

Scottish Parliament Region: Highlands and Islands

Case 200503682: The Highland Council

Summary of Investigation

Category

Local government: Complaints handling

Overview

The complaint concerned a breach of planning permission which was acknowledged by the Highland Council (the Council) but where, the complainant (Mr C) alleged, little action had been taken.

Specific complaint and conclusion

The complaint which has been investigated is that despite complaints that a condition of planning consent had been breached, the Council delayed and took little action (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) proceed to implement enforcement action without delay and in the event that they fail to achieve compliance, seek to implement an appropriate penalty; and
- (ii) offer Mr C a fulsome and sincere apology, reinforced by a payment to recognise the time and trouble involved in pursuing the matter and making his complaint, and the impact on his home over the years.

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

Main Investigation Report

Introduction

1. On 30 March 2006 the Ombudsman received a complaint from Mr C concerning condition 7 of a planning permission granted on 25 January 2001 to develop a secondary school adjacent to his home. He said that the condition had been breached and that although the Highland Council (the Council) acknowledged and confirmed this, there had been repeated delay in responding to his complaints and little action had been taken. Mr C said that he first complained in 2002 but he alleged that, since then, the Council had fobbed him off.

2. The complaint from Mr C which I have investigated is that despite complaints that a condition of planning consent had been breached, the Council delayed and took little action.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council; the Council and the developer concerned; and the Council and the management company with responsibility for the school which was procured under a Public Private Partnership (PPP). I have also had sight of the planning permission concerned, a Breach of Condition Notice dated 19 September 2006 and a briefing note sent to the Lochaber Area Planning Committee, the Area Convenor and the local member on 29 November 2005.

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

Complaint: Despite complaints that a condition of planning consent had been breached, the Council delayed and took little action

5. Mr C said that on 25 January 2001 the Council gave conditional planning permission to the developer for the 'erection of a secondary school and associated facilities' on a site which was close to his home. Condition 7 of the permission stated that, '...prior to the floodlights being installed and switched on, appropriate and adjustable hoods shall be installed around the floodlights to ensure no glare,

dazzle or light pollution is caused such as may prejudice adjacent proprietors' enjoyment of their properties'. Mr C said that the school's shinty pitch and all-weather football pitch were adjacent to his home and these were lit by 'enormous floodlights' but, he complained, that from the outset, the floodlights had not been properly shielded and the consequent glare shone directly onto his property. He said the lights were a real hazard to anyone visiting or leaving his property at night and were clearly in breach of planning permission. Mr C said that from the outset he complained to the Council but that over many years he had been fobbed off.

6. From the information available to me, I am aware that Mr C wrote complaining on at least 3 occasions in 2002 (on 25 July and 9 and 19 December 2002). He received a reply to his letter of 25 July 2002 some 8 months later, on 5 March 2003, when the Area Planning and Building Control Manager noted his concerns about the floodlights and said that the contractor had been given additional time, until March 2003, to fit the necessary hoods (to deflect the light). He indicated that if work was not completed, consideration would be given to whether there was a need to instigate enforcement action. He apologised for the delay in replying.

7. On 10 March 2003, the Director of Planning wrote to Mr C in response to his letter to the Chief Executive of 9 December 2002. He acknowledged that the developer was in breach of the planning consent and in the meantime had allowed him two months to fit hoods to the lights, failing which the Council would consider enforcement action. He apologised for the delay in replying.

8. In May 2003 the Area Planning and Building Control Manager met with the developer's lighting engineer who told him that the original specification for the lights was inadequate. (Mr C was not made aware of this until a year later by letter of 5 April 2004, paragraph 9 below). Planning officials were advised that his company had, therefore, sought and fitted a new specification. In the lighting engineer's opinion the new lights were an efficient and contained way of minimising light nuisance and did not cause glare. Nevertheless, the Council's own lighting engineer was asked by the Area Planning and Building Control Manager to review the appropriate technical material, inspect the site when the floodlights were in use and to assess the glare impact from Mr C's house.

9. Mr C remained unhappy with the situation and again wrote complaining on 12 June and 1 December 2003. He said that the developer was continuing to flaunt the regulations and was insistent that the terms of the planning consent be adhered to. He said the situation was affecting his enjoyment of his home. I am unaware whether Mr C received a reply to his June letter but as he had only received an acknowledgement to his letter of 1 December 2003, which had been addressed to the Chief Executive, he sent a reminder on 4 April 2004. The Chief Executive responded on 5 April 2004 apologising for the delay and advising Mr C of the meeting that had taken place with the developer's lighting engineer the previous May (see paragraph 8 above). He said the new specification was being checked out. Meanwhile, Mr C had been making his own enquiries and determined that the light specification mentioned in May 2003 had not in fact been installed. He made a further complaint to the Chief Executive stating this on 6 June 2004 and said he wanted the offending lights switched off because of their detrimental impact. This letter received a response dated 5 July 2004, apologising for the delay, and confirming that the new specification had not been fitted. The Chief Executive said that the Director of Planning had been asked to take steps to ensure that the flood lights complied with planning permission.

10. The available documentation showed that on 20 October 2004, the Area Planning and Building Control Manager wrote to the developer referring to the May 2003 meeting (paragraph 8). He said that the new specification had not been fitted, notwithstanding their unsuitability, that they were in breach of their planning consent and that immediate action should be taken to remedy the situation. Failure to do so would result in the Council seeking to take enforcement action. He looked for an early response to his letter.

11. As Mr C said that he had heard nothing from the Chief Executive subsequent to his letter of 5 July 2004 (paragraph 9), he wrote again on 28 January 2005 demanding immediate action. It is unclear whether this letter received a response although on 23 March 2005 the Director of Planning wrote (in response to a letter of 9 February 2005) acknowledging that little progress had been made since October 2004, but, that local members were now being consulted about

authorisation to take enforcement action¹. He apologised for the delay in contacting Mr C.

12. On 29 November 2005 the Area Planning and Building Control Manager issued briefing notes to the Local Area Committee Chairman, the Area Convener and Local Member advising them of the history of the site and recommending the service of a Breach of Condition Notice requiring the appropriate lights or hoods to be fitted. Mr C was told of this action on the same day and received a further apology for the overall delay.

13. A Breach of Condition Notice was served on 19 September 2006 to the PPP manager and the developer giving them 30 days to comply. Otherwise the matter could be reported to the Procurator Fiscal or an Enforcement Notice served. (I have been advised that between January and June 2006 planning officials were in contact with the company in the hope that the works would be taken voluntarily.)

14. Since then, on 4 December 2006, the Council advised me that works had been undertaken by the developer in November 2006 which included replacement of some of the light units, realignment of all the lighting units and the installation of external hoods on two of the lighting columns. Testing took place at which Mr C and Council officials were present and, on the basis of readings taken at the time, the Council have concluded that the breach of planning control has been resolved and the appropriate condition (paragraph 5) has been satisfied. (Although Mr C has advised me that he remains unhappy with one of the lights involved.)

Conclusion

15. The progress of Mr C's complaint as outlined above (paragraphs 5 to 13) is notable for the failure to respond to correspondence, and the number of apologies for delay made to him but where scant effective action was taken. Information was still being sought on the specification first mentioned in May 2003 a year later (paragraphs 8 and 9). It took 14 months for the Council to confirm that this new

¹ In March 2005 the matter was reported to the Chairman, Local member and Convener of the Local Area Committee with a recommendation that a Breach of Condition Notice be served. Members did not authorise this action at this time. There was a concern that if no floodlighting existed, the pitch could be rendered useless in the interim.

specification had not been fitted. This is too long. Although the Area Planning and Building Control Manager wrote to the developer in October 2004 saying that in the absence of immediate action the Area Planning Committee would be approached about taking enforcement action, this did not happen until months later, in March and November 2005 (paragraph 12). Again, this was too long.

16. I am aware that to some degree the Council were reliant upon the information the developers gave them. I also accept that it is better to achieve a resolution by agreement rather than by the commencement of enforcement proceedings. However, it was only recently that enforcement action was initiated, some three and a half years after it was acknowledged by the Council that the condition had been breached (on 10 March 2003). I accept that during this period the Council were led to believe that a more appropriate specification had been fitted, but this turned out to be incorrect. My comments upon the time taken to establish this have already been made.

17. In all, I consider that the Council's actions (or inactions) amount to maladministration and I uphold the complaint. It is easy to appreciate how the complainant felt he had been fobbed off. However, I am pleased to see that the planning condition concerned has now been fulfilled (paragraph 14).

Recommendations

18. Taking the foregoing into account the Ombudsman recommends that the Council offer Mr C a fulsome and sincere apology reinforced by a payment to recognise the time and trouble he has been put to over the years in pursuing this matter and making his complaint, and also the impact on his home over the years.

19. The Council have accepted the recommendations and have agreed to pay Mr C £1000. The Ombudsman is pleased to note this action and asks that the Council notify her when the recommendations are implemented.

27 February 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	The Highland Council
PPP	Public Private Partnership