

Scottish Parliament Region: West of Scotland

Case 200400314: East Dunbartonshire Council

Summary of Investigation

Category

Local government: Planning, Handling of application

Overview

The complainant (Mrs C) raised a number of concerns regarding the construction of new steps and a patio area on a neighbouring Council property. In particular, she was concerned that East Dunbartonshire Council (the Council) failed to comply with the planning guidelines and failed to ensure that staff followed the correct processes in the issuing of contracts for the construction of the steps and patio area.

Specific complaint and conclusion

The complaint which had been investigated is that the Council failed to adhere to the correct planning procedures for patios and decking (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council review its procedures to ensure that appropriate consultation with the Planning Department takes place prior to the Council undertaking significant improvements, repairs or developments to Council housing stock.

Main Investigation Report

Introduction

1. On 14 May 2004 the Ombudsman received a complaint from a woman (referred to in this report as Mrs C). She complained that East Dunbartonshire Council (the Council) had arranged for the construction of a stairway and patio area on a neighbouring Council property which caused a loss of privacy in her own home and garden. Additionally she considered that Council officers did not follow the correct procedures when planning and arranging for the construction of the development.

2. The complaint was allocated to a Complaints Investigator (the Investigator) who made enquiries of the Council, visited the site and attempted to resolve the complaint through discussion with both parties. The Council agreed to take certain steps to ensure that issues such as encroachment and screening would be addressed, offered an apology to Mrs C, and agreed to make an ex-gratia payment in respect of the inconvenience the process had caused. The Investigator wrote to Mrs C on 10 August 2004 advising that he considered the main issues to have been addressed through the local resolution process.

3. On 2 September 2004 the Ombudsman received a further letter from Mrs C appealing the Investigator's decision and suggesting that she did not consider the complaint had been adequately investigated. As part of our internal procedure at the time, this letter was passed to the Investigator's Manager (the Manager) for consideration. The Manager wrote to Mrs C on 27 September 2004 upholding the Investigator's decision. Mrs C then complained about both the decision on her complaint and the service we had provided. On 31 May 2005 the Ombudsman wrote to Mrs C to advise that she had asked one of the Deputy Ombudsmen to review the file and the merits of the decision. On 7 September 2005 the Deputy recommended to the Ombudsman that we re-open the case as he considered that one fundamental question remained unanswered, namely, whether the Council had adhered to their own procedures on planning procedure for patios and decking. He wrote to Mrs C on 13 October 2005 to advise that the case would be re-opened as a formal investigation under the new process introduced by the Ombudsman's office earlier that month.

4. Mrs C also raised concerns about the way this development was planned, managed and constructed. These included:

- (a) the Council incurred significant cost without following Council procedures;
- (b) Council Officers engaged a supplier of personal choice;
- (c) Council Officers made a verbal contract; and
- (d) Council Officers allowed the contractor to increase the value of the contract at will.

5. Schedule 4, Section 7(1) of the Scottish Public Services Ombudsman Act 2002 states that the Ombudsman must not investigate 'Action taken in matters relating to contractual or other commercial transactions of a listed authority', therefore, I was not able to investigate points (b) to (d) above.

6. Point (a) relates to the financial control of East Dunbartonshire Council. These are not matters where it would be appropriate for the Ombudsman to adjudicate. Concerns about the financial control within a local authority are most appropriately raised with Audit Scotland and so I have not investigated this issue.

7. The complaint from Mrs C which I have investigated is that the Council failed to adhere to the correct planning procedures for patios and decking.

Investigation

8. I have examined the correspondence forwarded by the complainant, reviewed relevant Council policies and procedures and made enquiries of the Council. Additionally I have reviewed the previous case notes and details of this site visit. I have not included in this report every detail investigated but 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.

Complaint: The Council failed to adhere to the correct planning procedures for patios and decking

9. The works which have given rise to this complaint originate in a request by a Council tenant for repairs to the steps providing access to their main entrance and rear garden area. The tenant highlighted to the Council that the steps were unsafe. The Maintenance Officer visited the site and concluded that there was a need to rebuild the steps. He considered that rebuilding the steps would also require a retaining wall as a result of the different levels involved. Additionally this retaining wall would, for safety reasons, require a fence to ensure nobody could fall from the structure. The structure, as built, has meant the filling in of the area between the retaining wall and the boundary fence giving a 'patio

effect'. The resultant structure is substantial and overlooks neighbouring properties, including the home and garden of Mrs C.

10. Council Officers went ahead with the construction and employed a contractor to construct the step area without referring the matter to the Planning Department for advice. The Council's Repairs Management Centre has acknowledged that, given the nature of the works, discussions with the Planning Office prior to construction would have been advisable.

11. On receipt of the original complaint from Mrs C, the Investigator asked the Council's Chief Executive whether the Planning Department considered the new steps and subsequent 'patio' area complied with planning guidelines. The Chief Executive advised that the Planning Department considered the structure did not require planning consent and that they were not in breach of Local Plan guidance. The development was deemed to be 'permitted' in terms of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

12. Schedule 1 part 12 Class 33(c) states that any development under enactment carried out by a planning authority within their own district is 'Permitted Development' provided that the estimated cost of the works does not exceed £100,000.00 and that it is not:

- (i) development of any of the classes specified in Schedule 2 (bad neighbour development); or
- (ii) development which constitutes a material change in the use of any buildings or other land.

13. The Council have provided me with details of developments which would be considered to be 'bad neighbour' developments under the Order. They have advised me that they consider that this construction of a raised access area was not a bad neighbour development or material change in use, nor did it exceed £100,000.00 in cost. As such, they consider it was permitted development and did not require consent.

14. The area where Mrs C lives falls within the provisions of the East Dunbartonshire Local Plan 2005. However, when the raised access area was constructed, that Local Plan had not yet been adopted by the Council. The relevant plan at the time was the East Dunbartonshire (Strathkelvin Area) Local Plan 2000. The East Dunbartonshire (Strathkelvin Area) Local Plan 2000 had no specific guidance on the construction of raised decking and patio areas.

15. I have seen a press release from the Council issued in May 2004, some months after the order to carry out the works was issued. This press release makes it clear that at that time the Council was concerned about the impact of raised timber decking. The release said that over the previous year the Council had received a number of complaints about the impact of raised timber decking. It also suggests that some raised timber decking may require planning consent, and encourages people to find out more about the planning issues by contacting the Planning Department. The Council has, however, confirmed that it did not have specific guidance in place in respect of raised patios or decking areas.

Conclusion

16. The Town and Country Planning (General Permitted Development) (Scotland) Order 1992 Schedule 1 part 12 Class 33(c) details why this construction is Permitted Development for the Council. As a result of this the question of the Council's adherence to planning guidelines in respect of patios and decking is redundant. As such, I am unable to uphold this complaint.

17. The East Dunbartonshire (Strathkelvin Area) Local Plan 2000 did not contain guidance in respect of patios and raised decking areas. The East Dunbartonshire Draft Local Plan 2005 did contain such guidelines. Although this plan had not at that stage been formally adopted by the Council, the contents of the Draft Local Plan would have been a material consideration when considering any formal planning applications. Although legally the Council were within their rights to consider this as Permitted Development, best practice would be to ensure that any guidelines which potentially would have been relevant to a formal planning application should also be considered when the Council viewed a construction as Permitted Development for them.

18. While I cannot uphold the complaint as stated, I do find that the Council was at fault in that the Repairs Management Centre did not consult with the Planning Department before going ahead with the development. Additionally following best practice would have enabled the Planning Department to consider the relevance of the Draft Local Plan for this construction.

Recommendation

19. While the criteria for Permitted Development differs for councils and private developers, best practice is that a council should adhere to its own policies and guidelines. The Ombudsman recommends that the Council review its procedures to ensure that appropriate consultation with the Planning Department takes place prior to the Council undertaking significant improvements or developments. The Council should inform the Ombudsman of the outcome of this review.

27 March 2007

Explanation of abbreviations used

Mrs C

The complainant

The Council

East Dunbartonshire Council