

Scottish Parliament Region: North East Scotland

Case 200503132: Angus Council

Summary of Investigation

Category

Local government: Planning: Objection to planning application by neighbours

Overview

The complainants (Mr and Mr C) raised a number of concerns about the handling by Angus Council (the Council) of planning proposals for the extension of church premises to the rear of their home. Unauthorised changes were made by the developer to the original proposals. These were the subject of a revised application which was refused by the Council and an enforcement notice was served. The developer subsequently appealed successfully to the Scottish Ministers.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed initially to check the relative position of the proposed extension to adjacent houses prior to granting planning consent in 2002 (*partially upheld*);
- (b) when an application for a building warrant was submitted on 20 May 2003, the Planning Service failed to respond regarding the discrepancy between these plans and those for which they had granted planning consent in the previous year (*not upheld*); and
- (c) the Council did not in the autumn of 2004 properly consider the issue of a stop notice to prevent further work on the extension (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. The complainants (Mr and Mrs C) reside at 1 X Street in a small town in Angus. The rear boundary wall of their property is mutual with the premises of a church (the Church) which fronts to Y Street. Y Street intersects with X Street at right angles. In 2002, the Church successfully applied for planning consent for a rear extension. However, the Church altered their proposals when they submitted an application for a building warrant in May 2003. The Church's agents (the Agents) did not obtain amended planning consent at that time. When work commenced in 2004, Mr and Mrs C alerted Angus Council (the Council), that works on site were not in accord with the 2002 planning consent. The Council sought to regularise the matter by inviting the Church to submit a further application for the development. The Council refused this application and subsequently issued an enforcement notice. The Church's appeals against the refusal of consent and the enforcement notice were upheld by a Scottish Executive Planning Inquiry Unit Reporter.

2. The complaints from Mr and Mrs C which I have investigated are that:
- (a) the Council failed initially to check the relative position of the proposed extension to adjacent houses prior to granting planning consent in 2002;
 - (b) when an application for a building warrant was submitted on 20 May 2003, the Planning Service failed to respond regarding the discrepancy between these plans and those for which they had granted planning consent in the previous year; and
 - (c) the Council did not in the autumn of 2004 properly consider the issue of a stop notice to prevent further work on the extension.

(a) The Council failed initially to check the relative position of the proposed extension to adjacent houses prior to granting planning consent in 2002

3. In 2002 the Church applied through the Agents for permission for a rear extension to the church (Planning Application A) on ground which had planning consent for car parking. Mr and Mrs C objected to Planning Application A stating that they considered that their property would be devalued, that there would be a loss of light to their garden ground, and that they would be adversely affected by noise generated as a result of activities in the extension.

4. The Council have informed me that it is the Planning and Transport Service's policy that in respect of all planning applications a site visit is undertaken and the data sheet accompanying the application indicated that a visit to the site took place on 12 November 2002 and this was confirmed by the planning officer (who has since left the Council). The notes contained within the data sheet make reference to there being a significant distance from the objectors' windows and the planning officer confirmed that he did not consider the proximity of Mr and Mrs C's house to be an issue.

5. Paragraph 5.6 of the planning officer's report to the Development Control Committee (the Committee) dated 27 November 2002 stated that loss of sunlight to Mr and Mrs C's garden area was likely to be minimal. He noted that there were a number of windows located along the eastern side of the objectors' property. These windows would, however, be 'between 11 and 12 metres' away from the proposed extension, adequate to maintain sufficient daylight entering into the rooms of the objectors' property. The planning officer noted that there were no windows on the elevation of the extension facing the objectors' property. The Council pointed out that relevant central government advice states that the loss of light to garden ground will not be accepted as sufficient ground for justifying refusal of consent, however, the loss of light from a window might be.

6. The report of 27 November 2002 was presented to the Committee on 5 December 2002. The Committee granted conditional planning consent. The approved plans for the extension showed it to be some 1.5 metres east of the mutual boundary wall with Mr and Mrs C's property but misrepresented the distance between Mr and Mrs C's east elevation and the boundary wall as being 10 metres rather than the actual distance of 5 metres.

(a) Conclusion

7. The evidence before me suggests that the proposals submitted by the Church for planning consent were properly assessed in late 2002 and consent was granted for a rear extension set back 1.5 metres east of the mutual wall. In terms of the approved plans, the extension was misrepresented to be some 10 or 11 metres to the north and east of the east elevation of Mr and Mrs C's property when the distance from the boundary wall is 5 metres.

8. The error by the developer in submitting plans for approval was unfortunate. It was compounded when the planning officer, who had apparently

paid a site visit on 12 November 2002, reported to the Committee that the nearest house (Mr and Mrs C's) was some 11 to 12 metres away. More accurately, the extension was then planned at about 5 to 6 metres from the eastern elevation of Mr and Mrs C's house. Since there were no windows planned on the west elevation of the extension, issues of privacy did not arise with the initial proposals. While Mr and Mrs C were concerned that they might be deprived of some morning sunlight to their rear garden that would not, in terms of relevant government guidance, have justified withholding consent. The evidence suggests that the planning officer did check the relative position of the proposed extension to Mr and Mrs C's home but reported the distance wrongly to the Planning Committee. This error amounts to maladministration. I cannot conclude, however, that had this error not occurred, then Planning Application A would have been refused. In these circumstances I partially uphold this complaint.

(b) When an application for a building warrant was submitted on 20 May 2003, the Planning Service failed to respond regarding the discrepancy between these plans and those for which they had granted planning consent in the previous year

9. According to the Agents, it was found that the building as approved by the planning authority would not conform with the Building Regulations, particularly with regard to the provision of access for the disabled. Additionally, it would have encroached on land in the mutual ownership of the Church and other proprietors on Y Street. The Agents engaged to submit the application for a building warrant were, therefore, instructed to relocate the building to the eastern boundary of the site and to secure an amendment to the planning consent. Included in the amended proposals was a ramp for the disabled at right angles to the boundary wall with a turn which allowed overlooking of the Mr and Mrs C's garden and rear windows.

10. The application for a building warrant was submitted on 20 May 2003. The Agents, in addition enclosed a letter addressed to the Planning Service with amended drawings. No response was received from the Planning Service and the Agents assumed that the Council's Planning Service had no concerns and did not thereafter pursue the matter with that service.

11. The Council said that their Planning and Transport Service did not receive the letter dated 20 May 2003 and, therefore, could not respond. An application for a building warrant was received on 20 May 2003 but it did not include a copy

of the letter. In terms of the building procedures regulations, there is no requirement to notify neighbours. The Council's Building Standards section considered the proposals conformed with relevant building standards and a building warrant was issued.

(b) Conclusion

12. There were significant differences between the approved plans in Planning Application A, and the plans submitted for a building warrant on 20 May 2003. The Agents should, prior to works commencing, have written directly to the Planning and Transport Service inviting them to confirm whether the changes were material and whether they should re-notify neighbours. The main fault in this instance, therefore, lay with the Agents rather than with the Council. While the Building Standards and Development Control functions are separate, the changes in the proposals would seem to have resulted at least in part from the demands of the building standard regulations in respect of disabled access. The model building warrant application form and the warrant itself contain disclaimers that a consent issued under the Building Acts does not obviate the need to obtain consent under the Town and Country Planning and other legislation. The onus was, therefore, clearly on the Agents to obtain any additional consent needed. In the circumstances, I have considerable sympathy for Mr and Mrs C but, in the last resort, do not consider that their sense of injustice results from administrative or service failure by the Council. I do not uphold this complaint.

(c) The Council did not in the autumn of 2004 properly consider the issue of a stop notice to prevent further work on the extension

13. Building work on the extension commenced in April 2004. Mr and Mrs C complained to the Planning Service on 15 July 2004 that, contrary to the approved plans under the 2002 planning consent, the building was being constructed on the inside of the mutual boundary wall with the Church rather than set back 1.5 metres from the wall. Mr and Mrs C requested that enforcement action be taken. An enforcement officer visited on 16 July 2004, noted the discrepancy from the approved plans in respect of Planning Application A, and wrote to the Church on 19 July 2004 advising them to cease work on site until the matter was resolved. At that time the extension had been erected up to roof height, although neither the external roofing material, nor external wall finishes had been applied.

14. On 5 August 2004, the Church notified Mr and Mrs C that they had submitted fresh plans for planning permission (in retrospect) for the erection of the extension. Mr and Mrs C submitted a letter of representation on 16 August 2004. This letter was acknowledged on 17 August 2004. In the meantime, in the absence of a stop notice, works on the rear extension continued.

15. A second application for planning permission for the extension to the Church (Planning Application B) was registered on 3 September 2004. Mr and Mrs C submitted a further letter of representation on 13 September 2004. That letter was acknowledged by the Council on 16 September 2004. Mr and Mrs C also contacted their local councillor, and he wrote to the Principal Development Control Officer on their behalf on 16 September and 27 October 2004.

16. A report on Planning Application B was prepared on 3 November 2004 for submission to the Committee on 11 November 2004. The report outlined the history of the application, the result of consultations, summarised the grounds of five letters of objection, and set out the planning considerations. It also disclosed that the previous report on Planning Application A had overrepresented the distance between Mr and Mrs C's house and the boundary wall. The report recommended that Application B be refused for the reason that the proposed development would have a significantly detrimental effect on the amenity of residential properties to the west of the extension, particularly Mr and Mrs C's property. The Committee refused Planning Application B.

17. The refusal notice was issued to the Agents on 15 November 2004. Mr and Mrs C were aggrieved, however, that work on the extension continued. They wrote to the Director of Planning and Transport on 19 November 2004 asking that the building structure be removed. The Head of Development Control responded on 16 December 2004 informing Mr and Mrs C that a further report would be placed before the Committee on 13 January 2005. That report, prepared on 20 December 2004, recommended that the Council take enforcement action and secure compliance with the approved planning consent (Planning Application A) or, alternatively, seek the demolition of the extension. The Committee authorised enforcement action and an enforcement notice was issued on 16 February 2005.

18. The Council informed Mr and Mrs C by letter of 28 January 2005 that the applicant had decided to appeal against the refusal of planning consent.

Mr and Mrs C notified their interest in the appeal to the Scottish Executive Inquiry Reporters Unit (SEIRU) on 2 February 2005. The applicant also appealed against the enforcement notice and Mr and Mrs C wrote again to the SEIRU.

19. In his decision letter of 24 August 2005, the SEIRU reporter allowed both appeals, directed that the enforcement notice dated 16 February 2005 be quashed, and granted conditional consent to Planning Application B. He also proposed as a condition that the appellant submit proposals for a lightweight obscure-glazed screen to mitigate the effect of overlooking from the ramp but accepted that this condition could be abandoned by the planning authority if Mr and Mrs C so petitioned. He copied his decision letter to Mr and Mrs C.

20. In response to my inquiry on the complaint, the Council's Head of Law and Administration stated that the difference in height of the building (0.5 metres) and its being approximately 1.5 metres closer to Mr and Mrs C's property than in the consent to Planning Application A meant that officers were able to recommend to the Committee that Planning Application B be refused. The possibility of the service of a stop notice was not formally put to the Committee, but had been considered by officers. At the time Planning Application B was determined on 11 November 2004, the development had been substantially completed and it was considered likely that the applicant would appeal if the decision were to refuse. Given the uncertainty of the outcome of any future appeal, and in view of the extent of the works already completed, officers had considered that the service of a stop notice would not be of any benefit to Mr and Mrs C. They considered it appropriate to await the outcome of an appeal against the refusal of planning consent. If there was no appeal then it was expected that there would be compliance with the enforcement notice. In terms of Scottish Office Development Department Circular 4/1999 the planning authority, prior to the service of a stop notice, should consider how many people are likely to benefit and how adversely their amenity would be affected if a stop notice were not served. The Head of Law and Administration stated that, since the subsequent appeal was upheld, the Council were correct not to serve a stop notice in the Autumn of 2004.

(c) Conclusion

21. While the Council's enforcement officer advised the Agents by letter of 19 July 2004 to cease work until the matter was regularised, at their own risk the Agents proceeded with construction works and submitted Planning

Application B which, if approved, would have regularised the unauthorised works. I believe that the Council had proper regard for the effect of the development on Mr and Mrs C's amenity. On balance they decided to refuse Planning Application B and to serve an enforcement notice. The Church, through the Agents, were entitled to appeal and were ultimately successful. I consider that in the circumstances the Council were correct in not serving a stop notice. I do not consider that there is evidence of service failure or maladministration by the Council. I do not uphold this complaint.

27 March 2007

Explanation of abbreviations used

Mr and Mrs C	The complainants
1 X Street	The complainants' house
The Church	The complainants' neighbours who first applied in 2002 for planning consent for a rear extension
The Agents	The Church's Agents
Y Street	The street on which the Church's premises are situated
The Council	Angus Council
The Committee	The Council's Development Control Committee
Planning Application A	2002 application by the Church through the Agents for permission for a rear extension
Planning Application B	Second application for planning permission for the extension to the Church on 3 September 2004
Scottish Office Development Department Circular 4/1999	Scottish Office Development Department Circular which accompanied Planning Advice Note 54 on Planning Enforcement
SEIRU	Scottish Executive Inquiry Reporters Unit