Scottish Parliament Region: Mid Scotland and Fife

Case 200502032: Fife Council

Summary of Investigation

Category

Local government: Policy/administration

Overview

The complainant, Mr C, alleged that there were a number of improper processes involved in the Council's decision to move the village of Freuchie into the Kirkcaldy and Mid Fife area for strategic planning purposes.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

(a) failed to carry out local consultation before changing the local plan boundaries (*not upheld*);

(b) failed to take account of the complainant's views despite confirmation that they would do so (*not upheld*);

(c) misrepresented the situation (*not upheld*); and

(d) encouraged staff not to disclose information (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 8 October 2005, the Ombudsman received a complaint from Mr C concerning the way in which Fife Council (the Council) had decided to move the village of Freuchie, where he is resident, into the Kirkcaldy and Mid Fife area for strategic planning purposes. He alleged that there had been a number of improper processes involved.

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

(a) failed to carry out local consultation before changing the local plan boundaries;

(b) failed to take account of the complainant's views despite confirmation that they would do so;

(c) misrepresented the situation; and

(d) encouraged staff not to disclose information.

3. A number of complaints were made on the same issue by other residents of Freuchie and I considered it appropriate to investigate them together.

Investigation

4. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have also had sight of Background Briefing Notes on the Review of Local Plan Boundaries (the Briefing Notes) dated 19 August 2004 which were presented to a meeting of Freuchie Community Council; a paper presented to the Environment and Development Committee of 1 November 2004, entitled 'Revised Local Plan Boundaries: Feedback on Community Council Presentations'; and, a Summary of Written Responses also presented to the same Committee. I have made reference, where appropriate, to sections of the Town and Country Planning (Scotland) Act 1997 and Planning Advice Note (PAN) 49. On 7 November 2006 I made a written enquiry of the Council's Chief Executive and his response was received dated 4 December 2006.

5. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C, Ms C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to carry out local consultation before changing the local plan boundaries

6. Mr C said that in 2004 the Council decided to put the Freuchie area into the Kirkcaldy and Mid Fife area for strategic planning purposes. He alleged that this was done without any local consultation and he, therefore, emailed the Council, as Secretary of the local Community Council, on 12 June 2004 complaining. Nevertheless, he complained that on 14 June 2004 the Environment and Development Committee agreed changes in local plan boundaries.

7. Available information shows that on 30 June 2004 the full Council met but that, as a consequence of the concerns so far expressed by community groups, they decided to delay implementation of the Environment and Development Committee's decision in order to allow consultation with various communities. An extended period for consultation followed (until 15 September 2004) including meetings with local communities and acceptance of written submissions.

8. On 4 January 2005, prior to complaining formally to the Ombudsman, Mr C raised this matter with the Council's Chief Executive. The reply he received, dated 14 February 2005, said amongst other things that, 'On a general point about the decision-making process, Fife Council is the statutory planning authority. In the discharge of its responsibilities under the terms of the Town and Country Planning Scotland Act 1997 (sic), it is required to prepare local plans for all of its area. There is no statutory requirement on the planning authority to consult the public prior to delineating the boundaries of local plans. The Planning Advice Note (the PAN) 49 states that the pattern and programme of local plan coverage will depend on the characteristics of the area and the planning authority's approach to local planning'.

9. I have considered the PAN referred to and have also discussed the matter with the Council's Development Manager (Business and Strategy) who was instrumental in preparing the Chief Executive's response to me of 4 December 2006. He explained that in 2004 the Council took a strategic decision to reduce the number of local plans in the Council area from ten to three, and that it was the Council's view, in connection to this, that they did not require to consult on the position of these new boundaries; that the PAN did not relate to the settlement of boundaries (which appeared to be Mr C's concern in this aspect of the complaint) but related to the local plan in its entirety. So far,

the local plan affecting the Freuchie area (Kirkcaldy and Mid Fife) has still to be determined and hence the consultative process is continuing. Information on the Council's website also confirmed this, providing the anticipated programme for the Kirkcaldy and Mid Fife local plan. This confirmed that, while timescales were subject to review, the draft local plan's publication and consultation period was to begin in March 2007 with the finalised plan anticipated in 2008.

(a) Conclusion

10. From what I have seen in the PAN, the Council were fully entitled to produce draft local plans reducing the total number from ten to three. This then resulted in new boundaries. However, once their draft has been determined, the Council is required to allow those affected by any changes the right to make representations. So far, the draft affecting Freuchie has not been confirmed and the Council's consultative process is ongoing. Nevertheless, it is clear that as the overall process continued, the Council were aware of local opinion and responded to it. It did not endorse the Environment and Development Committee's decision of 14 June 2004, and the Council decided, at that stage, to allow a period of consultation to run until 15 September 2004 to permit consultation with local communities and the acceptance of written submissions. In all the circumstances, therefore, I do not uphold this aspect of the complaint.

(b) The Council failed to take account of the complainant's views despite confirmation that they would do so

11. After the consultation period commenced (see paragraph 7) Mr C said that on 22 July 2004 he attended a meeting with the Head of Development Services when he agreed to take into account any new information which came to hand. In the meantime, the Council began meeting with various communities to discuss their proposals and on 19 August 2004 there was a meeting with the Freuchie Community Council. I have had sight of the relevant Briefing Notes (see paragraph 4) which the Council considered gave a full explanation for their proposals with regard to their review of local plan boundaries. Mr C said that he disputed some of the information upon which the Council was relying and, therefore, on 11 September 2004, he wrote on behalf of the Community Council to the Head of Development Services fully setting out local objection.

12. The Council advised me that on 1 November 2004 the Environment and Development Committee subsequently considered a full report of the matter and on the feedback from local communities (see paragraph 4). A full debate ensued. I have seen copies of the available documentation which showed a

summary of all the written responses received and confirmed that all original correspondence was available to committee members. The report clearly acknowledged local opinion and stated that, 'More could have been done to inform communities of how these changes would impact on them. This may have avoided misunderstandings over the implications for individual residents'.

13. Since then, Mr C continued his objections and on 4 January 2005 he wrote formally complaining to the Council's Chief Executive alleging that the Head of Development Services had acted in an unprofessional manner; had used statistics in a misleading way and that officers had been under pressure to dissemble and mislead.

(b) Conclusion

14. I have seen the information presented to the Environment and Development Committee on 1 November 2004, this summarised all the objections received and made available copies of the original correspondence. I am, therefore, satisfied that Mr C's (and other) representations were properly reported and considered. There was an acknowledgement that things could have been done better but, it appears to me that, the Council attempted to address public perception that there was a failure to take local opinion into account. I am aware that seven meetings took place with local communities. While I accept that Mr C is unhappy with the Council's proposals, I do not agree that they have ignored his opinions; the consultation process is continuing. However, at the end of the day, the Council are entitled to take strategic decisions based on the profession opinion of their officers. Accordingly, I do not uphold this aspect of the complaint.

(c) The Council misrepresented the situation

15. Mr C believed that the Council's proposals were based on flawed information and statistics. He has disputed them when he has complained to the Council (his letter of 4 January 2005 in particular refers, see paragraph 13) and, in his letter of complaint to the Ombudsman, he claimed that travel to work figures were untrue and that housing market figures were both arbitrary and undemocratic.

16. When the Chief Executive originally responded to this complaint, by letter of 14 February 2005, he explained that it was, '…a fact that a mistake was made in the tags applied to information in the system and these were wrongly collated. This stemmed, if anything, from an attempt to be helpful and to put

information out as quickly as possible resulting in the Officer contacting you as quickly as possible to apologise and to rectify the mistake.'

(c) Conclusion

17. As above (see paragraph 14), the Council were entitled to be make decisions based on the professional opinion of their officers, similarly this applied to the statistics they produce. Mr C is also entitled to dispute these figures and the Council's opinion, and, in one case, revealed that a mistake had been made. This was acknowledged by the Council (see paragraph 16). However, this would not necessarily lead the Council to doubt all the advice their officers made, as it would appear that Mr C wished. I have seen no evidence to lead me to conclude that the Council misrepresented the situation to the public and in the absence of such evidence; I do not uphold the complaint.

(d) The Council encouraged staff not to disclose information

18. The complainant alleged that in dealing with the St Andrews and East Fife Local Plan, officers involved were required by the Council to dissemble when giving information to the public. He said that while they felt uncomfortable about this, they feared sanctions. In his letter to the Chief Executive dated 4 January 2005, Mr C demanded a full investigation.

19. The Chief Executive replied on 14 February 2006 confirming that consultation called 'Your Place, Your Plan' had already started when the Council's proposals for the amended local plan boundaries came into the public domain. My discussion with the Council's Development Manager (Business and Strategy) (see paragraph 9) confirmed that 'Your Place, Your Plan' was part of a pre-consultation exercise which began in 2002 and covered the existing administrative area of St Andrew's and East Fife, including Freuchie. Specifically, consultation on 'Your Place, Your Plan' was carried out between March and April 2004; that is, it began, and continued, largely before any decisions had been reached on the new local plan areas proposed. The Chief Executive advised Mr C that before that, officers were not in a position to disclose the Council's local plan proposals until such time as they had been confirmed by elected members. He said that this was quite normal. He denied that there had been any 'threat, or implied threat, to or from members of staff in the advancing of these proposals.'

(d) Conclusion

20. Mr C believes that because Council officers did not tell him about the proposals for the three new local plan areas while they were consulting on 'Your Place, Your Plan' there was pressure being placed on them by senior officials. In all the information available to me, I have seen nothing to suggest that this was the case. The reason why they did not discuss Local Plan proposals has been explained by the Chief Executive (see paragraph 19) and I do not find anything suspicious in this. Taking the foregoing into account, I do not uphold this complaint.

18 July 2007

Annex 1

Explanation of abbreviations used

Mr C	The complainant
The Council	Fife Council
The PAN	Planning Advice Note 49