

Scottish Parliament Region: South of Scotland

Case 200601118: East Lothian Council

Summary of Investigation

Category

Local government: Planning: Handling of planning application complaints by objectors

Overview

The complainants (Mr and Mrs D) raised a number of concerns about the handling of applications for planning permission and conservation area consent made to East Lothian Council (the Council) for a housing development in their village.

Specific complaints and conclusions

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

- (a) policy statements in the Structure Plan and Local Plan and their obligations under sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (the 1997 Act) in considering and determining the applications (*not upheld*); and
- (b) the views of objectors and did not refer the matter to the Council's Planning Committee for determination (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complainants, Mr and Mrs D, reside in a house on X Road in an East Lothian village, a significant part of which is within a conservation area. Mr and Mrs D's complaint related to East Lothian Council (the Council)'s handling of applications for full planning permission and conservation area consent for a housing development. A similar complaint was made by Mr and Mrs D's neighbour (Mr C) who lives in the same street. A separate report is being issued on Mr C's complaint (200601169).

2. The complaints from Mr and Mrs D which I have investigated are that the Council did not have proper regard to:

- (a) policy statements in the Structure Plan and Local Plan and their obligations under sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in considering and determining the applications; and
- (b) the views of objectors and did not refer the applications to the Council's Planning Committee for determination.

Investigation

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

4. The complaints of Mr and Mrs D and Mr C concern development proposals for a site extending to 0.91 hectares (2.24 acres) including the curtilage of a former Parish manse and an adjoining field. That manse was built in the 1960s as a replacement for the historic manse and is situated at the northwest edge of the village. A development brief for the site was prepared by the former East Lothian District Council in 1987 and a second development brief by the present Council in May 2004 (the Development Brief) (Annex 3(c)).

(a) The Council did not have proper regard to policy statements in the Structure Plan and Local Plan and their obligations under sections 59 and 64 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 in considering and determining the applications; and (b) The Council did not have proper regard to the views of objectors and did not refer the applications to the Council's Planning Committee for determination.

5. According to Mr C, a previous application for residential development of the site was rejected in the face of local opposition on grounds that certain aspects did not accord with conditions stipulated in the Local Plan.

6. On 14 December 2005, a housing developer (the Developer) submitted applications for full planning consent and for conservation area consent for the erection of nine houses and associated works. As stated, the site was mainly an agricultural field but included the single storey manse and associated gardens on its eastern side. To the south the site was bounded by the grounds of the historic manse which has a Category B Listing. The parish church, which has a Category A listing, is located nearby to the west of the application site.

7. Following neighbour notification, the applications were registered on 3 February 2006 and advertised in a local newspaper on 10 February 2006. The applications attracted 16 letters of representation/objection including Mr and Mrs D on 5 January 2006, and Mr and Mrs C on 25 February 2006.

8. Mr and Mrs D's letter of 5 January 2006 was written after they had inspected the plans lodged and had compared these with the Development Brief. They were concerned at extremely dominant houses of unwarranted proportion being proposed for small plots of ground which in their view were not of the sympathetic and sensitive design the village merited. They raised objection with regard to the layout and density of the proposed development and scale and mix of the proposed houses. They were particularly concerned that a house proposed for the north west corner of the proposed development would be 2.9 metres higher than their own house and would dominate it.

9. On 6 June 2006, prior to a decision being taken on the application, Mr C wrote on behalf of the Village Association to his then local Member of the Scottish Parliament (the MSP). This letter was copied to the local councillor and to a named officer of the Council Planning Department (Officer 1). Mr C's letter voiced the concerns of the Village Association at the proposals.

According to the Council, this letter was not received by them until 15 June 2006, the date when an officer recommendation preview was issued to members (see Annex 3(d)).

10. The officer recommendation preview extended to 18 pages including the recommendation. It was circulated to members together with the 16 letters received. The report set out the policy background in the Structure and Local Plans (Annex 3(b)) and relevant Scottish Executive policy guidance, the relevant sections of the 1997 Act (Annex 3(a)), the terms of the Memorandum of Guidance on Listed Buildings and Conservation Areas, and relevant details from the development brief of May 2004 (Annex 3(c)). It then summarised 25 points from the 16 letters of objection and appraised the proposals. Page eight of the report set out and commented on Mr and Mrs D's objections. The report concluded with a recommendation that consent be granted subject to thirteen conditions and the conclusion of an agreement with the Developer for a financial contribution toward increasing the capacity of the local secondary school.

11. Since no councillor requested that the application be referred to the Council's Planning Committee for consideration, the application for planning consent was determined by officers under delegated powers and granted on 23 June 2006. The application for conservation area consent was approved but required to be referred to the Scottish Ministers. Following confirmation from the Scottish Ministers, conservation area consent was granted.

12. Mr and Mrs D were aggrieved to learn that planning consent had been granted and on 11 July 2006 wrote to the Chief Executive. They quoted eight statements from the officer recommendation preview and maintained that it contained inaccurate information and that it favoured the developer. Their letter was also copied to the Village Association and to this office.

13. The Chief Executive forwarded the letters from Mr and Mrs D to the Director of Environment (the Director) for him to respond. With his reply of 18 July 2006, the Director provided details of the Ombudsman's office. He stated that the role of the ombudsman was to assess whether a public body had followed the correct administrative and legal procedures when reaching a decision and not to question the technical judgement of the authority. The Director stated that most of the points raised in Mr and Mrs D's letter concerned the technical assessment of the application.

14. On 27 July 2006, Mr and Mrs D wrote again to the Chief Executive stating that the 'technical details' noted in their letter were based on the contents of the officer recommendation preview upon the decision to grant planning approval had been made. They considered that the information provided in the document was in many areas misleading, incorrect, divisive in favour of the developer and paid scant regard to the Development Brief agreed in May 2004.

15. The Director had in the meantime also received a letter of 11 July 2006 from Mr C and in his reply of 18 July 2006 explained to Mr C the procedures for dealing with applications. He stated that the Council's Committee Expedited Procedure (Annex 3(d)) was established for dealing with applications that are the subject of objection, but do not raise new or strategic policy matters. Under this procedure, members, in most cases the local member, inform the Director of Environment if they wish an application to be referred to the Planning Committee. If not, a detailed report, including copies of all letters of objection is put on the Committee Expedited List circulated each Thursday to all members of the Council. Members have seven days following publication of the list to request that the application be referred to the Council's Planning Committee. No request to refer the X Road applications to the Council's Planning Committee was received from an elected member.

16. Mr and Mrs D's complaint to the Ombudsman was made in a letter of 27 July 2006. They maintained that the officer recommendation preview had contained misleading and incorrect information and had been biased in favour of the Developer.

17. On 30 August 2006, Mr C submitted a complaint to the Ombudsman's office. He asked that we should investigate 'the appropriateness of the planning consent, given the weight of facts/opinions which oppose the decision'. He expressed his concern that, despite its controversial nature, the application for full planning consent was not referred to the Planning Committee for determination.

(a) Conclusion

18. In the particular instance, the principle of developing the site for housing had been established some twenty years ago; was identified in the Local Plan adopted in 2000; and a Development Brief had been prepared in 2004 to guide prospective developers to the quality of design which would be required for a

sensitive site in a conservation area close to listed buildings. I consider that the officer recommendation preview provided a thorough analysis of the issues relating to the development of the site and adequately addressed and commented on Mr and Mrs D's objections. I do not uphold this complaint.

(b) Conclusion

19. In terms of the Council's Scheme of Delegation (Annex 3(d)), the sheer amount of objections to proposals is not the main determinant of an application being referred to their Planning Committee for consideration. The Director has stated that strategic and new policy issues are more relevant to distinguishing whether an application should be determined by members. The timely letters of objection were in my view appropriately considered in the officer recommendation review. The system clearly allowed for a member to request that the applications be placed before the Council's Planning Committee for determination. I see no demonstrable administrative failure in this not happening. I do not uphold this complaint.

18 July 2007

Explanation of abbreviations used

Mr and Mrs D	The complainants
Mr C	Mr and Mrs D's neighbour in X Road who also complained to the Ombudsman
The Council	East Lothian Council
Officer 1	A planning officer
X-Road	The road where the complainants reside
The Developer	The developer of the site
The Director	The Council's Director of Environment
The Village Association	An Association of villagers
The Development Brief	Specific development guidance for the site issued by the Council in May 2004
The MSP	The Member of the Scottish Parliament to whom Mr C wrote on 6 June 2006
The 1997 Act	The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
The Chief Executive	The Council's Chief Executive

List of legislation and policies considered

Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

Edinburgh and Lothians Structure Plan 2015

East Lothian Local Plan 2000

Background

(a) Legislation

In terms of section 59 of the Planning (Listed Buildings and Conservation Areas Act 1997, a planning authority, in considering whether to grant planning permission which affects a listed building or its setting, is required to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. In terms of section 64, a planning authority has a general duty, in the exercise of its powers under the planning acts in respect of buildings and other land in a conservation area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

(b) Relevant Policies

The village is covered by the Edinburgh and Lothians Structure Plan 2015 and the adopted East Lothian Local Plan 2000. Policy ENV1C of the Structure Plan states that development that would harm the character, appearance and setting of listed buildings should be resisted. Policy ENV1D states that development affecting conservation areas should be permitted only if the objectives and overall integrity of the designated area will not be compromised.

The site was allocated for housing development in the 2000 Adopted Local Plan (Policy DN1). Relevant Local Plan policies are ENV3 (which requires all new development to be well designed and integrated into its surroundings); ENV9 (which states that new development that harms the setting of a listed building will not be permitted); and ENV10 (which states that all new development must be located and designed to preserve or enhance the special architectural or historic character of a conservation area).

(c) Development Guidance

The Council prepared a six page design brief (the Development Brief) for the site in May 2004 as development guidance to prospective developers. The Development Brief set out the designation of the planning site in the Local Plan and identified the importance of fitting the new houses into the conservation area. It also detailed layout constraints, accessibility and traffic management issues, landscaping, the scale and mix of houses and details and materials.

(d) The Council's Procedures for considering applications

The Council's procedures for deciding planning applications state that the decision on whether to approve or refuse a planning application rests with its elected members. Authority for this is vested in the Council's Planning Committee. The responsibility of planning officers is to report on and make recommendations in respect of applications. The Planning Committee has delegated to the Council's Director of Environment powers to issue without reference to the Planning Committee decisions on applications that promote development which is consistent with the provisions of the development plan and other material considerations, raises no other policy issue, and is not the subject of any public objection. Other cases have to be reported to the Council's Planning Committee. This is done either through an expedited procedure known as the Committee Expedited List or by presenting reports on applications to meetings of the Planning Committee. A Committee Expedited List is presented to all members of the Council on the Thursday of each week. It gives a full planning assessment report with a recommended decision for each application included on it. In cases where there are letters of representation in respect of an application the grounds of representation (usually objection) are addressed in the report and the letters are copied in full to elected members with the List. Members have until the following Thursday to decide whether or not to accept the terms of the report and the recommendation made for each application. If the recommendation is accepted then the Development Control Manager will, on the Thursday expiry date for the List, instruct administration staff to issue the decision on the application. Otherwise, at the request of a member, the report will be taken from the List, and placed on the agenda for the next available meeting of the Council's Planning Committee. In such cases the Council's Planning Committee will visit the application site before meeting to decide the application.