

Scottish Parliament Region: Mid Scotland and Fife

Case 200501996: Perth and Kinross Council

Summary of Investigation

Category

Local government: Planning

Overview

A company (the Company) complained about Perth and Kinross Council (the Council)'s handling of their application for a planning agreement and failings in the Council's complaints procedure.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) delay in agreeing a draft Section 75 Agreement (*not upheld*); and
- (b) failure to comply with their complaints procedure (*upheld*).

Redress and recommendation

The Ombudsman recommends that the Council issue the Company with the reply that they should have received in response to their step three complaint, which should explain and apologise for the failure to deal with it in accordance with their published complaints procedure.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. In October 2005, the Ombudsman received notice from a company (referred to in this report as the Company) that they intended to make a formal complaint to Perth and Kinross Council (the Council) because, since obtaining planning permission for a sand and gravel quarry, they had experienced numerous delays in the Council's processing of a Section 75 Agreement (planning agreement regulating the development or use of land). They complained that the delay was having a severe detrimental effect on their operations and financial affairs and they had, therefore, written to the Council requesting a copy of their formal complaints procedure.

2. In December 2005, I followed up the original enquiry from the Company and asked them if their complaint had been resolved after raising it with the Council.

3. The Company responded, on 12 December 2005, that they had not received a reply to the formal complaint submitted to the Council on 19 October 2005. It had been acknowledged and a formal complaint reference number given, together with advice that the Council would 'investigate the issues we have raised and respond within ten working days from the date our complaint was received in their offices'. However, they stated that it had been some 37 working days since their original complaint. They confirmed that they had invoked the next step in the Council's complaints procedure by writing to the Executive Director (Corporate Services). As no reply had been received after 16 working days, they had taken the next (and final) step in a letter to the Chief Executive on 5 December 2005 and awaited a response.

4. On 20 December 2005, the Company made a formal complaint to the Ombudsman about the Council. They cited the original grounds for their approach to the Ombudsman and added that the Council had failed to comply with their published complaints procedure.

5. The complaints from the Company which I have investigated are about the Council's:

(a) delay in agreeing a draft Section 75 Agreement; and

- (b) failure to comply with their complaints procedure.

Investigation

6. I discussed the complaint with the Company, who provided copies of the correspondence relating to their formal complaint, and I made enquiries to the Council. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both the Company and the Council have had an opportunity to comment on a draft of this report.

Legislation

7. The Town and Country Planning (Scotland) Act 1997, Part III Control over Development, Section 75 (Agreements regulating development or use of land) states in sub-sections (1) and (2) that:

'75 - (1) A planning authority may enter into an agreement with any person interested in land in their district (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement.

(2) Any such agreement may contain such incidental and consequential provisions (including financial ones) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.'

(a) Delay in agreeing a draft Section 75 Agreement

8. Planning permission was approved, subject to a Section 75 Agreement (the Agreement), on 16 February 2005.

9. The Company commented that by early June 2005 – after further submissions and negotiations with the Planning Department – agreement on the 'technical aspects' of the Agreement had been reached.

10. The Company explained that timing was crucial as Condition 7 of the planning consent restricted topsoil stripping operations to the period May to September. Their planning application stipulated that this would take place for six to eight weeks during the first year and, taking account of the organisation involved before this commenced, all consents had to be in place by mid-July.

11. The Company submitted a draft Agreement to the Council on 2 March 2005.

12. The Company stated that negotiations continued in the ensuing four months. However, there were periods of inactivity on the Council's part. They had concerns also about issues related to the Agreement. The Company commented that there were 'repeated calls, e-mails, etc' between the Company, their agents and the Council's Legal Services and they wrote to the Council's Chief Executive on 26 September 2005 seeking her assistance to achieve finalisation of the Agreement.

13. My investigation of the complaint commenced in March 2006 and I made enquiries to the Council on 28 March 2006 giving them an opportunity to comment on the complaint. As part of the complaint concerned a failure to comply with their own complaints procedure in not responding to the complainant, they were given a deadline of 28 days to respond. In the absence of a response, I extended the deadline for comment to 11 May 2006.

14. On 4 May 2006, the Council's Governance and Scrutiny Officer (Officer 1) informed me that he could not locate my enquiry letter of 28 March 2006. However, he said he would deal with the matter as a priority.

15. In early June 2006, the Council provided an e-mail of the reply which had been prepared in December 2005 by the Head of Legal Services (Officer 2) on the Company's complaint. On the lack of progress, the e-mail contained comments that the Department received an e-mail with a draft of the Agreement in March 2005, followed later that month with additional documents provided by the Company's agents. They had taken instructions from the Council's Planning Department and prepared the first draft on 27 May 2005. They then corresponded with the Planning Department and the Company's agents and, during the following two months, it was established that the Company required to obtain a lease for the land the Company wished to use. Revised plans were submitted to the Department on 8 August 2005 and further revised plans on 17 August 2005. On 12 September 2005, a copy of the draft lease was sent in. Two weeks later, the Company wrote to the Chief Executive (paragraph 12).

16. In summing up his Department's handling of the matter, Officer 2 pointed out that:

- there had been regular contact between the parties involved;
- as part of the Agreement, a lease had to be obtained by the applicant;
- a plan and other terms, which had not been in place at the time when planning consent was granted, had to be agreed;
- the Council's solicitor handling the matter had expedited matters by arranging meetings with the Council's Planning Department;
- at the time of the Company's first letter of complaint (26 September 2005), his Department had only two weeks previously received a copy of the draft lease; and
- at the time of the third letter of complaint (19 October 2005), an officer from the Legal Services Department had telephoned and spoken to the Company on 14 October 2005 and the draft agreement was sent out on 21 October 2005.

17. He commented also that he thought that the Company's frustration was with the time the whole process had taken and that 'neither Legal Services nor the Council are responsible for that'. He added that:

'In responding to the complainer I would make the point that a complex process was taking place to agree the terms of the section 75 agreement which were not in place at the time of the planning permission. A significant amount of information required to come from him or his agents. There is no evidence of inordinate delay on the file and there has not been any since the drafts were issued. There was a failure to formally reply to the complainer's letters but there was communication with him and rightly or wrongly the time was invested in dealing with the matter he was complaining about.'

18. No action was taken to issue this as a response to the Company.

19. The Council subsequently provided me with a chronology of contact within the Council and between the Council, the Company and their agents from the period 12 September 2005 to 6 June 2006.

20. The Company were given an opportunity to comment on all the information I had received from the Council. They restricted their comments to Officer 2's

e-mail. They considered that it showed that they and their agents had attempted to be pro-active from the period immediately following the planning approval on 16 February 2005. Also, the Company commented that it confirmed that the 'two issues' referred to were not dealt with correctly. However, with regard to the delay in processing the Agreement, the Company indicated that 'the situation currently is nearing completion'.

21. On 26 June 2006, the Council provided their formal comments on this head of complaint:

'We believe that (the information which they supplied) demonstrates that the Council has been attentive in its handling of this application since (September 2005) and that any protraction of the process has not been due to a lack of momentum from the Council's legal services.'

(a) Conclusion

22. I can understand the Company's frustration at the timescale in seeking to obtain formal agreement from the Council. However, I have seen no evidence of inactivity on the Council's part for prolonged periods.

23. The Council have referred to various issues which required to be addressed and the Company have not disputed this information. It appears that the issues identified by the Council only came to light following the production of the first draft of the Agreement and had an impact on the overall timescale. The Company's frustration appears to have been heightened because of the tight window open to them under the conditions of planning consent to get their operations underway.

24. There were periods specified by the Company before September 2005 when they complained of inactivity, specifically that their telephone calls were not returned promptly by the Council. However, there is confirmation that the Legal Services Department contacted the Company on 14 October 2005, in response to their letters in September and October 2005 complaining about the delay.

25. The Council have commented that from September 2005 they were attentive in the handling of the matter. Although I appreciate that the Company consider there were periods of inactivity, I have not established that there were significant periods of delay in the total time involved. It is clear that the Council did not

respond to the Company's representations in September and early October 2005 until the telephone call of 14 October 2005. While the Company feel there were periods of inactivity, I do not consider that this is an inordinate delay in responding to their representations. Accordingly, I do not uphold the complaint.

(b) Failure to comply with their complaints procedure

26. The Council explained that a 'full response' had not been sent out to the Company's formal complaint because of a misunderstanding of the Council's complaints procedure (the stage 1 response should have been sent by Legal Services). The Council intended to apologise to the Company.

27. The Company commented on the Council's response to this head of complaint:

'We would, however, contend that, if indeed the situation during October – December 2005 was as stated, it surely should not have been outwith the remit or the common politeness of the officers concerned to respond to our letters and appraise us of their position.

Indeed the matter of non-compliance with their own complaints procedure ... appears to have been totally overlooked by the council officers, both at the time and also in the enclosed e-mail.

In this regard we note that as yet you, the Ombudsman, have not yet received any formal reply in this matter to your letter of 28th March 2006 to the Chief Executive.'

28. The Council provided me with a copy of the formal apology which Officer 1 sent to the Company when they responded to my enquiry on the complaint on 26 June 2006. He stated that their complaint had been acknowledged but that the failure to respond to the Company's letter of 5 December 2005 was an 'unacceptable omission'. His investigation into the mistake had shown that it had occurred as a result of a misunderstanding between Council officers about whose responsibility it was to finalise the draft. He commented that he had taken steps to ensure that there was 'clarity about such issues in future'.

29. The Company responded to the Council's formal apology with advice that their letter was not acknowledged and that they had still not received a response to their complaint.

(b) Conclusion

30. The Council have accepted and apologised for their shortcoming in the handling of the Company's formal complaint. However, their explanation for the omission in answering one of the Company's letters has not addressed the failure to comply with the three stages in the Council's complaints procedure or, indeed, the failure to reply to the initial letter which prompted the Company's complaint. There is no doubt that the Council received this letter and the complaint about the failure to respond in October 2005: a reference number was assigned to it and the Company were told that it was being passed from Corporate Services to Legal Services. Clearly, it was not tracked. If it had been, then the expectation is that Corporate Services would have been alerted to the failure to respond and appropriate action would have been taken to remind and ensure a response was sent. The Company followed the Council's complaints procedure to the letter and their grievance is justified. I, therefore, uphold the complaint.

(b) Recommendation

31. The apology which has been given is insufficient to address the extent of the shortcoming which has occurred. The Ombudsman recommends that the Council issue the Company with the reply that they should have received in response to their step three complaint, which should also explain and apologise for the failure to deal with it in accordance with their published complaints procedure.

32. With regard to the failure to track the complaint, a similar occurrence should not arise in future because the Council have given assurances that a better system for tracking correspondence has been introduced (a Council-wide corporate data base referred to in a report issued about Perth and Kinross Council in the Ombudsman's April 2006 compendium). In the circumstances, the Ombudsman has no recommendation to make on this issue.

33. Finally, on the failure to respond within the timescale set for our enquiry. Given the nature of the complaint this was particularly disappointing. The Council have given assurances previously that they will give the 'highest priority' to

correspondence with the Ombudsman. It is of concern, therefore, that my initial letter addressed to the Chief Executive could not be traced and also at the overall timescale in dealing with the matter. While the Ombudsman has no recommendation to make on this aspect of the complaint, she will nevertheless review the Council's responses to enquiries on this issue at a later date to ensure that the Council's assurances are being met.

34. The Council have accepted the recommendations and will act on them accordingly.

19 December 2006

Explanation of abbreviations used

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|---------------|---|
| The Company | The complainant |
| The Council | Perth and Kinross Council |
| The Agreement | The Town and Country Planning (Scotland) Act 1997, Part III Control over Development, Section 75 (Agreements regulating development or use of land) |
| Officer 1 | The Council's Governance and Scrutiny Officer |
| Officer 2 | The Council's Head of Legal Services |

Perth and Kinross Council's complaints procedure (details of steps)

Step 1 – How do I register my complaint?

If you wish to make a complaint or comment about any of our services, you can:

- email us on councilcomplaints@pkc.gov.uk
- use the online form
- write to us at 'Complaints', 2 High Street, Perth PH1 5PH
- call in person to one of our offices
- contact one of our switchboards, who will put you through to the relevant service:
 - (telephone number removed) (2 High Street, Perth)
 - (telephone number removed) (Pullar House, Kinnoull Street, Perth), or
- contact one of our Service Complaints Co-ordinators:
 - Chief Executive's Service – (telephone number removed)
 - Corporate Services – (telephone number removed)
 - Education & Children's Services – (telephone number removed)
 - Environment Services – (telephone number removed)
 - Housing & Community Care:
 - Housing – (telephone number removed)
 - Community Care – (telephone number removed)
 - Planning & Transportation – (telephone number removed)

Whichever method you choose, please describe your complaint clearly and in detail.

If you are unsure about which service to contact, you can get in touch with the Council's Governance and Scrutiny Officer on (telephone number removed).

We will acknowledge your complaint in two working days. Depending on the nature of the complaint, we may be able to resolve it immediately. Whatever the circumstances, we will contact you to try and resolve your complaint within ten working days of receiving it.

Step 2 – What if I'm not satisfied?

If you believe your complaint has not been dealt with and resolved effectively, you can then ask for it to be referred to the Executive Director of the Council Service you have been dealing with, for further assessment.

When this is complete, which will be in no more than ten working days, you will be given a written explanation and a proposal to settle your complaint.

Step 3 – I'm still not satisfied. What do I do next?

If you are not satisfied after steps 1 and 2, you may wish to ask for your complaint to be referred to the Council's Chief Executive. When this is requested, your complaint will be re-examined, along with the earlier responses. This may involve the help of an independent investigating officer.

The Chief Executive will then write to you, giving more explanations or a proposal to settle your complaint. We aim to complete this stage in no more than ten working days, but, if our investigations are likely to take longer we'll write and tell you.

Scottish Public Services Ombudsman

You can get in touch with the Scottish Public Services Ombudsman and ask for an independent investigation into your complaint at any time. You may wish to contact the Ombudsman after all the steps in the Council's Complaints Procedure are completed.

The Scottish Public Services Ombudsman can be contacted at (our address and contact details)

If the Ombudsman agrees to investigate, the Council will be asked what it has done with your complaint. It may be felt that every reasonable step has been taken, or it may be decided to look further into your complaint.

A copy of our full complaints procedure is available for download or you can request a copy from the service you are dealing with, from the Governance and Scrutiny Officer.