

Scottish Parliament Region: North East Scotland

Case 200501045: Aberdeenshire Council

Summary of Investigation

Category

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

Overview

The complainants (planning consultants acting on behalf of a client) were unhappy that, following consideration of their client's planning application by an Area Committee of Aberdeenshire Council (the Council), further objections were allowed and the application was reconsidered by the Area Committee. The Consultants said that their clients incurred additional costs as a result of the delay.

Specific complaint and conclusion

The complaint which has been investigated is that the decision to reconsider the planning application led to unnecessary delay (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to the applicants (the Firm) for the delay in dealing with this application;
- (ii) following receipt of documented evidence of the costs necessarily incurred in pursuing this complaint, reimburse the Consultants' fees relating to this to the Firm;
- (iii) ensure all applications which may involve development plan departures are dealt with in line with PAN 41 unless there are demonstrable reasons why it would not be appropriate to do so;
- (iv) end their practice of considering applications subject to 'completion of departure proceedings'; and
- (v) provide her with a copy of the report of the Audit and Scrutiny Committee into their decentralisation arrangements.

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

Main Investigation Report

Introduction

1. An Agent acting on behalf of a building firm (the Firm) submitted a planning application on 2 February 2004. After correspondence between Aberdeenshire Council (the Council) and the Agent, this was considered on 24 May 2005 at an Area Committee meeting of the Council. It was agreed that the grant of the application would be delegated to the Head of Planning and Building Control subject to a number of conditions. One of these conditions was that departure procedures should be completed. As the planning application represented a departure from a local plan it required to be publicly advertised and objections allowed within a period of time set out by statute (see paragraph 5). The meeting had been held before the end of this period and, subsequently, objections were received from members of the public. As a result of these, the Area Committee reconsidered the application on 19 July 2005 and a site visit was held on 9 August 2005. On 18 August 2005 the Council informed the Agent that planning permission had been granted subject to conditions. The Firm's planning consultants (the Consultants) complained about the delay and said that this had cost the Firm £2,800.

2. The complaint from the Consultants which I have investigated are that the decision to reconsider the planning application led to unnecessary delay.

Investigation

3. In investigating this complaint I have considered relevant correspondence and documents. I have also made enquiries of the Council and reviewed relevant legislation and advice.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. The Consultants and the Council were given an opportunity to comment on a draft of this report.

Planning background

5. Where a planning application departs from a local plan, there is a requirement under statute (s 34 of the Town and Country Planning (Scotland) Act 1973) for the application to be advertised and 21 days given for representations from the public. Under s 38, the application cannot be determined before objections are received.

6. Planning Advice Note 41 applies to such applications and in paragraph 13 states:

'To ensure that all possible objectors are identified as early as possible, planning authorities should advertise applications which they consider to be departures or potential departures, as soon as practicable after the receipt of the planning application Normally it is expected that the application would be advertised within 7 days of receipt.'

Complaint: The decision to reconsider the planning application led to unnecessary delay

7. Following receipt of the application on 3 February 2004, a letter dated 12 February was sent to the Agent informing him that the application was valid and a decision would normally be made within two months. If a decision was not made within this time the Agent had the right to consider this a deemed refusal and to appeal to the Scottish Ministers.

8. A letter of 24 February 2004 from the Council set out a number of points that required to be addressed before this could be processed. This included drainage, access arrangements and the fact that part of the application lay outside the local settlement area. On 4 May 2004 the planning officer wrote to the Agent saying that he had not yet received a response to his request. On 30 June 2004 a telephone note records that the Agent had decided to reduce the area of the application and it was agreed this would not require a new application but an amendment. Neighbours would need to be renotified. The telephone note queries whether a departure advertisement would be needed. The neighbours were renotified on 7 July 2004.

9. Following the provision of some detailed information concerning drainage, a letter of 27 September 2004 from the Council informed the Agent that a further amended plan would need to be renotified to the neighbours detailing access arrangements and that the ownership certificate would also need amended. On 10 November 2004 the Agent wrote to the Council to confirm this had occurred. The Council sought more detail on the access and, in particular, on emergency access arrangements. Following receipt of this they informed the Agent, that, as this affected more neighbours, notification would again need to occur. The Agent sent details of this to the Council in February 2005. An email from the planning officer of 3 May 2005 said he hoped that this would go to Committee on 14 May 2005 and sought some additional clarification on drainage. An email dated 6 May 2005 said 'Given it has been on-going for so

long I would like to get it to committee this time if at all possible, not least because of the number of major applications I have which are due to go to the next one'.

10. On 13 May 2005 an advertisement in a local newspaper publicised this as a potential departure from a local plan. The deadline for objections was 3 June 2005.

11. As indicated in paragraph 1, at the meeting on 24 May 2005 the Area Committee agreed the planning application could be delegated to the Head of Planning and Building Control subject to conditions. One of these conditions (referred to as likely in the email of 6 May 2005) was that this would be subject to the completion of departure proceedings.

12. The Council received 23 objections in response to the advertisement and on 9 June 2005 wrote to the Agent:

'Departure proceedings are now complete and additional representations have been received. The Council's procedures in such cases require that the application is referred back to the Area Committee and cannot be determined by delegated powers.'

13. The Consultants complained to the Council saying that they considered it was incompetent of the Council to entertain such objections after the decision had been made to delegate approval but that even if they could consider such objections that, as the officer had admitted these raised no new matters, there was no public interest in representing this to the Council. Following correspondence the Council confirmed on 31 August 2005 that they had acted in accordance with Council procedures.

14. In their response to my questions the Council said they had been under considerable pressure from the Agent to progress this application and this had informed their decision to proceed before the end of the period for representations. It had been planned to place the advertisement on a date which would have meant the deadline ended on 27 May 2005 but this did not occur. They accepted that, with hindsight, given the previous response to this application (from the neighbour notifications), it had been unlikely that there would have been no further representations. The representations that arrived in response to the advertisement related to the aspects of the application that departed from the local plan and, while none raised 'wholly new material

considerations', a number of new points were raised. As more than five letters had been received the Council's scheme of delegation required that the matter be referred to the Area Committee for determination. The Council continued:

'It is clear in the circumstances of the number of representations submitted in response to the departure advertisement that there was no option but to refer the application back to the ... Area Committee. This was in order that these representations which specifically related to the issue of the Committee's resolution that it intended to depart from a development plan policy in granting conditional outline permission subject to a Section 75 agreement could be considered. The representations received previously did not relate at all to the resolution to depart from policy.'

15. Having decided they had to refer this matter to the Area Committee the Council said that they could not have done so on the next date of 14 June 2005 because of the number of representations and the next possible date was the vacation meeting of 19 July 2005.¹ The Council also said that while three months could be seen to be a significant delay in processing this application they had frequently had to remind the Agent that questions were outstanding and this lack of information was the reason for the overall delay of 15 months from February 2004 to May 2005 when it was considered by the Area Committee. The Council submitted copies of correspondence which showed their officer seeking responses to questions and advised that at the time the application was considered by the Area Committee on 24 May 2005 information was still outstanding from the Agent but that it had been submitted to the Area Committee under the Council's procedure to 'advertise the application as a departure from development plan policy, as soon as it became apparent to officers that there was a case to recommend conditional approval notwithstanding the policy'.

16. In support of their complaint to the Ombudsman, the Consultants submitted an itemised bill which listed their contacts with the Council in relation to their pursuit of this complaint for the period from 17 May 2005 to 18 August 2005. Their client had employed the Consultants to act on their behalf in progressing the planning application throughout the process. The Consultants said the fees for this particular period amounted to £2,800 and

¹ The Council have said the committee normally meets on a three weekly cycle but that this is disrupted over the summer months and they have vacation meetings less regularly during this time.

consisted of objections to the decision of the Council to reconsider this application. This expense was only incurred because of the delay.

17. When commenting on the draft of this report, the Council said that their decision not to following PAN 41 had been faced with the need to 'make ends meet' and follow Best Value. They only advertised an application when it was clear that not only would it depart from planning policy but that it might succeed because of other material considerations. They went on to say that many applications that would be advertised as departures do not receive planning consent. Some will very clearly breach a number of planning policies and to advertise could be considered a waste of money and effort. They said that they estimated implementing this decision had saved them around £40,000 in advertising costs. The Council accepted the application should not have gone to the Area Committee before the departure proceedings were completed.

Conclusion

18. Between February 2004 and May 2005 the Council actively sought to clarify a number of matters relating to this application. There was some delay on behalf of the Agent during this time and it is unlikely that the application could have been dealt with by the Area Committee prior to May 2005. However, PAN 41 clearly states that any application that could amount to a departure should be advertised as soon as possible and, ideally, within seven days of the application. The Council policy outlined in paragraph 15 is clearly in breach of this. According to the best practice guidance, this advertisement for this application should have been issued when the initial consultations with other departments was ongoing in early 2004. This would have allowed objections to be dealt with at the meeting of 24 May 2005. The delay between May and August 2005 could, therefore, have been avoided.

19. While Planning Advice Notes such as PAN 41 are not mandatory they offer planning advice on good practice. As a public body, the Council has a duty to follow this advice unless it can demonstrate why it would not be appropriate to do so. The Council's reference to financial savings linked to Best Value is not a sufficient reason to avoid following the PAN.

20. I am also concerned that, having finally advertised this application as a departure, it was placed before the Area Committee prior to the end of the statutory period. This could have led to complaints by objectors to the Ombudsman's office that their representations were not being dealt with

appropriately and is evidence of maladministration. I should add I have seen no evidence of substantial pressure being put on the Council by the Agent for them to consider the application at the May meeting.

21. In response to the draft of this report and the issue of the frequency of the Area Committee Meetings, the Council have confirmed that their Scrutiny and Audit Committee had recently reviewed their decentralisation arrangements and considered these worked well. The Ombudsman has asked for a copy of this report. Given the planning system is in a period of change she has not made further recommendations for any review of the scheduling of Area Committees at this time.

Recommendation

22. I have carefully considered the financial loss allegedly suffered by the Firm as a result of the Consultants billing over the period referred to in paragraph 16 for their contact with the Council in connection with this complaint. This appears to be in line with their normal fees. Given the finding of maladministration, there is no reason why, on production by the Consultants of documented evidence which demonstrate that the actions undertaken related solely to pursuing the complaint, the Council should not reimburse these costs to the Firm.

23. The Ombudsman makes the following recommendations that the Council:

- (i) apologise to the applicants (the Firm) for the delay in dealing with this application;
- (ii) following receipt of documented evidence of the costs necessarily incurred in pursuing this complaint, reimburse the Consultants' fees relating to this to the Firm;
- (iii) ensure all applications which may involve development plan departures are dealt with in line with PAN 41 unless there are demonstrable reasons why it would not be appropriate to do so;
- (iv) end their practice of considering applications subject to 'completion of departure proceedings'; and
- (v) provide her with a copy of the report of the Audit and Scrutiny Committee into their decentralisation arrangements.

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

The Consultants (and complainants)	Planning consultants who, acting on behalf of the Firm, complained to the Ombudsman
The Council	Aberdeenshire Council
The Agent	An Architect also acting on behalf of the Firm
The Firm	Building firm who made the planning application
Area Committee	The Council Planning Committee for the area in which the planning application was made
PAN	Planning Advice Note

List of legislation and policies considered

The Town and Country Planning (Scotland) Act 1973

Aberdeenshire Council's Scheme of Delegation

Planning Advice Note 41