

## Scottish Parliament Region: West of Scotland

### Case 200502807: Loch Lomond and The Trossachs National Park Authority

#### Summary of Investigation

##### **Category**

Local government: Complaints handling

##### **Overview**

The complaint concerned the decision to issue a Provisional Tree Preservation Order (TPO) on trees on land owned by the complainant (Mrs C) and that, in the subsequent decision to confirm the TPO, she said that the Director of Planning failed to represent properly her objections to the Planning and Development Control Committee. Later, when Mrs C complained to the Chief Executive, she said he failed to consider the matter properly.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Director of Planning failed to represent properly her objections to the Planning and Development Control Committee (*not upheld*); and
- (b) the Chief Executive failed to consider her complaint properly (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. The Ombudsman received details of Mrs C's complaint on 16 January 2006. She said that the Director of Planning did not present properly her objections to a Tree Preservation Order (TPO) placed on trees on her land. She complained to Loch Lomond and The Trossachs National Park Authority (the Authority)'s Chief Executive but, she contended, he failed to consider the matter properly.
  
2. The complaints from Mrs C which I have investigated are that:
  - (a) the Director of Planning failed to represent properly her objections to the Planning and Development Control Committee; and
  - (b) the Chief Executive failed to consider her complaint properly.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including that between Mrs C and the Authority. I have also had sight of a copy of the Director Planning's Report to the Planning and Development Control Committee (the Committee) on 19 December 2005 and the associated Committee minute. On 5 September 2006, I made a written enquiry of the Authority and their reply was sent to me on 4 October 2006.
  
4. Although, 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 Authority were given an opportunity to comment on a draft of this report.

#### **(a) The Director of Planning failed to represent properly her objections to the Planning and Development Control Committee**

5. On 4 October 2005, the Authority placed a Provisional TPO on trees on land owned by Mrs C. The Provisional TPO had immediate effect. Mrs C said that on 24 October 2005 she submitted a formal letter of objection. By 9 December 2005, she had had sight of the report the Director of Planning was intending to submit to the Committee at their next meeting and she wrote again complaining that it was misleading and misrepresented her objections. She restated her objections to the TPO in full.

6. The Committee met on 19 December 2005 when the Director of Planning's report (see paragraph 5) was considered. The report had attached to it Mrs C's letter of objection dated 24 October 2005. A minute of the meeting, which I have seen, also refers to Mrs C's letter of 9 December 2005 and photographs she provided, being circulated to members prior to the meeting. Despite Mrs C's objections the Committee went on to note the Authority's decision to serve the Provisional TPO and to confirm the Provisional Order as a TPO without modification.

*(a) Conclusion*

7. I have seen the report to which Mrs C objects. However, I have seen no evidence to suggest that her views were misrepresented. Her objections were fully stated and addressed. The report was accompanied by her actual letter of objection and her further letter of objection, with photographs, was also circulated to the Committee. In all the circumstances, I do not uphold her complaint that the Director of Planning failed to represent properly her objections.

**(b) The Chief Executive failed to consider her complaint properly**

8. In the meantime, Mrs C wrote on 10 December 2005 to the Authority's Chief Executive complaining about the Director of Planning and she received his reply dated 15 December 2005. However, Mrs C feels that the Chief Executive failed to give the matter proper consideration. She was concerned that the letter was not post-marked until the day after the Committee meeting (see paragraph 6). It is her view that the Chief Executive altered the date of his letter to make it look as if he conducted his enquiries before-hand.

The Authority's response to me of 4 October 2006 addressed this aspect of Mrs C's complaint. The Chief Executive said that he received Mrs C's letter of 10 December 2005 on 13 December 2005. It was acknowledged by his PA the same day, when he caused an internal investigation to take place. He said that he compiled a reply to Mrs C, giving his conclusions to his investigation, on 15 December and this letter was typed and signed on Friday, 16 December 2005. The letter was too late for the post on Friday and then appeared to miss the post on Monday, 19 December 2005. The Chief Executive said that with the passage of time, he was unable to offer an explanation for this delay. The letter was franked on 20 December 2005 and sent to Mrs C.

*(b) Conclusion*

9. I have seen the letter the Chief Executive sent to Mrs C and it is dated 15 December 2005, although the Authority said it was typed and signed the following day. I can readily see then the cause for confusion and suggest that the Authority double check that the issue date of letters reflects the accurate date of signing. Similarly, to try to ensure as far as it is possible that letters are posted on the day of writing. I accept that this is not always achievable and, with regard to this particular letter, I agree with the Chief Executive that it would be difficult with the passage of time to explain why the letter was not posted on 19 December but was franked on 20 December 2005. Nevertheless, taking the Chief Executive's explanation into account, together with the terms of the letter sent, I cannot conclude that this confusing sequence is evidence to support Mrs C's contention that the Chief Executive did not consider her complaint properly and I do not uphold her complaint of maladministration.

30 January 2007

**Explanation of abbreviations used**

Mrs C	The complainant
The Authority	Loch Lomond and The Trossachs National Park Authority
TPO	Tree Preservation Order
The Committee	The Planning and Development Control Committee