

Scottish Parliament Region: Central Scotland

Case 200501334: South Lanarkshire Council

Summary of Investigation

Category

Local government: Planning; Handling of application (complaint by opponent)

Overview

The complainants (Mr and Mrs C) raised seven issues relating to the handling of an application for planning permission for residential development in the steading where they reside. They also complained about the failure of South Lanarkshire Council (the Council) to meet their targets in responding to their complaint.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to spot errors by the applicant in his description of the proposals (*not upheld*);
- (b) objectors were misled by officers that the application would be considered on its merits (*not upheld*);
- (c) the report to committee on the application failed properly to assess and evaluate the proposals (*not upheld*);
- (d) the report failed adequately to convey the unique situation of Mr and Mrs C and the impact on their human rights (*not upheld*);
- (e) the report to committee showed bias and discriminated against Mr and Mrs C, failed adequately to represent their objections, and failed to challenge untruthful statements by the applicant (*not upheld*);
- (f) Mr and Mrs C were not furnished with a copy of the report and were not informed they could approach a councillor to present their case (*not upheld*);
- (g) as objectors, Mr and Mrs C were not afforded the opportunity to be heard by the committee (*upheld*); and
- (h) the Council failed to meet their published targets in responding to Mr and Mrs C's complaint (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council apologise to Mr and Mrs C for

the failings identified. She recognises that The Planning Act (Scotland) 2006 will establish a new system of public engagement and consultation in the planning process and recommends that the Council in meeting their obligations take all necessary steps to ensure that objectors in sparsely populated areas are not discriminated against.

Main Investigation Report

Introduction

1. On 19 August 2005 the Ombudsman received a complaint from the owners of a small holding (Mr and Mrs C) that the Council had not properly considered an application for planning consent for the conversion of adjacent agricultural buildings to form two residential units.

2. The complaints from Mr and Mrs C which I have investigated are that:

- (a) the Council failed to spot errors by the applicant in his description of the proposals;
- (b) objectors were misled by officers that the application would be considered on its merits;
- (c) the report to committee on the application failed properly to assess and evaluate the proposals;
- (d) the report failed adequately to convey the unique situation of Mr and Mrs C and the impact on their human rights;
- (e) the report to committee showed bias and discrimination against Mr and Mrs C, failed adequately to represent their objections, and failed to challenge untruthful statements made by the applicant;
- (f) Mr and Mrs C were not furnished with a copy of the report and were not informed that they could approach a councillor to present their case;
- (g) as objectors, Mr and Mrs C were not afforded the opportunity to be heard by the Committee; and
- (h) the Council failed to meet their published targets in responding to Mr and Mrs C's complaint.

Background

3. The Council's Hamilton District Local Plan aims to define a defensible Green Belt. It states that within the area designated as Green Belt there will be a strong presumption against development, including changes of use, unless shown to be necessary for the furtherance of agriculture, forestry or other uses appropriate to the Green Belt. New buildings should be integrated where possible within existing farm steadings or building groups. Relevant Local Plan policies EN1a and SLP1 state that proposals for rehabilitation or change of use for residential purposes of disused or redundant buildings may be approved where a total of nine criteria are met including that it has been satisfactorily demonstrated to the Council that the building is no longer required, appropriate, or marketable, for agricultural purposes or other appropriate countryside uses.

4. Central Government guidance to planning authorities on Development Plan Departures is contained in Scottish Office Development Department Planning Advice Note 41 (PAN 41) of March 1997. That advice enjoins planning authorities to advertise potential departures. It also advises that authorities should consider whether it might be appropriate to give all those who made representations the opportunity to appear at the planning committee or at a special hearing or delegated/sub-committee meeting. The advice, while recognising that such an invitation remains at the discretion of the authority, states that selective use of the practice can lead to greater confidence by the public in the planning authority's decision.

5. The Council have published their criteria for dealing with requests to be heard by a Local Area Committee. A written request to be heard by Committee before a proposal is determined must be received a minimum of two days before the appropriate committee meeting. A hearing is offered where objections are lodged to a proposal where the officer's recommendation is to grant consent contrary to approved Structure or Local Plan policy or standards. In other cases, hearings are assessed where a majority of committee members agree; secondly, where the Committee Chair considers an applicant or objector wishes to present new relevant or additional information to committee; and thirdly, where, in the view of the Chair, an application has attracted a substantial body of objection and the officer's recommendation is to grant planning consent.

Investigation

6. Mr and Mrs C supplied documents and information relating to their complaint. Enquiry was made of the Council. Both Mr and Mrs C and the Council were given the opportunity to comment on two drafts of this report. While not all the information obtained in the investigation appears in the report, I am satisfied that no relevant information has been excluded.

7. Mr and Mrs C own a farmhouse (X Farmhouse), which they acquired from the previous owner in 1986, some fields and part of the original X farm steading. They have been a registered agricultural holding since 1988 and have been registered to keep goats since 1996. The goats, poultry and ducks, occupy a building adjoining another which is in that part of the steading not in their ownership. The remaining steading buildings were used by the current owner (Mr A) until he built a new cattle shed at his own farm in May 2001. The buildings were rented out to another farmer (Mr B) for the purpose of in-housing

Mr B's cattle during the winter of 2002/03. Mr and Mrs C understood that Mr A refused Mr B's request for a similar arrangement for the winter of 2003/04.

8. Mr and Mrs C considered the adjoining building would be ideal for use by them as a calf-rearing unit, feed store and craft workshop but an approach to Mr A to sell to them was also unsuccessful. As far as they are aware, Mr A did not seek to market the building for agricultural purposes.

9. In July 2004, Mr A submitted a planning application to convert disused agricultural buildings at the steading to form three residential units. This application was subsequently withdrawn. However, a further application was made thereafter for planning consent for the conversion of disused agricultural buildings to form two residential units (the Application). The description of the application site was initially inaccurate.

10. Notwithstanding the erroneous description, Mr and Mrs C viewed the plans and submitted an eight page letter of objection to the planning case officer (Officer 1) on 29 December 2004. In summary, they contended that Mr A had misrepresented his legal rights of access in the plans and part of the public road. They quoted relevant Council policy presuming against development in the Green Belt, including change of use, unless it could be shown to be necessary for the furtherance of agriculture. Mr and Mrs C pointed out that the two houses were neither for Mr A's own use nor for farming tenant occupancy. They also pointed out that the proposals were against the Council's policy of openness in the country, would place a housing accumulation in an area of solitary houses, and would destroy the rural character of the area and would establish a precedent.

11. The development was, in the complainants' opinion, contrary to relevant Scottish Office guidance (NPPG18) on Planning and the Historic Environment and to another Scottish Executive Report on the *Conversion of Redundant Farm Steadings to Other Uses* which stressed that, wherever possible, old farm buildings should be retained for agricultural use and that it had to be satisfactorily demonstrated that the building was no longer required, appropriate, or marketable for agricultural purposes or for other countryside uses.

12. Mr and Mrs C expressed concern about how the occupants of the proposed houses would react to noise, smells and health issues from animals

literally 'through the wall', to restrictions on their own agricultural operations (or their ability to sell their agricultural unit), to potential problems with sewerage and to the design of the new dwellings destroying the character and integrity of traditional building. They also stated that there were currently 19 swallow nests and that the building was also frequented by bats. Finally, they stressed that their privacy, solitude, and way of life, would be severely impaired if consent were granted.

13. Officer 1 sought information from Mr A, about agricultural use of the building. Officer 1 subsequently showed Mr and Mrs C a statement and letter from Mr A, claiming that the building had not been in use for twenty years and was unsuitable for farming and confirmation that Mr B, who had previously rented from Mr A, had since found alternative buildings to rent at another nearby farm. Officer 1 invited Mr and Mrs C to comment. They submitted a further letter on 7 April 2005. Their letter commented in detail on the use of the building since 1982. According to Mr and Mrs C, Mr A and previously his father carried out conversion work and housed at least 50 cattle there every winter from 1982 to 2001. In the winter of 2002/03 the building was rented out to Mr B. Mr and Mrs C understood the building to have been re-roofed with the aid of an agricultural grant in 1996. Mr A had subsequently constructed a new cattle shed in 2001 but in their view that did not render the building useless, inadequate or inappropriate. Mr B had hoped to rent the building again in 2003 but Mr A wanted to keep it empty. They contested statements made by Mr B giving his opinion about the building. They repeated that they had expressed an interest in buying the building and had offered Mr A more than its market value for agricultural use. They claimed that the building was redundant because Mr A had constructed a new building; it was not in their view inappropriate for agricultural use and the applicant had not satisfactorily demonstrated that the building was no longer marketable.

14. A detailed report on the Application (the Report) was prepared on 21 April 2005 by the Executive Director (Enterprise Resources) for submission to the Local Area Committee (the Committee) on 11 May 2005. The Report noted that there had been statutory neighbour notification and advertisement in the local press, and that there had been five letters of objection. There had been no objection to the proposals by any of those consulted (Environmental Services, Roads and Transportation Services, Scottish Water, Scottish Environmental Protection Agency, Transco, Scottish Power, and the RSPB), though several points made by them were detailed. Four pages of the Report

were devoted to setting out 33 points of representation made by five neighbours with detailed responses from the planning services. The Report also set out the relevant planning history, local plan policy, and relevant government advice.

15. In a concluding three page section devoted to assessment and conclusions, the Report highlighted that the determining factors in assessing the Application related to whether the proposed development was in accordance with national planning guidance and local plan policy, whether the proposed development impacted upon the amenity of the area, and its traffic implications. The proposal was clearly stated to be located within the Green Belt and to be affected by Policy EN1a of the adopted Hamilton District Local Plan. That policy set out a strong presumption against development, including changes of use, unless it could be shown to be necessary for the furtherance of agriculture, forestry or other uses appropriate to the Green Belt. Policy EN1a, however, allowed for the approval of proposals for rehabilitation or change of use for residential purposes of disused redundant buildings, provided they meet seven specific criteria listed in paragraph 3.1.1 of the policy and two additional points in paragraph 3.2.2.

16. The proposals were assessed against these nine criteria. The impact of advice provided by the Scottish Executive on the *Conversion of Redundant Farm Steadings to Other Uses* and NPPG 18 Planning and the Historic Environment was also considered in the assessment. The conclusion reached was that the criteria had been met and that, subject to appropriate conditions, planning permission for two units could be granted. The Executive Director accepted that the applicant had not been able to demonstrate that the buildings were no longer marketable for agricultural or other countryside purposes, but had provided sufficient justification to prove that the building was no longer required or necessary for the operation of his business. He also referred to other cases within the District where 'a number of agricultural buildings had been sensitively converted'. He recommended that planning permission be granted subject to conditions. In a separate paper 14 conditions were detailed.

17. Mr and Mrs C obtained a copy of the Report on 9 May 2005 and prepared a letter dated 10 May 2005 which they asked to be distributed to each member of the Committee. They claimed that in making a recommendation to grant the application, the Planning Department had shown bias and discrimination against their objections. Although previously told by the Planning Department that the Committee would determine the application based on the uniqueness of

the case, the advice given to the committee was based on precedent. The uniqueness of their situation was not mentioned in the Report, namely that they, rather than the applicant, lived adjoining the site. They also alleged that the applicant had made untrue statements about use of the building and had not demonstrated that the building was 'no longer appropriate' for agricultural use. The complainants stressed the potential conflict likely to arise from houses close to their smallholding. They pointed specifically to paragraph 3.46 of the Scottish Executive advice on the *Conversion of Redundant Farm Steadings to Other Uses*. They also indicated that it was not evident from the Report that the Roads Department had been consulted on amended roads plans submitted in April 2005. They claimed that their human rights had not been addressed and requested that the Committee set aside the Report, study the details presented, and grant them 'a fair hearing in this case with all policies discussed'. Mr and Mrs C were aggrieved that Officer 2 refused to distribute the letter, allow them to read the letter at the Committee, or to read it himself in its entirety to the Area Committee.

18. The Application was determined on 11 May 2005. The minute of the meeting records that:

'A further letter of representation had been received from [Mr and Mrs C] expressing their concerns regarding the proposal. The points raised in the letter were addressed by officers and considered by the Committee.'

The decision was that the Application be granted subject to the conditions specified in the Executive Director's Report.

19. On 20 May 2005, Mr and Mrs C submitted a formal complaint to the Council. They claimed that their unique situation had been ignored in the Report and that they had only learned from Officer 1, two days prior to the Committee meeting, that the Report had been prepared, recommending conditional approval. On enquiry, they were told that, in terms of the Council's procedures, they could not address the Committee.

20. Mr and Mrs C's letter referred to the Report being flawed in its remarks about an access road and with regard to Mr A's statement that the steading had last been in regular use 20 years previously. Mr and Mrs C expressed concern that they had not been properly informed in their discussions with Officer 1 about their rights as objectors. They maintained that granting the Application was unjustified and was contrary to the Council policies and Scottish Executive

guidelines.

21. A reply was sent to Mr and Mrs C by the Operations and Area Manager Planning and Building Control Services (Officer 2) on 4 July 2005. Her letter contained an apology for the response being delayed. Officer 2's reply dealt with four issues, namely the application process, the Committee process, the accuracy of the Report, and planning merits.

22. On the first point, Officer 2 accepted that there had been 'difficulties with the processing of this application'. The proposal had been re-advertised and the plans amended. The Application was registered with an incorrect address. While the plans had not shown the proximity of the housing of Mr and Mrs C's animals to the adjoining building, this had been referred to in their letters of objection. In terms of vehicular access to the site, the plans had been amended to reflect the correct site boundary but the access from the site had not been altered and, on that basis, Roads and Transportation Services had not been consulted again.

23. Mr and Mrs C submitted a further letter on 8 July 2005, complaining that it had taken 29 days for them to receive a previous response. They highlighted the potential conflict likely to occur with residents of the new houses. Mr and Mrs C maintained that the proposals had failed to meet three of the criteria stipulated in the Green Belt policy, yet the application had been approved.

24. The Chief Executive responded on 8 August 2005. He again apologised for the previous delay in responding to their letter of 20 May 2005. He indicated that, while the Report had not referred specifically to paragraph 3.46 of the Scottish Executive advice, relating to proposals within 400 metres of a working farm, the Report had referred to the proximity of animals on Mr and Mrs C's property to the proposed houses. The Chief Executive referred to questions of access but stated that these did not prevent a decision being made on a planning application. The Chief Executive accepted that the Report did not state that the building was in constant agricultural use. The building had not been used by the applicant and this formed part of the applicant's justification for the proposed conversion. In the Chief Executive's view, Planning Services had given appropriate consideration to Green Belt policy and to the impact of the development on Mr and Mrs C's amenity. He concluded his letter by advising Mr and Mrs C of the address of the Ombudsman.

25. Mr and Mrs C submitted their complaint to the Ombudsman's office on 16 August 2005. After considering the information they supplied, I made enquiry of the Council on 9 November 2005.

The Council's response to the complaint

26. The Council's Head of Administration (Officer 3) responded in a letter of 6 December 2005 to the eight aspects of complaint as follows:

- (a) after the defects of the description in the Application had been raised the proposal was re-advertised with the correct address;
- (b) the Application had been considered on its individual merits and characteristics and had been evaluated against local plan policy and criteria contained within Policy EN1a of the adopted Hamilton District Local Plan. The proposed development had not been considered solely on precedent;
- (c) the Report provided a detailed assessment and evaluation of the proposals in terms of relevant government guidance and Policy EN1a of the adopted Local Plan and Policy SLP1 on the Green Belt;
- (d) the Report had clearly indicated the proximity of Mr and Mrs C's house to the site of the Application. Some 33 concerns of objection were listed, 15 of these detailed Mr and Mrs C's concern at the impact of the proposed development on their privacy and amenity. Officer 3 considered that Mr and Mrs C's human rights had been duly considered within the Report;
- (e) the points of objection had been addressed in the Report and Mr and Mrs C's objections had been adequately represented;
- (f) Council committee reports are not sent automatically to objectors but are available to the public three clear days prior to the date of a committee meeting and may be sent if requested. Agendas and reports are available on the Council's website and committee agendas are also available at public libraries. The Council had no formal procedure on approaching councillors and did not consider it would be appropriate to offer advice on the matter;
- (g) Mr and Mrs C's request did not meet the Committee's general criteria for allowing objectors to be heard (paragraph 5). The Application, although advertised as potentially Development Contrary to the Development Plan, was adjudged by the committee not to be contrary. In terms of the relevant national guidance (PAN 41 – paragraph 4) the Council were not, therefore, obliged to hold a hearing and no hearing was offered;
- (h) because of staff absences and vacancies at the time, the Planning Service was unable to meet its standard response time. The Council apologised

for this and had noted for the future their lack of explanation for the delay.

Mr and Mrs C's response to the Council's comments

27. I sent Mr and Mrs C a copy of the Council's comments on 7 December 2005 and they provided a detailed response by letter of 10 January 2006. Their letter revisited the merits of the arguments presented to committee. They stressed the range of the information they had sourced and submitted to the Council (including photographs, sasine records and information on their offer to Mr A). They were aggrieved that the Planning Committee had effectively only been shown the Report.

28. Mr and Mrs C stated that their letter of 10 May 2005, (paragraph 17) had been written out of concern at the bias and discrimination exhibited in the Report and their view that the Report did not fully address their objections. They had not been heard or provided with information on contact with councillors. Finally, they were concerned that the Application did not meet all the criteria to allow an exception to be made against the general strong presumption (paragraph 3). They pointed out that Article 6 of the Human Rights Act detailed that a person has a right to a 'fair trial' when there is a determination of his or her 'civil rights' and that this encompasses property rights. They maintained that they should have been allowed to defend their home as strongly as possible. They did not have a 'fair trial' since only one side had been put forward in the Report. They had asked on 9 May 2005 about addressing the Committee but said they were told that they only could talk at the meeting had the proposal been about a larger matter.

(a) Conclusion

29. Mr and Mrs C were not deprived of the opportunity to object as a result of any error in the initial description of the site. Together with other objectors they submitted representations. I do not uphold this complaint.

(b) Conclusion

30. In considering any planning application there is a presumption in favour of the developer. The evidence before me suggests that the application was considered on its individual merits. While the Report makes mention of other conversions of agricultural buildings approved in the Green Belt, the Report accepts that with 'more rigorous marketing' these other conversions could have been retained for agriculture or other countryside uses. In the last resort, and on balance, the Report found sufficient justification to recommend conditional

approval of the proposals. Considering an application on its individual merits does not mean that precedents in similar situations should be ignored. Mr and Mrs C feel they were misled. However, in the circumstances I believe that this decision was made on the merits of the application and so, on balance, I do not uphold the complaint.

(c) Conclusion

31. The Report extended to twelve pages and was in my view sufficiently detailed. It referred to relevant Council and national policies and advice. Mr and Mrs C have not identified any policies which are not addressed in the Report. It also addressed the issue of Mr and Mrs C's privacy. Mr and Mrs C are aggrieved that the officers did not recommend refusal which they felt could be merited from the Council's published criteria. The officer's recommendation, was made after thorough assessment, and was not in my view biased and discriminatory. I do not uphold this complaint.

(d) Conclusion

32. I consider that the Report conveyed that Mr and Mrs C had been the only people living at the steading for 20 years and their concern at loss of privacy. This means that the Committee were aware of these issues in reaching their decision. I do not uphold this complaint.

(e) Conclusion

33. The Report did present and comment upon Mr and Mrs C's objections. Their relevant points were addressed. As I have said above, the Report accepted that the applicant had not been able to demonstrate that the buildings could not be used for agricultural or countryside purposes. I do not consider that the Report displayed bias or was discriminatory. I do not uphold this complaint.

(f) Conclusion

34. The Council are not obliged by statute to provide objectors with a copy of an officer's report before a committee meeting and it is not their established practice to do so. The agenda with the Report was available on the Council's website and a paper copy could have been sent out if requested. It is also not the role of a planning authority to instruct objectors on how to oppose development proposals. During the period when the application was under consideration Mr and Mrs C could have approached their councillor for advice. It is not possible, however, for a councillor to take up a position before the

committee meeting and then at the committee argue in favour of that view and vote. I do not uphold this complaint.

(g) Conclusion

35. Mr and Mrs C were denied a hearing because their specific circumstances were not covered by either PAN 41 (paragraph 4) or the terms of the Area Committee's own criteria (paragraph 5). I consider it to be unfortunate that the request to be heard was not minuted. Given the importance of the proposals to their established way of life, I consider Mr and Mrs C's request to be heard should have been considered. On balance, I uphold this head of complaint.

(h) Conclusion

36. The Council have apologised for the delay in dealing with the complaint. They explained the reasons following involvement of the Ombudsman's office. I uphold the complaint and note that the Council will seek to provide updates in future if they are unable to meet their targets for response.

Recommendations

37. In light of the upholding of the complaints at paragraphs 2(g) and 2(h), the Ombudsman recommends that the Council should apologise to Mr and Mrs C.

38. I recognise that The Planning Act etc (Scotland) 2006 will establish a new system of public engagement and consultation in the planning process. The Council have told me that they recognise they will have to review their procedures in the light of this Act. Because of this the Ombudsman is not making any recommendations about procedures at this time.

27 March 2007

Explanation of abbreviations used

Mr and Mrs C	The complainants
Officer 1	The planning case officer
Officer 2	The Area Manager, Planning and Building Control Services
Officer 3	The Council's Head of Administration
X Farmhouse	Mr and Mrs C's house
The Report	The report presented to the Area Committee on 11 May 2005
The Committee	Local Area Committee
Mr A	The non resident owner of buildings in the steading not owned by Mr and Mrs C
Mr B	Another farmer who rented those buildings in 2002/03
The Application	The application for planning consent for the conversion of disused agricultural buildings to form two residential units

List of legislation and policies considered

The Local Plan	The adopted Hamilton District Local Plan
PAN 41	Scottish Office Development Department Planning Advice Note 41 Development Plan Departures March 1997
NPPG 18	Scottish Office Development Department National Planning Policy Guidance 18 Planning and the Historic Environment April 1994
Scottish Executive Report	Scottish Executive Report on the Conversion of Redundant Farm Steadings to Other Uses February 2002