

Scottish Parliament Region: South of Scotland

Case 200500902: North Ayrshire Council

Summary of Investigation

Category

Local government: Planning; unauthorised development

Overview

The complainant (Mr C) complained about North Ayrshire Council (the Council)'s handling of a planning matter relating to a site adjacent to his property which had been the subject of a number of planning proposals. He was aggrieved because the contractor carried out unauthorised works and he alleged that the Council delayed in taking enforcement action.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) delayed in taking action against the contractor (*upheld*); and
- (b) delayed in taking action following the decision to serve an enforcement notice (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise to Mr C for failing to deal efficiently with his complaints; and
- (ii) produce internal guidance on good practice in Planning Enforcement which should include advice for officers on the need to maintain properly documented records of their investigation of each case.

The Council have accepted the recommendations and have confirmed that arrangements have been made to act on them.

Main Investigation Report

Introduction

1. The complaint by a member of the public, referred to as Mr C, concerned unauthorised works which were undertaken on a site adjacent to his property (plot A). He complained that North Ayrshire Council (the Council) were dilatory in taking enforcement action to require the removal of a static residential caravan which had been positioned in front of his lounge window and for the reinstatement of the land.
2. Essentially, Mr C complained that the Council wasted time and did not deal with the contractor's actions on site satisfactorily.
3. The complaints from Mr C which I have investigated are that the Council:
 - (a) delayed in taking action against the contractor; and
 - (b) delayed in taking action following the decision to serve an enforcement notice.

Investigation

4. My findings and conclusions are set out below and, although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. As part of my enquiries, I obtained details of the planning history of the site (plot A), as well as post the serving of the enforcement notice. Mr C and the Council were given an opportunity to comment on a draft of this report.

Legislative background - paraphrased from Planning Advice Note: PAN 54

5. Carrying out development without the required planning permission constitutes a breach of planning control. The planning authority has discretionary powers to take action against such breaches having regard to the provisions of the development plan and any other material considerations.
6. There are various powers available to a planning authority to enforce planning control under the Town and Country Planning legislation. However, central government guidance (*Circular 4/1999 Planning Enforcement*) sets out the general approach to enforcement and, in terms of good practice, emphasis is given to the wider choice of options for taking enforcement action available to authorities and the need to assess in each case what is best suited to deal with any suspected or actual breach of control to achieve a satisfactory, lasting and

cost effective remedy. In particular to:

- consider whether the breach unacceptably harms public amenity, or the existing use of land and buildings merits protection in the public interest;
- ensure any enforcement action is commensurate with the breach of planning control to which it relates; and
- ensure that, should an initial attempt to persuade an owner or occupier of a site to remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

7. It is vital for the planning authority to maintain a properly documented record of their investigation of each case and of the reasons why they decided to take, or not to take, enforcement action. The decision not to take enforcement action can be challenged by judicial review and it is important to ensure that a decision not to take enforcement action is also well-founded.

Planning History of the Site

8. Under the Council's Local Plan, Policy RES 1 allows new housing development in the area in question.

9. In 2002 the Council refused planning permission for the erection of a dwelling house on plot A on the grounds that the standard of the existing road network serving the area had 'reached its development capacity and is not capable of supporting any further development without major improvements'.

10. In December 2004, plot A was cleared of vegetation and Mr C complained to the Council that hard standing had been created with the import on site of rock and other material to form what appeared to be a 'very large Car Park' immediately in front of his lounge window. Initially, he pursued this matter by telephone. However, he followed this up in writing to the Chief Executive in January 2005 requesting action and the service of an 'immediate Enforcement Order' requiring the reinstatement of the site.

11. Mr C's letter was acknowledged and the Chief Executive responded to him on 28 January 2005 with advice that 'the contractor has been instructed to cease works on this site' and this had been done. However, it was explained that it was unlikely that enforcement action would be taken because the contractor had advised that an application for planning permission was about to

be submitted. In the circumstances, the Council would be unlikely to proceed to require the removal or undoing of the works pending the outcome of the planning application.

12. In February 2005, the formation of an access road was completed and a static residential caravan was placed at the site. Mr C complained about this to the Council and received advice that this would be investigated.

13. An application for the erection of two houses on plot A was submitted on 1 April 2005. Mr C exercised his right to lodge objections to the plans. At the same time, an application was submitted for a development of three houses on a nearby site (plot B).

14. In July 2005, an application was submitted with revised development proposals for plots A and B and the two previous applications were withdrawn.

15. In the meantime, the caravan remained on plot A and the contractor had not taken action to reinstate the land.

(a) The Council delayed in taking action against the contractor

16. Mr C complained that the Council failed to act promptly on his numerous written and oral representations to them seeking enforcement action to require the contractor to remove the mobile home which had been placed in front of Mr C's lounge window, which he claimed affected his amenity. Mr C had first raised the matter by telephone in December 2004 and followed this up in writing (see paragraph 10).

17. As background, the Council commented to me that it is not uncommon for works to commence prior to obtaining planning permission and that, once planning officers become aware of this, they make every effort to persuade the contractor to halt the works and submit a planning application to regularise the situation. In the first instance, a complaint is investigated by the Planning Inspector and a decision on the appropriate course of action follows discussion with the relevant Planning Officer. This may require the submission of a retrospective planning application or for the unauthorised works to be removed. Voluntary agreement to remedy the breach is normally sought rather than formal enforcement action.

18. The Council commented that in this case, the matter was dealt with by a

Planning Officer (who has since left the authority) rather than the Planning Inspector, reflecting the fact that it was the contractor's stated intention to develop plot A for a house or houses and to lodge a planning application for such a development in the near future. On this basis, it was decided that it was not necessary to take enforcement action at that time as, in terms of the Local Plan, residential development was, in principle, a suitable land use for the area. However, the Council commented that it took many weeks, and a lot of pressure on the contractor, before proposals were submitted that could be properly assessed.

19. There is evidence which shows that the Planning Officer had a number of telephone conversations with Mr C as this is referred to in an email of 19 January 2005 when he stated that he had told Mr C that the contractor had been asked to cease works on site. There is reference to his understanding that the contractor proposed to apply for a house on this site 'shortly' and that he had advised him to do so as soon as possible. The Planning Officer noted also that he had arranged to meet Mr C on site to discuss his concerns.

20. There is evidence, therefore, confirming that Mr C's initial approaches were actioned. Mr C also received advice from the Assistant Chief Executive on 17 February 2005 that he had asked for a full report from his Planning Service (and that on receipt consideration would be given to further action to be taken against the contractor). However, I have not been shown any documentation which confirms that the matter was investigated by the Planning Service or that Mr C was contacted further with advice of the outcome of any subsequent investigation into the matter. It was only after raising the matter with the Council's Chief Executive in July 2005 that Mr C was told enforcement action would be taken.

21. The Council have explained their practices where unauthorised works take place but have not issued formal guidance. Further, there is insufficient documentary evidence that they put pressure on the contractor over the unauthorised development on plot A.

(a) Conclusion

22. It is not in dispute that unauthorised works were carried out on land adjacent to Mr C's property. The key issue is whether or not the Council acted correctly in their investigation of the matter and if there was, as Mr C claimed, delay in pursuing his complaint of unauthorised works.

23. The Council stated that they were satisfied that they communicated regularly and promptly with Mr C. Although there is evidence of telephone calls and contact by the Council with Mr C about his complaint in January 2005, he was not told what action, if any, was being taken subsequently. Also, there is no evidence that the Council investigated the matter further and formalised their advice to the contractor about the unauthorised works and the expectation that an application would be submitted. The Council have not been able to show that they pursued this matter and were at fault in their failure to update the complainant.

24. It was a judgement call whether it was appropriate to progress to formal action and I could not criticise a Council for adhering to central government guidance. However, I am critical of the absence of records of the action they took in pursuing the contractor – both informally and formally – and updating Mr C. Guidance in PAN 54 on best practice in handling complaints of development control breaches highlights the importance of maintaining a properly documented record of the investigation into an alleged breach of development control.

25. In the absence of evidence which confirms that the Council dealt properly and timely with Mr C's complaints about the unauthorised development, I have concluded that there was maladministration in the handling of the matter and this head of complaint is upheld.

(a) Recommendation

26. The Ombudsman recommends that the Council:

- (i) apologise to Mr C for failing to deal efficiently with his complaints; and
- (ii) produce internal guidance on good practice in Planning Enforcement which should include advice for officers on the need to maintain properly documented records of their investigation of each case.

(b) The Council delayed in taking action following the decision to serve an enforcement notice

27. Mr C complained that after the decision was taken to proceed with enforcement action, there was delay in completing the process.

28. In his letter to Mr C of 20 July 2005, the Chief Executive informed him that the Council would take enforcement action at the first available opportunity.

29. In their comments the Council explained that it took far longer to reach a decision on the contractor's planning proposals¹ because of the 'road access issues affecting this site'. The Council's Road Engineer had responded to the consultation on the application that, in the interests of road safety and in view of the previous decision to refuse planning permission for a house on plot A, the contractor should be required to widen the public road leading into the area. He stipulated also that only one further house could be permitted on plot A, unless the private access road linking the public road to the site could be widened. In the event, the original application was withdrawn and another one submitted amending the proposal for plot A to one house.

30. The Council commented that they were 'mindful of the ongoing delay' since the complaint of unauthorised works had been made and that they were 'under pressure from [Mr C]' to take action. On 15 August 2005, authorisation was given to take enforcement action.

31. The Council accepted that they afforded the contractor a 'fair degree of latitude' in proposing an acceptable form of development before their patience expired in July 2005. They have explained that the Planning Committee, which approved the enforcement notice on 15 August 2005 (for the removal of the unauthorised access road, static residential caravan and reinstate the land to its original condition), was the first after the summer recess. Instructions were then given to the Council's Legal Section to prepare the notice and this was served by Sheriff Officers on 17 September 2005.

32. Mr C stated that the Council resisted requests for many months to take enforcement action before they finally sent the matter to a committee with wholly delegated powers on 15 August 2005 (after further delay following the letter of 20 July for the summer recess). He noted that this was some seven months after the unauthorised works were drawn to the Council's attention and that, subsequently, the Council's legal officers took an inordinately long time to prepare the notice. Mr C commented that this 'further assisted the caravan dwellers' by extending the statutory four week implementation period to the end of October, in full knowledge that the statutory time allowed for an appeal would take the matter to the end of November.

¹ (see paragraphs 13 and 14)

33. In the meantime, the revised planning application for plots A and B was being considered and planning permission was granted on 28 October 2005. A planning application seeking temporary permission for the siting of the caravan was submitted to the Council on 4 October 2005. On 5 December 2005 the Planning Committee determined the application for the caravan when permission was granted for one year and they agreed to withdraw the enforcement notice. Building commenced on site; however, there was delay in completion and approval was given in February 2007 by the Planning Committee for an extension of time for the caravan to be on site during construction of the house, prior to the occupation of the dwelling house on site, or by 5 August 2007, whichever date is the earlier.

(b) Conclusion

34. It is understandable that Mr C was concerned about timescales but I have seen nothing to suggest that the Council delayed inordinately once the decision was taken to proceed with enforcement action. Although the Council have admitted that the contractor was given a certain amount of latitude, they have discretion on what action is appropriate when unauthorised works are taken; and the guidance from central government is clear that formal action is the last resort. In the event, the Council did take this step. I do not see any specific fault in their actions and I do not, therefore, uphold this head of complaint.

35. The Council have accepted the recommendations and have confirmed that arrangements have been made to act on them. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

22 August 2007

Explanation of abbreviations used

Mr C

The complainant

The Council

North Ayrshire Council

The contractor

Company developing the site

List of legislation and policies considered

Planning Guidance
Circular 4/1999

Planning Advice Note (PAN) 54

Town and Country Planning (Scotland) Act 1997

Town and Country Planning (General Development Procedure) (Scotland)
Orders

Isle of Arran Local Plan
Policy RES 1