

Scottish Parliament Region: Central Scotland

Case 200401691: East Ayrshire Council

Summary of Investigation

Category

Local government: Planning; Handling of applications

Overview

The complainant (Mr C) raised a number of concerns about East Ayrshire Council (the Council)'s handling of various planning applications submitted for the erection of a housing development on a site adjacent to his property.

Specific complaint and conclusion

The complaint which has been investigated is that the Council showed favouritism to the developer throughout their consideration of the various planning applications submitted by the developer (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) take steps to ensure that the administrative errors which had been identified prior to my involvement in relation to the Council's planning files are addressed to ensure that they do not arise in the future; and
- (ii) revisit their Scheme of Planning Application Delegation (the mechanism which allows Council Officers discretion to determine applications) to see whether there is a need, in cases such as this, for a referral to committee.

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

Main Investigation Report

Introduction

1. On 12 December 2004 the Ombudsman received a complaint from a man (Mr C) about the Council's handling of a number of planning applications submitted for the erection of a housing development on a site adjacent to Mr C's property. Mr C was advised of the need to exhaust East Ayrshire Council (the Council)'s complaints procedure. Mr C subsequently approached the Ombudsman's office confirming that he had completed the Council's procedures.

2. The complaint from Mr C which I have investigated is that the Council showed favouritism to the developer throughout their consideration of the various planning applications submitted by the developer.

3. As part of my consideration of his complaint, and in view of the complexity of the matters raised (and I will touch on this point later in the report), I asked Mr C to confirm the terms of his complaint. In doing so, Mr C also raised new points with me which had not been put to the Council and which the Council had not had a formal opportunity to consider and respond to. As a result, I have not included these additional points in my investigation. It is open to Mr C to raise these matters with the Council, and, if he remains dissatisfied, to bring his complaints to the Ombudsman.

Background

4. The application site which is the subject of this report was located within a village and was centred on the site of a former industrial building which had been demolished. The site was adjacent to Mr C's property.

5. On 16 May 2002 a revised planning application (an earlier application had been submitted for the demolition of existing buildings and the erection of 20 new dwellings) was submitted for the erection of 17 houses and the refurbishment of a listed building into five flats on the application site. The revised application was considered by the Council and planning permission was granted, subject to a number of conditions, one of which related to the requirement for a visibility splay area (a wedged shaped area to improve visibility) to be provided at the junction of the access to the development with the public road. This visibility splay was to be provided prior to the commencement of the development. The sightlines specified by the condition

were to be maintained free from obstruction at all times thereafter.

6. Mr C raised a number of concerns with the Council about the issue of the sightlines available at the junction to the development, and the steps proposed by the developer to achieve those sightlines.

7. Over the next 18 months, further applications by the developer prompted further concerns from Mr C about sightlines. Mr C's exhaustive correspondence with the Council, and discussions the Council had with Mr C and the developer culminated in the developer submitting alternative proposals which encompassed reduced sightlines and work to the carriageway. The proposals were acceptable to the Council's Road Section, and since the Planning Department did not consider the new proposals required further planning permission, consent was issued on 29 November 2004.

Investigation

8. This is a complex complaint, and Mr C raised numerous technical objections and points which focused on his questioning the professional judgement of planning officers involved in considering the developer's applications. I have already made it clear to Mr C that it is not my role to question professional judgement or assess technical aspects of planning applications, issues and questions, unless I see evidence of maladministration or service failure in the application process.

9. As a result, my investigation has focused on whether the Council, in considering the applications and Mr C's objections, acted properly and applied their normal processes and procedures.

10. Evidence on file shows that, in view of the seriousness of Mr C's complaints to them, including allegations of 'impropriety, conspiracy and collusion', the Council took the decision to refer Mr C's complaints to their monitoring officer. The monitoring officer in a local authority is responsible for ensuring that decisions are lawful and procedures correctly followed.

11. The monitoring officer delegated the matter to a depute monitoring officer for investigation. I shall refer to the depute monitoring officer as Officer 1. Officer 1 conducted what I consider was a full, detailed and extensive investigation of all Mr C's numerous complaints and I have had the benefit of considering Officer 1's comprehensive and thorough report which covers all of

the issues raised with me by Mr C.

12. My investigation of Mr C's complaint has also involved reading all relevant documents, including correspondence provided by Mr C. I have also examined copies of relevant planning reports and minutes and details of the various enforcement actions taken by the Council against the developer.

13. I have not included in this report every detail investigated but 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: The Council showed favouritism to the developer throughout their consideration of the various planning applications submitted by the developer

14. As part of his investigation of Mr C's complaints, Officer 1 invited Mr C to two meetings. The first meeting was to give Mr C an opportunity to explain and expand on his complaints. The second meeting was to give Mr C an opportunity to comment on the Council's planning files which he had been given access to. Officer 1 also interviewed various planning officials, including officers who were no longer employed by the Council. Officer 1 also visited the development site.

15. Mr C has seen Officer 1's full report and so I do not consider it is necessary to repeat all the details here. However, I do feel it would be helpful to address Mr C's allegation of corruption. In the course of one of his meetings with Officer 1, Mr C confirmed that, contrary to his complaint, he was not suggesting that anyone within the Council was corrupt. Instead, he told Officer 1 that he had used the word 'corruption' quite deliberately so that he would be heard by the Council.

Conclusion

16. I am satisfied, having considered all the evidence, that a full, rigorous investigation of Mr C's complaint had already been undertaken by the time Mr C approached my office.

17. I am satisfied that the report's conclusions are fully supported by evidence set out in the documentation. Mr C was sent a copy of the report and so I will not duplicate it here. For the record, I am satisfied that, in considering the developer's applications, the Council applied their normal process and

procedures. I am also satisfied that, where appropriate, Mr C was given full opportunity to submit objections and that these were considered properly. That Mr C disagrees with the Council's decisions is not, in itself, a complaint of maladministration or service failure I would pursue.

18. Officer 1's report covers in detail the technical issues raised by Mr C and explains why he did not accept Mr C's position on those matters. I agree with Officer 1's conclusions.

19. While Officer 1 did not uphold the complaints made by Mr C, he did identify a number of administrative shortcomings in relation to the Council's planning application files. In particular, Officer 1 was concerned that certain items had been misfiled within the planning files, certain letters had not been responded to, and meetings or telephone conversations had not been recorded. This was not part of Mr C's complaint to the Council or to the Ombudsman's office. Nonetheless, Officer 1 felt that lessons could be learned for the future. I am aware that the Council have already apologised to Mr C for their failure to respond to correspondence and I would expect the Council to take steps to ensure that the administrative errors identified by Officer 1 are avoided in the future. I would stress that the minor administrative errors, while regrettable, did not impact on the decision-making process relating to the applications.

20. Officer 1 explained that he had not seen any evidence that the Council had shown favouritism to the developer. However, he did accept that the alternative proposals put forward by the developer for reduced sightlines should have been referred back to the committee to advise them of the proposed course of action. The committee would simply have been asked to note the position.

21. Officer 1 did not accept Mr C's contention that, as a result of the decision by Council Officers to approve the amended proposals, rather than committee members, he had been denied the opportunity of submitting objections and being heard by elected members. Officer 1 explained that, if the proposals had been put to the committee Mr C would not have been able to be heard by elected members as the proposal would only have concerned the alteration of a previous decision. It would not have been subject to neighbour notification or rights of audience.

22. I am satisfied that the Council have responded to Mr C's concerns and

have explained that the decision to issue planning consent was justified. While I am satisfied that Mr C did not suffer injustice as a result of this decision, I recommend that action is taken by the Council to revisit the Scheme of Delegation to provide clarification of whether, in such cases, there is a need for a referral to committee. In the circumstances I do not uphold the complaint.

Recommendations

23. Although the Ombudsman does not uphold Mr C's complaint it is recommended that the Council:

- (i) take steps to ensure that the administrative errors which had been identified prior to my involvement in relation to the Council's planning files are addressed to ensure that they do not arise in the future; and
- (ii) revisit their Scheme of Planning Application Delegation (the mechanism which allows Council Officers discretion to determine applications) to see whether there is a need, in cases such as this, for a referral to committee.

24. 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.

23 May 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	East Ayrshire Council
Officer 1	The Council's Depute Monitoring Officer