

Scottish Parliament Region: Central Scotland

Case 200501691: Falkirk Council

Summary of Investigation

Category

Local government: Planning; Policy; Administration

Overview

The complaint concerned the way in which the Council dealt with the complainant's representations about unauthorised development at a neighbouring house.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to do enough to encourage the developer to submit retrospective planning and building warrant applications (*not upheld*);
- (b) the Council failed to consider Mrs C's objections properly and in accordance with their stated procedure (*partially upheld*);
- (c) although the application was contentious, it was dealt with under delegated powers, contrary to Council guidelines (*not upheld*); and
- (d) the Council failed to consider this retrospective application in the same way as other, more timely, applications (*not upheld*).

Redress and Recommendation

The Ombudsman recommends that the Council apologise to Mrs C for failing to adhere to their stated aim of responding to objections within two working days and to emphasise the importance of this to staff.

Main Investigation Report

Introduction

1. On 17 January 2006 the Ombudsman received a complaint from the complainant (Mrs C) about the way in which the Council dealt with representations about unauthorised development at a neighbouring house.

2. The complaints from Mrs C which I have investigated are that:
 - (a) the Council failed to do enough to encourage the developer to submit retrospective planning and building warrant applications;
 - (b) the Council failed to consider Mrs C's objections properly and in accordance with their stated procedure;
 - (c) although the application was contentious, it was dealt with under delegated powers, contrary to Council guidelines; and
 - (d) the Council failed to consider this retrospective application in the same way as other, more timely, applications.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mrs C, the Convenor of the Regulatory Committee, a local councillor and the Council. I have also made reference to the appropriate sections of the Town and Country Planning (Scotland) Act 1997 and had sight of the Terms of Reference of the Council's Regulatory Committee and Scheme of Delegation, together with Falkirk Council's 'Guide to Commenting on a Planning Application' (the Guide). On 5 May 2006, I made a written enquiry to the Council and their formal response to me was dated 26 May 2006.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to do enough to encourage the developer to submit retrospective planning and building warrant applications

5. Mrs C said that, although she began raising her concerns with the Council in May 2004 about the development which was taking place at a property close to her

own, and despite the fact that her neighbour had begun the work without the appropriate permissions, he was given too much flexibility and was allowed to breach deadlines he had been given.

6. From information made available to me by the Council, I understand that, on 4 June 2004, the neighbour was contacted by the Development Control Unit as a consequence of a telephone complaint from Mrs C about alleged unauthorised development. On the same day, the neighbour submitted a sketch plan for consideration as to whether planning permission was required for the work he was undertaking. Shortly after that, a planning assistant inspected the site and the neighbour was told that planning permission was required and that, if he continued the work without the required consents, he did so at his own risk.

7. Mrs C continued her complaint by telephoning on 14, 15 and 16 June 2004, followed by a formal letter of complaint on 21 June 2004. Meanwhile, on 14 June 2004, an enforcement officer visited the site and left the neighbour planning application forms and, on 24 June 2006, he wrote to Mrs C advising her of the planning situation.

8. The neighbour submitted a retrospective planning application to 'Re-tier a sloping garden with retaining wall' on 31 August 2004. In this connection, the Council said that they would normally expect such an application to have been made within 28 days of a request by the Council having been made but the neighbour had asked for an extension of time to prepare the necessary documentation. When the application was submitted it was found to be invalid, as some of the documents were incomplete. It was not validated until 22 October 2004. The planning permission was granted to the retrospective application under delegated powers on 25 January 2005.

9. Meanwhile, the site was visited again on 6 October 2004, this time by a building standards surveyor, and the neighbour was advised that he would also require to obtain a building warrant for the works (a copy of an internal e-mail refers to the requirement for building warrant as being 'only just') and that it was an offence to continue works in terms of the Building (Scotland) Act 1959 and 1970. This information was confirmed to him by letter of 8 October 2004 and a building warrant application was submitted on 22 October 2004. Unfortunately, the

application was deficient and a further letter from the Council of 30 November 2004 highlighting its shortfalls was sent to the neighbour. A response was received from the neighbour on 21 December 2004 but further clarification was required and was requested on 18 January 2005. A reminder letter was sent on 16 May 2005, with a final reminder on 16 June 2005. The Council said that matters were clarified shortly after that and a Building warrant was issued on 5 July 2005 and a Completion Certificate on 21 August 2005.

10. The Council point out that throughout the process, the neighbour handled his applications for planning permission and building warrant himself; no architect or agent was involved. They said that this explained the length of time taken to respond to requirements for further clarification.

(a) Conclusion

11. It is clear that the neighbour had commenced works without the necessary consents. When the matter was brought to their attention by Mrs C, Council officers visited the site and warned the neighbour about the situation. They told him that, should he continue work without planning approval, he did so at his own risk (see paragraph 6). He was also told that it was an offence to continue works without statutory building warrant approval (see paragraph 9) but Mrs C did not consider that this was sufficient. She thought the Council were too lenient towards her neighbour, as he had started the work without the proper permissions.

12. Whether or not the Council seek to take enforcement action is a matter for their discretion. Similarly, so is the method they choose to deal with applicants in an effort to ensure compliance with the legislation. The Council have made the point that the neighbour made the necessary applications and drew up the plans himself. There were obvious difficulties with this (see paragraph 9) but, throughout, I am satisfied that the Council kept in reasonable contact with the applicant in their efforts to regularise the situation. My only reservation is the period after 18 January 2005, when the Council wrote seeking further clarification about his building warrant application. No further action was taken until he was reminded on 16 May 2005. On balance, I do not think that this delay caused any injustice to Mrs C, particularly as the requirement for building warrant appears to have been a close one (see paragraph 9). Accordingly, I do not uphold this aspect of the complaint.

(b) The Council failed to consider Mrs C's objections properly and in accordance with their stated procedure

13. Mrs C objected to the planning application on 10 September 2004 and her letter is date stamped as received by Development Services on both 14 and 23 September 2004. It was acknowledged on 28 September 2004 by the Development Control Manager who said that 'your comments, in so far as they relate to planning matters, will be considered prior to the determination of the application'.

14. Mrs C is unhappy that her representations were not acknowledged within the Council's stated timescales, as shown in the Guide to be normally two working days. In their formal response, the Council agree that her representations should have been acknowledged earlier. They said that the reason for this was that the letter appeared to have been misdirected within the department. However, they advised me that her objections were fully taken into account prior to the application being considered on 25 January 2005. This has been confirmed by sight of the Delegated Report of that date which referred to her objections, including the accuracy of the plans. Although Mrs C said that specific objections about the inaccuracy of the plans were ignored, I do not agree that this was the case. The Council have confirmed that at the time the application was assessed it was considered that the plans submitted were accurate and complete. Officers' site visit notes and photographs were also available for consideration.

(b) Conclusion

15. The fact that the Council did not acknowledge Mrs C's objections in a more timely manner is a procedural failure and she should receive an apology for this. However, there is no evidence to suggest that this led to her objections not being considered properly. They were taken into account but, as he was entitled to do, the Director of Development Services nevertheless approved the application under his delegated powers. In all the circumstances, therefore, I partially uphold this aspect of the complaint.

(b) Recommendation

16. The Ombudsman recommends that the Council apologise to Mrs C for failing to adhere to their stated aim of responding to objections within two working days and to emphasise the importance of this to staff.

(c) Although the application was contentious, it was dealt with under delegated powers, contrary to Council guidelines

17. The Council's Guide states that their Regulatory Committee usually deals with applications 'where the proposals are large scale, raise important policy issues, generate widespread public interest or where the recommendation is to grant the application contrary to the Development Plan'. It further advises that 90% of all applications are determined under delegated powers. Mrs C said that a planning officer told her the application was 'contentious' and, if this was the case, she said the matter should have been considered by the Regulatory Committee not under delegated powers.

(c) Conclusions

18. In a letter to Mrs C, dated 10 March 2005, I am satisfied that a planning officer referred to this application as 'contentious' but the Council have confirmed to me that her neighbour's application did not fall into any of the categories described immediately above and, as such, it was appropriate to determine the application at officer level. I have seen no evidence to suggest that it should have been treated otherwise and I do not uphold this part of the complaint.

(d) The Council failed to consider this retrospective application in the same way as other, more timely, applications

19. In a letter dated 4 May 2005 addressed to Mrs C, the Acting Development Control Manager, amongst other things, said that:

'Furthermore, since the work to which this application relates had been substantially completed, processing of the application was given a lower priority than others where applicants were waiting a planning permission to enable work to proceed.'

This led to Mrs C concluding that a matter, which was of great importance to her, was not given proper attention. However, in their formal reply to me, the Council maintained that planning applications submitted retrospectively are considered in

exactly the same way as planning applications submitted before any works commenced on site and the progress of the planning application appears to reflect this (see paragraphs 5 to 8). I am also satisfied that the planning application, when it was received and considered, was given proper attention (see paragraph 14).

(d) Conclusion

20. There was some slight delay in pursuing the applicant for information concerning his building warrant application (see paragraph 12) but I have had sight of an internal e-mail from the Building Standards Manager which confirms the Council's policy of treating all building warrant applications (retrospective or otherwise) the same. Given my view that the delay described did not result in any injustice to Mrs C, I do not uphold this complaint. However, the Council may wish to consider restating its policy to staff.

28 November 2006

Explanation of abbreviations used

Mrs C	The complainant
The Council	Falkirk Council
The Guide	Falkirk Council's 'Guide to Commenting on a Planning Application'

List of legislation and policies considered

The Town and Country Planning (Scotland) Act 1997

Terms of Reference of Falkirk Council's Regulatory Committee and Scheme of Delegation

Falkirk Council's 'Guide to Commenting on a Planning Application'

Building (Scotland) Act 1959 and 1970