

## Scottish Parliament Region: Central Scotland

### Case 200600970: North Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Planning: Handling of Planning Applications (Complaint by Objector)

##### **Overview**

The complainant (Mr C) raised concerns about the handling by North Lanarkshire Council (the Council) of planning applications for a site adjacent to his home.

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

The complaints which have been investigated are that the Council did not:

- (a) have proper regard to site levels in the development (*not upheld*);
- (b) ensure that appropriate plans were made available to enable neighbours properly to gauge the effect of the proposed development on their privacy (*not upheld*); and
- (c) insist that the play area for the development was incorporated within the development rather than adjacent to existing housing (*not upheld*).

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

The Ombudsman has no recommendation to make.

## Main Investigation Report

### Introduction

1. The complainant (Mr C) lives at 6 X Street in a community in North Lanarkshire. To the rear of his house lies an area which was the subject of applications for planning consent in 2002 and 2003. Mr C and his neighbour at 8 X Street (Mr D) submitted separate complaints to the Scottish Public Services Ombudsman in 2006 when the adjacent development was nearing completion. A separate report has been issued on Mr D's complaint (200600085).

2. The complaints from Mr C which I have investigated are that the Council did not:

- (a) have proper regard to site levels in the development;
- (b) ensure that appropriate plans were made available to enable him properly to gauge the effect of the proposed development on his privacy; and
- (c) insist that the play area for the development was incorporated within the development rather than adjacent to existing housing.

### Investigation

3. The investigation is based on information supplied by Mr C and Mr D and the Council's response to my enquiries. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, Mr D and the Council were given an opportunity to comment on draft reports.

**(a) The Council did not have proper regard to site levels in the development; and (b) The Council did not ensure that appropriate plans were made available to enable neighbours properly to gauge the effect of the proposed development on their privacy**

4. An application for outline planning consent for the formation of 37 house plots and associated roads was submitted to the Council and registered on 5 August 2002. The application (Application A) involved a departure from the development plan and was advertised in a local newspaper on 14 August 2002. It was submitted in conjunction with other applications for planning consent and listed building consent to convert an existing listed farm steading into 23 dwelling houses. Although the site was located in the Green Belt, it was considered by officers that the release of land for a new housing development was justified in order to secure retention of the listed building which was then in danger of collapse.

5. Application A attracted 180 letters of objection including 4 petitions. One petition, whose signatories included two nearby neighbours of Mr C, referred to a problem of drainage in what was then an open field. Other reasons for objection included lack of play facilities. Although site levels were not specifically mentioned in the objections, issues of overshadowing and lack of privacy were referred to. There is no evidence that Mr C objected to Application A.

6. A report on Application A was submitted by the case officer (Officer 1) to the Planning and Environment Committee (the Committee) on 16 January 2003. The Committee were minded to grant conditional outline consent. In accordance with the Town and Country Planning (Notification of Applications) (Scotland) Directions 1997, Application A was referred to Scottish Ministers. Outline consent was issued on 31 October 2003.

7. A further application (Application B) was submitted shortly thereafter seeking approval of reserved matters which included details of existing and proposed site levels, the provision of equipped play areas, a sustainable urban drainage system (SUDS) and public open space. Application B was registered on 12 November 2003 and was the subject of neighbour notification of some 29 neighbouring property owners and occupiers. It attracted two letters of objection, one of which was from Mr C and his wife and was dated 24 November 2003. Mr C and his wife's objection related solely to the potential nuisance and detriment to their amenity and value of their property from a proposed play area on the periphery of the development adjoining his property. Neither Mr C nor the other objector's letter referred to site levels.

8. As part of the consideration of Application B, the Director of Planning and Environment wrote to the developer on 19 December 2003 requesting further information regarding the proposed levels of the site as part of the overall requirement for the SUDS. Since the application site was formerly a field, officers were concerned that rainwater runoff would have a detrimental effect on adjacent properties - a point previously raised by petitioners (paragraph 5).

9. The Council informed me that in order to provide an efficient and sustainable method of drainage, a gravity system was proposed diverting roads and roof drainage to the north and away from the rear of the properties of Mr C and Mr D. The Council stated that this required a detention pond to be located

at the north of the site and levels altered at the south to reflect this. After a meeting to discuss the proposals, the developer was advised that due to the proposed extent of retaining walls, re-notification of neighbours would be required. The developer submitted plans to the Council on 19 February 2004 showing the location of proposed retaining walls. The developer certified that he had re-notified the 29 owners and occupiers on 17 February 2004 and provided a copy of a letter of explanation which highlighted that re-notification was due to the inclusion of proposed levels. No further letters of representation were received following the re-notification.

10. The Council informed me that the initial plans submitted in respect of Application B were superseded and were not retained on file. While generally applications for approval of reserved matters are determined by the Development Control Team Leader under delegated powers, the submission of two letters of objection, required reference to the Committee.

11. The Council further stated that pre-development site levels were such that the new development would always sit at a higher level than Mr C and Mr D's properties at X Street. In order to construct a new access road and drain to the north to the SUDS detention pond, substantial re-grading was required to create the final levels for the new roads and driveways to the houses. Further clarification was provided in a particular drawing (Drawing 1) which provided the finished floor levels of the new houses and the existing garden levels of each adjoining property in X Street. Additionally the plans showed the location and height of proposed retaining walls within the site and on its boundary.

12. A report was prepared on Application B and was considered by the Committee on 3 March 2004. The Committee agreed to grant approval to the proposals subject to conditions. These included a proposed play area of some 550 square metres which, on its eastern side, would share a boundary with Mr C and Mr D's property. A further condition (condition 10) required the play area to be provided before completion of the 31<sup>st</sup> house on the site. Drawing 1 was one of the approved plans.

13. The Council have commented that, in general, case officers make judgments on the impact of the development proposals, based on training and experience. In the particular instance, there had been an overriding argument in favour of developing the site. The site had to be adequately and sustainably drained. Existing site levels were an additional constraint. Officer 1 judged that

the impact of the new houses, albeit at a substantially higher level, was on balance acceptable given that the distance between the new and existing houses was in excess of the Council's minimum standard of 18 metres from directly facing windows and there were intervening existing trees and bushes. Also, there had been a lack of reaction from existing residents to the details of levels provided by the applicant. Officer 1 had no recollection of anyone visiting the office to request information on the issue. While it would have been possible for the plans to have been viewed at the public reception desk without the knowledge of Officer 1, he would have expected any request for clarification of the plans to have been referred to him.

*(a) Conclusion*

14. I am satisfied that the Council had proper regard to site levels in the development. Site levels were a reserved matter in the consent issued in respect of Application A and appear to me to have been fully addressed in the consideration of Application B. Mr C appears not to have taken the opportunity presented by the crucial second neighbour notification in respect of Application B to view the plans and convey any concern he might have had when Application B was determined. I do not uphold this complaint.

*(b) Conclusion*

15. The purpose of neighbour notification is to alert those with an interest of the availability of plans associated with a proposed development to enable them to inspect and thereafter to submit comment. It appears that Mr C was alerted through neighbour notification on 11 November 2003 of Application B, availed himself of the opportunity to inspect, and made comment on the initial plans. Those plans were, however, superseded. A further neighbour notification was certified by the developer to have been served on 29 neighbouring properties on 17 February 2004 with a covering letter explaining why further notification had been necessary. No further comments were received by the Council. I do not uphold this complaint.

**(c) The Council did not insist that the play area for the development was incorporated within the development rather than adjacent to existing housing**

16. The Council informed me that the initial plans submitted with Application A indicated that the play area associated with the development would be located to the north west of the existing steading to the back of those buildings and away from the new housing. That location was criticised during the consultation

on Application A and, in response, the developer altered the proposed indicative position to a site adjoining the rear of Mr C and Mr D's properties. That position could have been altered by the developer when he submitted Application B for the approval of reserved matters.

17. The developer in submitting Application B in November 2003, however, did not alter again the position of the proposed play area. Mr C and his wife responded on 24 November 2003 objecting to the proposed location of the play area in Application B and their comments were included and commented upon by Officer 1 in his report to the Committee. The assessment of the location in the report concluded that due to the available existing screening provided by trees/bushes and the available distance between the play area and all of the neighbouring properties, the impact on the amenity of surrounding properties would be limited. The Council stated that the final detail of the proposed play area placed the equipment 25 metres from the objectors' dwelling house in line with the Department's practice.

18. The Council stated that the guidance in relation to play areas envisages them being located towards the centre of a development on main pedestrian routes, but away from major accesses or other hazards. The Council said that the available areas which met those requirements were limited due to the awkward nature of the site overall. They stated that due to the existence of established vegetation for partial screening they decided it was possible to balance preserving the amenity of existing home owners with ensuring appropriate play provision. Application B was approved on 3 March 2004 subject to a condition that required completion of the play area and associated landscaping before completion of the 31<sup>st</sup> of the 37 houses in the development.

19. The play area was installed in the Spring of 2006. Mr C and Mr D were alarmed at its height and proximity and, in separate letters of 6 and 13 June 2006, pursued complaints with the Council. Mr C stated that he had put his home on the market in May 2005 but that a proposed purchase had fallen through at that time because of problems with the chain. The installation of the play area had had an adverse affect on selling the property at the price he anticipated. Mr D felt that his privacy and amenity had been adversely affected.

20. Mr D was aggrieved at the proximity of the playground equipment eight metres from his rear fence. He stated that the ground on which the play area

had been built had been raised. He pointed out that the developer had provided no additional screening and the area was bounded only by a decorative open railing. The mature screening shrubs were in his garden. He had been plagued by noise from teenagers as late as 23:00, his privacy had been affected, and stones had been thrown at him and his property from the play area.

21. The Council initially commented on 28 December 2006 that the developer had provided information that a 1.8 metre high fence would be constructed to the eastern boundary of the play area which, when constructed, would keep the impact on Mr C and Mr D's property to a minimum. A timber fence screening the play area was subsequently erected in early 2007.

*(c) Conclusion*

22. I can understand why Mr C (and his neighbour) are aggrieved at the proximity of the play area on a raised site. The reason for the increase in height is dealt with at paragraphs 9 to 11 and for the particular location at paragraphs 16 to 17. I see no evidence of service failure or maladministration associated with the selection of the location of the play area or in its relative height and distance from the homes of Mr C and his neighbour. I do not uphold the complaint.

*(c) Recommendation*

23. The Ombudsman has no recommendation to make.

18 July 2007

**Explanation of abbreviations used**

Mr C	The complainant
Mr D	Mr C's neighbour
X Street	The street in which Mr C and Mr D reside
The Council	North Lanarkshire Council
The Committee	The Council's Planning and Environment Committee
Officer 1	The Planning Case Officer
Application A	The application for outline planning consent for 37 houses and associated roads
Application B	The application for approval of reserved matters
SUDS	Sustainable Urban Drainage System
Drawing 1	One of the plans submitted with Application B showing finished floor levels