighbours.

14. The appellant's contended that the site had been used as a gypsy/traveller pitch for more than 10 years, with no enforcement action raised during that period. They indicated that the Council's return in respect of twice yearly audit of travellers' pitches produced by the Scottish Executive in January 2003 confirmed the existence of an established traveller pitch on the appeal site. They contended that the Council had recorded their acceptance in principle for the use of the site as 3 traveller pitches and the sole basis of their refusal of planning permission concerned issues of visual amenity and noise impact on the neighbouring residential properties.

15. The Reporter drew attention to the Council's reasons for the refusal of planning permission, on the grounds that it was not zoned for development in the Local Plan; the use as a travellers' site was incompatible with nearby residential use; and that there were problems with visual impact, noise and vehicular access. The Council were also concerned about the prospect of the site being used for business purposes, which they argued would be incompatible with the surrounding land uses.

16. The Reporter also described fully the representations – including objections – made by local residents. In doing so, he listed all the main points raised by the objectors including:

- no planning permission had been granted for use of the site as a traveller pitch in the past;
- illegal operations had been conducted within the site and ownership was unclear;
- the proposal was contrary to the Council's policy on housing in the countryside;
- the development was detrimental to the amenity of nearby residential properties;
- the proposal was detrimental to road safety;
- the site was of archaeological interest;
- the drainage arrangements were unsatisfactory;
- the ground condition of the site was unstable; and
- there was no proven need for a travellers' site in the area.

17. In his conclusions the Reporter considered that, based on his inspection of the appeal site and the written submissions, the determining issue was whether the proposal was consistent with the relevant provisions of the development plan and, if not, whether an exception to these provisions was justified by other material considerations. There was no dispute that the development had already started without the benefit of planning permission; and that the appeal sought approval for the continuation of a change of use and associated works which had commenced without planning consent, in addition to the other proposals set out in the planning application, including completion of the road access and site screening improvements.

18. The Reporter also drew attention to the national policy context concerning the accommodation needs of travelling people, which he noted were regarded as a special category. Referring to the government guidance on site provision for travelling people, he indicated that, in terms of planning and site selection:

...'it can require an act of political courage to decide on a particular location in the face of opposition from the settled community'...

19. He noted that the guidance indicated that there was no such thing as the perfect location for a travellers' site, and that the choice of location involved compromise. A number of non-obligatory criteria required to be addressed, as far as practicable, and a balance needed to be struck to achieve an acceptable site. These criteria included reference to accessibility; provision of services; the settled community; the nature of the site; access to employment, education and community facilities; and provision in neighbouring areas. In particular, the guidance encouraged locations on suitably screened ground near the main road network, not too close to the settled community but also not too remote to allow at least for the possibility of social integration.

20. The Reporter noted from his site inspection that the chalets, caravans and ancillary structures already in place on the three plots were not visible from road level or from the nearest houses, including that owned by Mr C, situated immediately to the south of the appeal site boundary. He indicated that the site had a good landscape framework and could be screened effectively. He stated that:

'I am persuaded by your evidence ... and submissions from local residents that the site has been used as a traveller pitch for some years already...'

and that all of the various developments on site broadly matched the proposals set out in the planning application under appeal.

21. Furthermore, the Reporter expressed satisfaction that:

...'the scale, form and other details of the proposed development, whilst on the edge of a rural area, would accord with the existing pattern of residential development along (access road) and in the main village of X, immediately to the north and south of the appeal site, respectively...'

22. In respect of environmental impact on neighbouring residents, the Reporter noted that the nearest residential dwelling (Mr C's property) was situated at least 25 metres from the southernmost traveller pitch in the proposal and would be separated from it by a substantial change of level and screen planting along the intervening wooded embankment and bund above it. He also drew attention to an independent assessment by acoustic consultants commissioned by the appellant's which had concluded that noise from normal residential activity within the appeal site would be unlikely to be a source of disturbance or cause any environmental impact to Mr C's property, as the nearest residential property. In this context he stated:

...'I am persuaded that the proposal would not cause unacceptable environmental impact, in particular visual and noise impact, if permission was restricted to residential use by the travellers and provided that commercial uses, including the storage of equipment and heavy plant are not permitted here'...

23. With regard to the question of access, the Reporter indicated:

...'I am persuaded that, if implemented, the road access and junction improvements would address satisfactorily the access issues that had previously been raised. I consider that this is a matter that could be resolved by a planning condition, in order to ensure that access and road safety issues relating to the development of the site are addressed satisfactorily'.

24. The Reporter summarised his position on the appeal in the following terms:

'Notwithstanding my conclusion with regard to the development plan, I have also had regard to all of the detailed issues and concerns raised by local objectors, as outlined above. For the reasons given earlier, I conclude that none of these concerns, or the related issues they raise, outweighs the fact that your clients' proposal would be consistent with the development plan, subject to appropriate conditions being attached to any planning permission in order to safeguard amenity and road safety. I have taken account of all the other matters raised but find none that outweigh the considerations on which my decision is based.'

25. In allowing the appeal and granting planning permission for the continuation of the change of use, the Reporter attached three conditions stipulating that:

- the use for three traveller pitches should be for residential use only with no business or commercial use;
- boundary fencing and screen planting should be implemented in accordance with an approved scheme; and
- improvements to the internal road and access junction should be implemented in accordance with an approved scheme.

(a),(b) and (c) Conclusions

26. My investigation has established that the Reporter considered properly all relevant planning factors – including the views expressed by the objectors – before reaching his decision on the appeal.

27. While I recognise that Mr C disagrees strongly with the outcome on the appeal, I do not accept his contention that there was administrative fault or service failure on the part of the Reporter in the handling of the appeal procedure.

28. I am satisfied from examination of the documentary evidence available that there was no failure by the Reporter to consider properly the planning history of the site; the relevant planning factors; and the issues relating to amenity and road safety in determining the matter and in granting planning permission subject to appropriate conditions covering the environmental issues raised by the proposal. In these circumstances there is no basis to uphold the complaint.

31 October 2006

Explanation of abbreviations used

Mr C	The complainant
The Reporter	A reporter from the Scottish Executive Inquiry Reporters Unit
The Council	Perth and Kinross Council
Village X	The village where Mr C lives