

## Scottish Parliament Region: Central Scotland

### Case 200501980: South Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Planning\Handling of application (complaints by opponents) and Complaint Handling

##### **Overview**

The complainant (Mr C) raised concerns about the way Council officers handled a Planning Committee hearing and about the response of South Lanarkshire Council (the Council) to his complaints.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council unfairly denied Mr C, on behalf of the objectors whom he was representing, the opportunity to put points to the Council's Planning Committee on 30 August 2005 (*not upheld*); and
- (b) the Council failed to properly deal with Mr C's complaints (*partially upheld*).

##### **Redress and recommendation**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 20 October 2005 the Ombudsman received a complaint from Mr C. His complaint related to events at a meeting of the Planning Committee (the Committee) of South Lanarkshire Council (the Council) and the Council's response to his subsequent complaint.

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

- (a) the Council unfairly denied Mr C, on behalf of the objectors whom he was representing, the opportunity to put points to the Committee on 30 August 2005; and
- (b) the Council failed to properly deal with Mr C's complaints.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including communication between Mr C and the Council, the minutes of the meeting of the Committee concerned, the Council's standing orders on procedures, the Council's procedures on hearings for planning applications, the relevant documentation relating to the planning application, legislation and guidance relating to the type of planning application concerned and the notes and background documents relating to the investigation of Mr C's complaint. 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.

4. The Council made a planning application for the erection of a children's home on a cleared site opposite residential properties. Under planning regulations, Mr C was notified of the application. He submitted an objection to it, along with 44 other written objections and a petition containing 231 signatures. Due to the substantial public interest in the development, the opportunity of a hearing was offered to the objectors to the proposal and the applicant, and this was held at the meeting of the Committee on 30 August 2005.

**(a) The Council unfairly denied Mr C, on behalf of the objectors whom he was representing, the opportunity to put points to the Council's Planning Committee on 30 August 2005**

5. At the Committee meeting Mr C represented a group of 45 concerned residents. In preparation for his presentation at the meeting he had consulted both the Scottish Executive Planning Office and Planning Aid for Scotland. Prior to Mr C's opportunity to speak, the Committee heard presentations from Council officials in support of the application. These were: a presentation from a Council official which dealt with the physical nature of the development, road safety concerns and the results of architectural liaison with the Police, and representation from the Social Work Department regarding the reduction of anti-social behaviour as a result of new techniques in designing children's homes. When Mr C was called to speak he attempted to expand on the points made by the previous speakers, but was interrupted by the Chair of the meeting to be told the issues he was raising were not material planning concerns. Mr C attempted to continue but was repeatedly interrupted on the grounds that the points he was making were not material planning concerns.

6. Mr C believes these interruptions were unjustified as he was attempting to present counter-arguments to those put forward by the Council's own representatives relating to anti-social behaviour, loss of amenity and the reinstatement of an adjacent lane. He also believes that as a result of the interruptions, he was denied appropriate time to outline the residents' objections to the Committee.

7. From the responses the Council sent to Mr C's complaints and their correspondence with me over the course of my investigation, their position is that Mr C attempted to raise matters that related to the prospective management of the home, speculate on the possible behaviour of the children who might occupy the home and refer to alleged incidents at another home within the area.

8. Mr C has told me that he does not agree with the Council's position and that he presented statistics of actual incidents relating to all the children's homes in South Lanarkshire which were provided to him by Strathclyde Police.

9. The minutes of the meeting outline only the factual events of the meeting; noting the report, noting those who had spoken, detailing the proposal and the Committee's decision.

*(a) Conclusion*

10. The Council are correct in saying that these matters would not be material planning concerns, and that the Committee's concern should be concentrated on land-use considerations. It is Mr C's belief that these issues were brought up by the Council representatives who had spoken before him and they had neither been interrupted nor the Committee advised that such matters was not material planning concerns. However, Mr C's opportunity to speak at the meeting was to present his objection in the terms he had already lodged on behalf of a group of residents. The Chairman believed that he chose instead to raise issues as direct rebuttals of the presentations of the previous speakers. In the absence of a more detailed objective record of the meeting, I cannot reach a conclusion on what was said by Mr C or the Chairman. However, in terms of the Council's guidance on planning hearing meetings the Chairman was correct to prevent speakers from raising issues that he perceived to relate to non-material planning concerns. Therefore, I do not uphold the complaint.

**(b) The Council failed to properly deal with Mr C's complaints**

11. On 4 September 2005, Mr C made a formal complaint to the Council about the conduct of the Chairman of the Committee and his actions at the meeting. Mr C complained that his attempts to make comment on the issues previously raised by Council officials and representatives of the Social Work department (see paragraph 5) were denied by the Chairman. The Chairman had told Mr C that the issues he raised were not material planning issues. Mr C complained that this opinion was contrary to that which he had received from the Scottish Executive and Planning Aid Scotland and questioned the Chairman's competence as a result. Mr C complained the Chairman's actions were inappropriate as Mr C believed the Chairman was overly aggressive, intimidating and argumentative and that his conduct and interruptions resulted in the time Mr C was able to speak being unfairly restricted.

12. The Council's Head of Administration responded to Mr C on 27 September 2005 by letter. The letter stated that, following investigation, the Head of Administration did not agree that the Chairman acted inappropriately. He stated that Mr C had referred to alleged incidents at another children's home and continued to raise these after the Chairman had correctly advised Mr C that this was not material to the consideration of the application being decided upon. The Head of Administration identified the appropriate legislation relating to the consideration of planning applications and provided further information to Mr C

about the progress of the application. In closing, he referred Mr C to the Ombudsman if he remained dissatisfied.

13. Mr C wrote to the Ombudsman on 18 October 2005, enclosing his letter of 4 September 2005 and the Council's response of 27 September 2005 and outlined his continued dissatisfaction with the Council's actions.

14. On 24 October 2005 a Complaints Investigator from the Ombudsman's office contacted the Council to discuss the complaint. The Council's Administration Officer agreed that the complaint had not yet exhausted the Council's complaints procedure and that it should be referred to the Chief Executive, whose response would represent the final stage of the Council's complaints procedure. The Complaints Investigator contacted Mr C by telephone and by letter and advised him of this.

15. Mr C wrote to the Chief Executive and his complaint was responded to by letter on 30 November 2005. In this letter the Chief Executive stated that the same procedures as would be followed in an investigation on behalf of the Chief Executive had been followed in preparing the Head of Administration's response of 27 September 2005. The Chief Executive said that the Head of Administration's letter had represented the final stage in the Council's complaints procedure but acknowledged that this had not been made clear in the letter and apologised accordingly. He also answered the other questions Mr C had raised in his letter, about issues that Mr C did not consider formed any part of his complaint to the Ombudsman.

16. The Council's complaints procedure states that at stage 3 of the process 'the Executive Director of the service involved will then look into the matter and contact you with a reply within ten working days'. Following this if the complainant is 'still not satisfied after stage 3, we will refer [the complaint] to our Chief Executive, who will have the matter investigated and get back to you within 20 working days'. It is then stated, under the heading 'stage 5': 'At the end of this process, if you feel you have been treated unfairly by the Council, you can ask the Scottish Public Services Ombudsman to investigate'.

17. Mr C's complaint was investigated at stage 3 by the Head of Administration. The Council have advised me that the investigation consisted largely of verbal communication with officers in attendance at the meeting. On

points of procedure written communication was undertaken and this has been supplied to me.

*(b) Conclusion*

18. I consider the answers given in the Head of Administration's letter to be adequate and reasonable responses to the issues raised in Mr C's letter of complaint. The Head of Administration, however, should have referred Mr C to the Chief Executive rather than the Ombudsman at the end of the letter or indicated that his response had been approved by the Chief Executive and formed the final internal stage of the Council's complaints procedure. Following contact from the Ombudsman's office the Council agreed that, in that respect, the Head of Administration's letter was inaccurate and the Chief Executive responded to Mr C's letter indicating his continued dissatisfaction. As noted in paragraph 11 the Chief Executive stated that he concurred with the opinion put forward in the Head of Administration's letter, and apologised for the inaccuracy made in referring Mr C to the Ombudsman. Given that the Head of Administration's letter did not properly advise Mr C of the Council's complaints procedure, I partially uphold the complaint. However, the Chief Executive's subsequent response acknowledged and apologised for the inaccuracy and the Ombudsman commends the Council for this action and has no recommendations to make.

18 July 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Committee	The Council's Planning Committee
The Council	South Lanarkshire Council