

Scottish Parliament Region: North East Scotland

Case 200501779: Aberdeenshire Council

Summary of Investigation

Category

Local government: Planning; Handling of application (complaints by applicants)

Overview

The complaint was in connection with a planning application made in 2002. This was granted in 2005. The complainant (Mrs C) was unhappy with the delay, Aberdeenshire Council (the Council)'s response to her complaints and she felt the application had been dealt with less favourably than a subsequent application by new owners of part of the land.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) planning permission was only granted in 2005 for an application made in 2002 (*upheld*); and
- (b) the Council's handling of the complaint about this (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) clarify to all planning staff that it is not appropriate to authorise planning permission on any other grounds than that of planning merits;
- (ii) audit their policy and procedures for maintaining planning records and implement any changes they identify as necessary as a result of this; and
- (iii) apologise to Mrs C for their initial response to her complaint and confirm with staff their procedures for ensuring complaints are swiftly dealt with and progressed.

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

Main Investigation Report

Introduction

1. In January 2002 a planning application was submitted to Aberdeenshire Council (the Council). This was a renewal application as outline planning permission had been granted in 1998. The application was by a man referred to in this report as Mr C. Mr C was acting as the executor for his late father's estate. Following the sale of the land in January 2005¹, Mr C's sister (Mrs C) contacted the Council to ask about the outline planning permission. She was informed this had not been granted and, on 11 February 2005, she wrote to the Council seeking further information. Planning permission was granted on 4 March 2005. Over the following months, Mrs C corresponded with the Council and asked a series of questions about the processing of this application. Mrs C said she also became aware that an application by the new owners of the land showed that they had had more helpful input and guidance from the Council and that permission was granted without the restrictions which she and Mr C had been informed were necessary because of the conservation status of the area.

2. The complaints from Mrs C which I have investigated are that:
- (a) planning permission was only granted in 2005 for an application made in 2002; and
 - (b) the Council's handling of the complaint about this.

Investigation

3. In investigating this complaint I reviewed relevant documents and correspondence between Mrs C and the Council. I interviewed Mrs C and made enquiries of the Council.

4. 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.

¹ The land was sold in two lots. This refers to the second and final sale.

(a) Planning permission was only granted in 2005 for an application made in 2002

5. The original planning application was made by [Mr C] Executors² (care of a solicitor firm) and through an agent (the Agent) in 1998. In response to this, the Council initially asked for sketch proposals as the land lay within a conservation area. The Agent replied he was reluctant to provide them as there was no guarantee he would be involved in detailed submissions. Outlines of a footprint of a dwelling were enclosed to show two buildings could be accommodated on the land.³ The application for two houses was approved subject to conditions. These conditions included a height restriction of one storey. In 2002 Mr C submitted an application to renew the outline permission. This appears to have been in the form of a brief handwritten note signed by Mr C with a cheque for the fees. On 22 January 2002 the Council wrote, in error, to Mr C at the address of the land for which planning permission was being sought, saying this was being considered and that a response should be received within two months. Mr C was also informed that if a decision was not received within the time he could appeal to the Scottish Ministers. On 24 January 2002 the planning officer (Officer 1) asked for advice on the application from an adviser to the Development Control Service (Officer 2). A memo from Officer 2 dated 25 January 2002 said he was concerned that previously permission had been given to demolish two 18th century cottages and that two houses would be an over development. Officer 2 recommended outline permission not be granted and detailed consent sought.

6. On 8 February 2002, Officer 1 wrote to Mr C to say that the application could not be determined in outline form. This was again sent to the wrong address and a telephone note from March 2002 said that the application was discussed with Mr C, address clarified and that he had agreed to submit detailed drawings. In April 2002 another letter was sent to Mr C explaining the fees for the application, and asking for detailed drawings which should be prepared by an architect or other suitable person and adding that as this would be a streamlined process, no new application form or neighbour notification would be required.⁴ This was sent to an address similar to that on the

² Mr C has the same name as his late father.

³ The drawings were for buildings of one and a half storeys.

⁴ A photocopy of the 1998 application is on file with a stamp saying this was submitted in 2002. This appears to have been put in the file by the Council. The 2002 copy was given a new number and the applicant's address (care of the executor's solicitors) was scored out. It is not clear why this was done.

handwritten note but still incorrect for Mr C. Details were given of the traditional design features which were encouraged in the conservation area.

7. In May 2002 Mrs C wrote to Officer 1 and said she understood Mr C had been asked for further information and wished clarification as to what this was. She received a response on 27 May 2002 which said drawings were required. The response contained details of the relevant legislation and the local plan under which the decision had been made. Mrs C wrote again in June 2002 to say that she did not understand why detailed drawings would serve any purpose as guidelines were subject to change, that she had sought advice from the planning department in her own area and that the design and height restrictions (see paragraphs 5 and 6) were 'most unusual'. A telephone note of 6 June 2002 shows that the Scottish Executive had contacted the Council and Officer 1 had explained his decision to ask for drawings to them and said that the applicant (Mr C) had agreed to do this. The final recommendation on the note was that Mrs C ask Mr C to contact the Council. On 30 July 2002, Officer 1 wrote to Mr C asking again for sketch plans and that the neighbours be renotified. This again went to the wrong address.⁵ The letter said if the plans were suitable then the Council would expect to be able to grant outline planning permission subject to the usual conditions.

8. A meeting was held between Mr C and Officer 1 on 8 October 2002. Mr C was concerned about lack of progress and said he was having plans prepared and would then notify the neighbours. The note said he agreed the application would be held in abeyance meantime. Mrs C's husband prepared and submitted drawings in December 2002 following advice they say they received from the Scottish Executive that they did not require to use an expert. On 7 January 2003 Mr C met again with Officer 1 and discussed these. It was said that a purchaser was interested in a single house on the plot and it was again agreed that the application be held in abeyance.

9. A note of a telephone call on 27 June 2003 between Mr C and Officer 1 indicated that interest to purchase had ceased because of the conditions that it be a single storey. The note also said that the nature of the conditions were discussed, Mr C advised to submit sketch plans by an architect and the Council agreed to provide Mr C with a list of suitable architects. This was sent on 3 July 2003 again to the wrong address.

⁵ This letter did arrive and was replied to but after a delay.

10. The Agent who had been involved in the initial application (see paragraph 5) wrote to the Council on 12 January 2004 to say that he had had four prospective clients interested in one or other of the two sites but that the restrictions had encouraged them not to continue. He said two of these clients had asked him to submit drawings of one and a half storeys and the Agent asked if these would be acceptable to replace the drawings on file. A letter from Officer 1 to Officer 2 in April 2004 asked for comments. Officer 2 said that he was still of the opinion that two dwelling units were an over development and that the use of some traditional elements did not hide the fact this was essentially two bungalows. He again recommended refusal.

11. Mrs C wrote to the Council on 11 February 2005 and said she had telephoned earlier in the week and been told that outline planning permission had not been granted. She was concerned about this and also asked whether there was an amended version or other applications pending. She sent an email following this and in an email response was informed that the Council accepted the processing of the proposal had been unusually long. This was because of: 'the requirement for discussion; the need for sketch plans to be submitted which were received early last year and; more recently, the member of staff who had been dealing with the application having left the Council'. The email from the Council said that the decision would be made in the next week and a decision notice issued thereafter. Mrs C responded by saying that although the application was submitted in Mr C's name it was on behalf of the whole family. Mrs C also asked for details of the date of submission and whether they had been approached by any potential purchasers for detailed permission and whether the purchasers had been advised of the problems with planning permission.

12. Outline planning permission was granted on 4 March 2005 to Mr C. On 5 March 2005 Mrs C wrote to the Development Control Manager (the Manager). She described the history in brief and said she had left a query as to 'why this had not been granted and why there was no immediate follow up'. She said she believed the application had been granted/or was about to be granted.

13. The Manager replied on 1 April 2005. The Manager summarised his understanding of the progress of this application. This broadly follows the outline above but also refers to a meeting with the Agent on 2 September 2004. It said he was:

'astonished to hear [a planning officer – not previously involved] description of the history of the application and I instructed him to issue conditional outline permission as soon as possible This certainly does not represent the efficient manner in which I would wish to see applications being processed but it seems that there has been a reluctance to submit the requisite drawings with promises that they would be submitted soon. With hindsight the application should have been recommended for refusal on grounds of inadequate information long ago but allowing it to continue undecided seems to have been done in an endeavour to be helpful.'

The letter concluded that there had been no contact with the family's solicitors or with any prospective purchasers and no applications for full (detailed) planning permission received.

14. Mrs C wrote to the Head of Planning and Development on 12 April 2005. She said that as Officer 1 had left the Council, the Manager had provided her with information from the files. She said the renewal application was made by Mr C as an executor but it appeared to have been registered in Mr C's name and the Agent. Mrs C said she had been told there was no copies of correspondence with the Agent which she believed would have been normal procedure given the way the application was registered but that she knew there had been communication with him as the Council had said he had been present at a site meeting. She pointed out that the Agent would have been aware of the ownership of the land. She also said the Scottish Executive had contacted her in 2002 to say they had discussed this matter with Officer 1 and recommended he accept sketch plans.

15. In the same letter, Mrs C also detailed the history of the sale of the property. On July 2003 an offer had been made for one site conditional on the purchasers 'acquiring detailed planning' within six months. This time limit was extended as they had been unable to gain planning permission in this time. This offer was finalised in July 2004. An offer for plot 2 was finalised in January 2005 and the estate wound up. She understood from the Manager that 'no detailed applications were submitted' and in conclusion said that 'Both

parties would appear to have proceeded oblivious to any information – unless it was verbal'.⁶

16. In her meeting with me and in a subsequent letter, Mrs C provided more detail on this point and said that the second sale was also subject to planning permission. She said the purchaser had appeared to be stalling and they had set a deadline but were concerned that the height restriction to one storey meant that interest from any other party might not be forthcoming. She also said that the sales went ahead for the price initially agreed although permission had not been granted.

17. Mrs C also raised her concerns that shortly following the grant of outline planning permission in March 2005, one of the new owners of the land had submitted an application for one and a half storey house which had since been granted. The Agent had referred to 'helpful guidance' from the planning department.

18. Following correspondence with Mrs C (see paragraphs 27 to 29 below), the Council's final response to Mrs C's complaints was set out in a letter of 30 January 2006. This stated that the Manager had reviewed the file and:

'I must conclude that it does not read as a textbook example of how to efficiently determine a planning application. The various anomalies and the overall length of time taken certainly constitute bad practice and you are clearly due an apology for this poor service. As you know, I have already apologised in person to both yourself and your brother and I reiterate this.'

19. The Manager said he did not consider that this amounted to maladministration and, in particular, that they were able under local plan policies to seek details in conservation areas rather than outline and did so properly in terms of the legislation. It was pointed out that the longest period of inactivity occurred while waiting for plans to be submitted as the sketch initially submitted was unacceptable. He stated:

'My decision to grant permission under delegated powers in the absence of these details was not because I did not agree that the details were

⁶ In light of the information in paragraph 15-16, I am taking this to mean that both purchasers had proceeded with no information about the likely outcome of any detailed planning application unless that had been made verbally.

important but because of the length of time that had elapsed and the lack of evidence on file of formal follow-up and clear explanations of exactly why the detail was required.'

20. The Manager added that he had seen a letter sent on 20 December 2005 which answered specific questions raised and while he was aware that Mrs C had reservations about this as the author of the letter (a planning officer - Officer 3) had not been involved in this application they were 'accurate and firmly based on the evidence of the file. I find that [Officer 3] has done his very best to be helpful to you'.

21. In response to my questions, the Council said that the planning application submitted in 2002 was a photocopy of the original application with Mr C's name scored out. They had, therefore, sent an acknowledgement to the Agent but subsequent correspondence had gone to Mr C. The Council accepted that the application for the new owner was dealt with more efficiently. They said that unlike the two previous applications this was for full planning permission. It added that planning officers had recommended refusal and it was placed before the Area Committee on 6 September 2005 with such a recommendation. The Committee, however, decided to approve this application after a site visit and gave reasons for this decision. The Council said that in their view: 'the Planning Services assessment of the [new owner's] application was entirely consistent with their assessment of the previous application and they did not view this application any more favourably than they had the original two applications'.

(a) Conclusion

22. The Council have apologised for and have accepted that there were a number of errors and inconsistencies in the file. They have sought to explain these to Mrs C where possible but she remains unhappy with their explanations. Having reviewed the file, I accept the Manager's position that the letter of 20 December 2005 (paragraph 20) was based on the evidence on the file. Officer 3 said in that letter that it is not possible to answer all the questions raised by Mrs C and I would agree with this. This is partly because of the state of the file and also due to the length of time since some of the events.

23. The Manager accepted the bad practice evidenced on file for which he has apologised. I would include the keeping of accurate records and of providing consistent advice as part of good administration. I can well understand the

reasons why Mrs C felt it necessary to raise a complaint with the Ombudsman. The Council have accepted there was a failure in record-keeping and apologised for this before the complaint was made to the Ombudsman's office. Nevertheless, it is not clear what, if any, action has been taken in an effort to ensure a similar situation does not re-occur.

24. Turning to the handling of the application itself, the Council have also apologised for this and attempted to resolve the matter by granting the planning application. The Council are required to treat each application, including a re-application, on its own merits. The proposed development was in a conservation area and officers were entitled to ask for more detailed information than would usually be required for an outline planning application. In particular, there is no evidence that their request for plans was unreasonable, although they have apologised for a lack of clarity in this regard.

25. However, I am concerned that the application was granted not because of its planning merits but because of the length of time that had elapsed and the lack of evidence on file of follow-up (see paragraph 19). Planning consent should only be granted based on the planning merits of the proposal and, in this case this did not happen. Given this and the failures in record-keeping, I uphold this complaint.

(a) Recommendation

26. The Ombudsman recommends that the Council:

- (i) clarify to all planning staff that it is not appropriate to authorise planning permission on any other grounds than that of planning merits; and
- (ii) audit their policy and procedures for maintaining planning records and implement any changes they identify as necessary as a result of this.

(b) The Council's handling of the complaint about this

27. Following the correspondence in February 2005 (paragraphs 11) Mrs C continued to correspond with the Council seeking answers to her concerns about the handling of this process. This was substantial and included a Freedom of Information request which led to Mrs C making further detailed enquiry of the Council. During this period, Mrs C wrote to more than one Council official. A letter from the Council of 1 April 2005 said that the letter of 11 February 2005 was not replied to but did not apologise for this.

28. Mrs C wrote to her MSP on 25 July and again on 13 September 2005 and contacted the Ombudsman's office on 4 October 2005 for advice. In a letter to her MSP dated 14 October 2005 Mrs C said her main concerns were 'in relation to the administration of, and conditions, applied to, our renewal application, among other issues which were detrimental to the marketing process of our sites, creating friction between parties involved and unnecessary and unjustified anxiety within the family'.

29. Mrs C's MSP wrote to the Council on 19 September 2005 and this letter was received on 22 September 2005 and replied to in detail on 7 October 2005. Mrs C telephoned in response to this on 14 October 2005 and requested a meeting. At the meeting, held on 1 November 2005 the Council agreed to investigate this matter. A third party was present to take notes for Mr and Mrs C and on 6 December 2005 Mrs C wrote to the Council in response to their request for a copy of the transcript with 17 specific questions. The Council replied in a letter which itemised each point on 20 December 2005. A copy of the Council's complaint procedure was attached. On 11 January 2006 the MSP enclosed a letter from Mrs C with her outstanding concerns. A further response was sent on 30 January 2006 (this is the letter referred to in paragraphs 18 to 20 above) and Mrs C was advised to contact the Chief Executive if she remained unhappy. Mrs C wrote to the Ombudsman on 22 February 2006. She sent a copy of this to the Chief Executive on 27 February 2006. The Chief Executive replied on 23 March 2006 to say that he had investigated the matter and agreed with the letter dated 30 January 2006.

(b) Conclusion

30. The Council's initial response to Mrs C's concerns was not well managed. Mrs C's letter of 11 February 2005 was not responded to in detail. There were a number of subsequent telephone calls, emails and letters between February⁷ and July 2005 and, although the Council appear to have responded to these, it was clear that Mrs C remained unhappy with those responses but the case was not progressed through the complaints procedure. The correspondence ceased in July when Mrs C contacted her MSP and following the MSP's contact with the Council in late September 2005 the issue was dealt with appropriately through their complaint procedure.

⁷ Mrs C's letter of 11 February 2005 makes reference to a telephone conversation of the week before and she has said that she was in contact from late January.

31. I have already commented on the appropriateness of responding to a complaint about the processing of an application by granting permission (paragraphs 23-25). In other respects, the Council have attempted to fully respond to Mrs C's concerns and complaints. However, this has been hampered by the state of the file on this application. I, therefore, uphold this complaint to the extent that Mrs C's concerns should have been better dealt with between February and July 2005 and that the state of the file hindered the Council's ability to respond to the issues raised in good time.

(b) Recommendation

32. The Ombudsman recommends that the Council apologise to Mrs C for their initial response to her complaint and confirm with staff their procedures for ensuring complaints are swiftly dealt with and progressed.

33. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

27 March 2007

Explanation of abbreviations used

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| Mrs C | The complainant |
| Mr C | The complaint's brother |
| The Council | Aberdeenshire Council |
| The Agent | The Agent for the 1998 application |
| Officer 1 | The planning officer responsible for the processing of the 2002 application |
| Officer 2 | Adviser to the Development Control Office |
| Officer 3 | The planning officer who responded to Mrs C's complaint in the letter of 20 December 2005 |
| The Manager | The Council's Development Control Manager for the area |