

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200601662: Fife Council

#### Summary of Investigation

##### **Category**

Local government; planning; enforcement

##### **Overview**

The complainant (Ms C), complaining on behalf of an elderly couple (Mr and Mrs A), raised a number of concerns about Fife Council (the Council)'s alleged failure to take appropriate and timely enforcement action to remove unauthorised air conditioning units that had been erected directly outside Mr and Mrs A's window. Ms C was concerned about the noise produced by the units and their impact on visual amenity.

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

The complaints which have been investigated are that the Council:

- (a) failed to take timely enforcement action against the developer after complaints were first raised in October 2004 (*not upheld*);
- (b) failed to take enforcement action after the East Area Development Committee (the Development Committee) granted enforcement powers on 27 September 2005 (*not upheld*);
- (c) failed to inform the complainant and the aggrieved that the original retrospective planning application had been withdrawn (*not upheld*);
- (d) failed to serve an enforcement notice in a timely fashion after the Development Committee decided to take enforcement action in June 2006 (*not upheld*); and
- (e) failed to carry out the decision of the Development Committee that the owners of the site (the Developers) should have only 28 days to appeal as they gave the Developers three additional days (*not upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) put measures in place to ensure that, when complaints are received about alleged unauthorised developments or when requests for enforcement action are received, complainants are provided with an explanation of the

- Council's duties in relation to enforcement and of the options generally available to deal with unauthorised development; and
- (ii) should ensure that, where possible and appropriate, complainants' expectations are managed with regard to likely outcomes and timescales and are kept up to date with significant developments.

The Council have provided me with a copy of a new Planning Enforcement Charter, which adequately addresses the issues raised in my recommendation.

## **Main Investigation Report**

### **Introduction**

1. On 11 September 2006, the Ombudsman received a complaint from a woman, referred to in this report as Ms C, complaining on behalf of an elderly couple (Mr and Mrs A), about Fife Council (the Council)'s alleged failure to take appropriate and timely enforcement action to remove unauthorised air conditioning units that had been erected directly outside Mr and Mrs A's window. Ms C was concerned about the noise produced by the units and their impact on visual amenity. A reminder of the abbreviations used in this report is at Annex 1.

2. The complaints from Ms C which I have investigated are that the Council:
- (a) failed to take timely enforcement action against the developer after complaints were first raised in October 2004;
  - (b) failed to take enforcement action after the East Area Development Committee (the Development Committee) granted enforcement powers on 27 September 2005;
  - (c) failed to inform the complainant and the aggrieved that the original retrospective planning application had been withdrawn;
  - (d) failed to serve an enforcement notice in a timely fashion after the Development Committee decided to take enforcement action in June 2006; and
  - (e) failed to carry out the decision of the Development Committee that the owners of the site (the Developers) should have only 28 days to appeal as they gave the Developers three additional days.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading the correspondence between Ms C and the Council. In addition, I obtained copies of: reports to the Development Committee dated 30 August 2005, 27 September 2005 and 27 June 2006; minutes of the Development Committee's meetings dated 30 August 2005, 27 September 2005 and 27 June 2006; Planning Advice Note 54 – Planning Enforcement; Scottish Executive<sup>1</sup> Circular 4/1999; Section 33 and 127 of the Town and Country Planning (Scotland) Act 1997; and the Council's planning file.

---

<sup>1</sup> On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive

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

#### *Background*

5. On 12 October 2004, Mr A submitted a complaint to the Council's Development Services Department (Development Services). The complaint was about unauthorised air conditioning units (the Units) that had been erected on the roof of an extension to commercial premises.

6. On 21 October 2004, a site visit was carried out by an Enforcement Officer (Officer 1). On 26 October 2004, Officer 1 spoke to the Developers about the Units and invited the submission of a retrospective planning application. On 30 November 2004, Officer 1 chased the Developers, asking that a planning application be submitted within 14 days. On 17 December 2004, a planning application was received from the Developers. The planning application was invalid at that stage as not all the required plans had been submitted. On 4 January 2005, a Development Control Technician (Officer 2) wrote to the Developers stating that more information was required to make the application valid. Following receipt of that information the application was made valid on 25 January 2005.

7. On 26 January 2005, a Planning Officer (Officer 3) wrote a memo to the Council's Environmental Services Department (Environmental Services) enclosing the planning application and requesting comments. On 28 January 2005, Officer 3 carried out a site visit. A note of the visit records a visual impact as well as environmental health issues from the Units, which it was suggested might be dealt with by some form of screening. On 8 February 2005, an Environmental Health Officer (Officer 4) wrote a memo to Officer 3 stating that the noise from the Units was causing a problem to adjoining proprietors and that the Developers should be asked to submit an acoustic consultant's report with regard to the noise created by the Units.

8. On 16 March 2005, Officer 3 wrote to the Developers advising them of the comments made by Officer 4 and requesting an acoustic consultant's report. Officer 3 also suggested that the visual impact of the Units was unacceptable and that some form of screening was, therefore, required.

9. On 19 April 2005, Officer 3 wrote a memo to Officer 4 enclosing amended details from the Developers showing screening around the Units and asking whether the concerns previously raised by Officer 4 (see paragraph 7 above) had been addressed. On 11 May 2005, Officer 4 replied stating that in his opinion the noise from the Units should be inaudible to neighbours. He said that he could not say, from the information provided by the Developers, whether or not the amended details would reduce the noise to such a level that it would not cause problems to adjoining proprietors.

10. On 3 June 2005, Officer 3 wrote to the Developers detailing the comments made by Officer 4 and stating that they should contact him to discuss possible solutions to reduce the noise from the Units to an acceptable level. Officer 3 stated that the screening proposed by the Developers in terms of visual appearance was not sufficient and that some sort of lead or lead look-a-like finish, possibly with a standing seam would be preferable.

11. At an unknown date between 3 June 2005 and 26 August 2005, Officer 3 prepared a report for submission to the Development Committee's meeting on 30 August 2005, which recommended that the planning application be refused and that enforcement powers be granted.

12. On 26 August 2005, the Developers sent an email to Development Services' Lead Officer (Officer 5) stating that their application was being withdrawn and that a new application would be submitted with all the relevant information. As the application had been withdrawn, it was not considered by the Committee at their meeting of 30 August 2005.

13. On 27 September 2005, an enforcement report prepared by Officer 1 was presented to the Development Committee seeking enforcement powers. These were granted. On 28 September 2005, a letter was sent to Mr and Mrs A's solicitors stating that enforcement powers had been granted but that a new planning application was likely to be submitted.

14. On 1 November 2005, the Developers submitted a new planning application seeking approval to erect shielding around the Units. The application was invalid as it did not seek retrospective permission for the erection of the Units themselves. On 9 November 2005, Officer 2 wrote to the Developers requesting information before the application could be made valid. On 12 November 2005, the Developers provided further information.

15. On 10 November 2005, Officer 1 sent a memo to Environmental Services asking for acoustic tests to be carried out to determine the noise generated by the Units. Officer 1 explained that it was important for Development Services to establish whether noise was still a problem as any reference to noise would have to be omitted from a potential Planning Enforcement Notice (PEN) if the issue with noise had been resolved. On 22 November 2005, Officer 4 replied that he had requested a copy of the Developers' acoustic consultant's report and that, once he had considered that report, he would determine whether further monitoring or works required to be carried out.

16. On 1 December 2005, Officer 1 spoke with the Developers regarding the lack of progress and pointed out that the application was still invalid. The Developers were of the view that relevant information had been provided. On 2 December 2005, the Developers submitted a report from their acoustic consultant. On 5 December 2005, the Developers confirmed that neighbour notification had been carried out. On 6 December 2005, the planning application was made valid.

17. On 12 December 2005, another Planning Officer (Officer 6) sent a memo to Environmental Services enclosing the new application and comments. On 23 December 2005, Officer 4 stated that the proposed works varied from the ones in the acoustic consultant's report. He asked that a further acoustic consultant's report be provided which would show that the proposed works met the same standards as those shown in the current report.

18. On 20 December 2005, Officer 6 carried out a site visit and sent a memo to Officer 4.

19. On 7 February 2006, the Developers wrote to Officer 6 stating that as a result of consultation responses received they had made significant changes to the proposed location of the Units. Officer 6 sent a copy of the new proposals to Officer 4 for comments. On 2 March 2006, Officer 4 replied stating that the Developers should be asked to submit a new acoustic consultant's report to determine the noise impact of the Units in the newly proposed location. On 3 March 2006, Officer 6 wrote to the Developers advising that Environmental Services had requested a further acoustic consultant's report.

20. On 16 March 2006, the Developers submitted amended plans for the location of the Units and advised that an acoustic consultant's report would be forwarded soon. On 21 March 2006, Officer 6 sent an email to the Developers advising that revised neighbour notification was required as the proposal differed materially from the previous application. On 23 March 2006, Officer 6 wrote to the objectors to the application advising that amended plans had been submitted and would be available to view from 27 March 2006.

21. On 7 June 2006, a meeting at the site was held between the Development Manager (Officer 7), a Local Councillor and Mr and Mrs A. Following this meeting, Officer 6 was instructed to prepare a report for the Development Committee's meeting on 27 June 2006. The Development Committee refused the application and granted enforcement powers.

22. On 31 July 2006, a PEN was served on the Developers allowing 31 days for an appeal to be made to the Scottish Ministers before the PEN came into force on 1 September 2006.

23. The Developers subsequently appealed the PEN. The appeal was rejected on 27 December 2006. Ms C has updated me on developments since that time, but they are not relevant to my investigation of this complaint and are, therefore, not recorded here.

**(a) The Council failed to take timely enforcement action against the developer after complaints were first raised in October 2004 (b) The Council failed to take enforcement action after the Development Committee granted enforcement powers on 27 September 2005**

24. As complaints (a) and (b) are similar, I will deal with them together.

25. Paragraphs 26 to 29 below set out some of the relevant guidance issued to planning authorities regarding enforcement action.

26. Scottish Executive Circular 4/1999 (the Circular) states, amongst other things, that planning authorities have a general discretion to take enforcement action against any breach of planning control if they consider such action to be expedient, having regard to the development plan and any other material considerations. The Circular states that, in deciding whether enforcement action is expedient, planning authorities should consider a number of factors. One of those factors is that:

'Decisions in such cases, and any resulting action, should be taken without undue delay. Failure to do so could constitute grounds for a finding of maladministration by the Commissioner for Local Administration in Scotland [now the Scottish Public Services Ombudsman]'

27. The Circular states that, where a development is carried out without permission, but the planning authority's assessment clearly indicates that planning permission should be granted, the correct approach is to suggest to the developer that a retrospective application be submitted. If such a retrospective application contains unacceptable elements, the planning authority may reject it or grant it subject to conditions. Another circumstance in which the Circular states that it is correct for a planning authority to invite a retrospective planning application for unauthorised development is where the planning authority considers that the development could be made acceptable through the imposition of conditions.

28. Planning Advice Note 54 – Planning Enforcement (PAN 54) highlights three issues that planning authorities should consider in relation to deciding on enforcement action:

- 'Consider whether the breach unacceptably harms public amenity, or the existing use of land and buildings merits protection of the public interest;
- Ensure any enforcement action is commensurate with the breach of planning control to which it relates;
- Ensure that, should an initial attempt to persuade an owner or occupier of a site to remedy voluntarily 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.'

29. PAN 54 provides further advice to planning authorities in deciding when to take enforcement action:

'Deciding whether to take enforcement action

27. Taking enforcement action means either:

- The issue of an enforcement notice, or
- The service of a Breach of Condition Notice, or
- Applying for an interdict.

30. In terms of section 127-129 of the 1997 Act [The Town and Country Planning (Scotland) Act 1997] planning authorities may issue an enforcement



notice where it appears to them that there has been a breach of planning control and they consider it expedient for planning policy reasons and having taken account of other material considerations. Before taking enforcement action planning authorities must consider:

- In any case whether it is 'expedient' to take formal enforcement action. The decision is within the planning authority's sole discretion ...

#### *Government ombudsman*

31. Many investigations of alleged or suspected breaches of planning control result from neighbours' complaints to the planning authority. It follows that, in deciding whether to take formal enforcement action, the authority must observe decision-making procedures enabling them to satisfy any complainants that whatever decision is eventually taken is well-founded in all respects. Otherwise the complainant would have a good cause to complain to the Local Government Ombudsman [now the Scottish Public Services Ombudsman] about alleged maladministration. In other words, where there is evidence of a breach of planning control, there will be maladministration unless the planning authority either solicit an application for planning permission, or consider taking enforcement action.'

32. The Council explained their normal procedure when dealing with alleged breaches of planning control such as the one complained about by Ms C. They said that sites were normally visited by Enforcement Officers within seven days of a complaint being received. They explained that the site visit would establish whether planning permission was required and, if it was, application forms would be sent to the developers requesting that a planning application should be submitted to the Council seeking retrospective planning permission. The Council said that, if no application was received, a follow-up letter would be sent. They said that if, after trying unsuccessfully to have an application submitted, the unauthorised development remained in place and no progress was being made, and in the opinion of the planning officer the development was unacceptable, then it was likely that enforcement action would commence for the removal of the works. They said, however, that if the planning officer felt that the development might be acceptable then it would be unlikely that an enforcement notice would be served.

33. The Council said that when the complaint was first received on 12 October 2004, they took action without delay to investigate the complaint. The Council said that receiving the complaint, visiting the site and contacting the Developers

to request that an application be submitted all took place within 14 days. They said that a follow-up letter was sent to the Developers just over one month later to ensure that an application would be submitted. The Council said that the application was received 17 days after the follow-up letter. They said that was in line with, and indeed considerably quicker, than other retrospective application requests that they dealt with.

34. The Council acknowledged that the timescale between the original complaint (12 October 2004) and the PEN being served (31 July 2006) was quite lengthy, however, they said that the PEN would have been served much sooner had it been felt that no progress was being made. The Council said that the initial retrospective planning application had been submitted on 17 December 2004 and that Officer 3 had considered the application from the time it was made valid (on 25 January 2005) to the time it was withdrawn (26 August 2005). The Council said they felt it would have been prejudicial to take any enforcement action during this period as the planning application was still being determined.

35. The Council pointed out that it sought and was granted enforcement powers on 27 September 2005, but that it had not used them because it had been made aware that a new planning application was being prepared and would be submitted very soon. The Council said that Development Services hoped that a better overall solution could be achieved by way of this new application rather than running the risk of the developer appealing against a PEN.

36. The Council said that the new application was received on 2 November 2005 and that, in the course of considering this application, the Council received amended plans which it was hoped would significantly improve both the visual and acoustic concerns of the neighbouring properties. The Council said that relevant acoustic consultant reports for the amended plans were requested but that when none were received a report was put to the Development Committee on 27 June 2006 recommending refusal and seeking enforcement powers.

37. The Council said that this case did not differ greatly from other cases where it was felt that progress, albeit slowly, was being made.

38. On 11 May 2007, I wrote to the Council outlining a number of apparent gaps where the planning file recorded no actions having been taken for a given amount of time. I asked the Council to explain what was happening during the following periods of apparent inactivity and tell me whether they considered each period of apparent inactivity to be justified:

- '8 February 2005 (when Development Services received a memo from Environmental Services) to 16 March 2005 (when the Planning Officer wrote to the Developer).
- 11 May 2005 (when Development Services received a memo from Environment Services) to 3 June 2005 (when the Planning Officer wrote to the Developer).
- 3 June 2005 (when the Planning Officer wrote to the Developer) to 26 August 2005 (when the Developer wrote to the Planning Officer withdrawing the application).
- Some of the time 'gaps' in the planning file occur when Development Services sought advice from Environmental Services regarding noise (such as between 2 February 2006 and 2 March 2006). Can you please let me know whether any policy/procedure advises on the target times for communications between departments? Do you consider that the time taken for responses to be provided by Environmental Services was reasonable?
- 23 March 2006 (when the Planning Officer wrote to objectors advising that amended plans had been received) and 7 June 2006 (when the Development Manager visited the site).'

39. The Council responded on 14 June 2007 stating that they could add no further information from the planning file as records of telephone calls made had not been maintained. The Council apologised for that omission. The Council confirmed that responses to communications between Council services were normally expected within 14 days. However, they said this was not mandatory and that it could depend on the complexity of the issue, the adequacy of the information requested and other workload management issues.

40. The Council said that although the planning file might suggest that there were undue delays in this instance, there had been a number of changing factors which extended the normal period for consideration, including changes to plans and specifications, changes in ownership of the premises and delays in submitting details to the Council.

41. Ms C, in commenting on the Council's responses to my enquiries, stated that the Council's enforcement procedure either had no teeth or officers were unwilling to use the powers they had. Ms C stated that the Developers were allowed to proceed at their own pace, as shown by the fact that they stated on 26 August 2005 that they would submit a new application within seven days but did not do so until 2 November 2005. Ms C stated that the Council were overly concerned about a possible appeal from the Developers and that as a result they went to extraordinary lengths to accommodate them. Ms C said that the Developers had used the submission of a new application on a number of occasions as a tactic to avoid enforcement action.

*(a) and (b) Conclusion*

42. I consider that the decision on whether or not to take enforcement action, when first notified of a possible problem and at various subsequent points during the consideration of this case, was a discretionary one for the Council to take.

43. I note that PAN 54 states that if an initial attempt to persuade an owner or occupier of a site to remedy the effects of an unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable or make it stop. However, PAN 54 and the Circular are also clear in stating that the invitation and consideration of planning applications are acceptable courses of action if the planning authority considers that a development can be made acceptable by those means. That was the case here. I also note that PAN 54 states that there will be maladministration unless the planning authority either solicit an application for planning permission, or consider taking enforcement action. I note that the Council did both of those things in considering this case.

44. I, therefore, consider that, in requesting that a retrospective application be submitted in October 2004 and in choosing to consider a new application rather than taking enforcement action in September 2005, the Council acted in line with the guidance provided by the Circular and PAN 54, given that, in the Council's opinion, there was a chance that the development could be made acceptable without resorting to enforcement action.

45. I also note that the Council, rather than being led by the Developers as Ms C has suggested, made clear that they were willing to seek enforcement powers and were not prepared to allow the situation to continue indefinitely, as

shown in the fact that refusal and enforcement powers were recommended in August 2005 and, subsequently, enforcement powers were sought and granted in September 2005. That the Council chose not to use their enforcement powers, because they were aware that a new application was to be submitted and believed a better solution than enforcement action was possible, was a matter for the Council's discretion, which I consider was exercised reasonably in this case.

46. With hindsight, given that the Developers were eventually unable to satisfy the Council through the submission of planning applications, it is possible to conclude that the Council should have taken a harder line with the Developers at an earlier time. However, at the time, the Council considered that there was a reasonable chance that the development could be made acceptable without formal enforcement action being taken. The Ombudsman, in considering complaints of maladministration, must judge a body's actions in terms of whether they were reasonable at the time rather than in terms of whether they appear reasonable with the benefit of hindsight. On that basis, I find that the Council's actions were reasonable in this case.

47. I am satisfied that there was no undue delay on the Council's part. The actions described at paragraphs 5 to 23 above show that attempts were made to establish the acceptability of the development in terms of its noise impact and to find a solution to the inadequacies perceived in the visual impact of the Units. The planning file shows that regular attention was given to the case by Council officers, although there are some periods of apparent inactivity in the planning file. However, I do not believe that those periods of apparent inactivity are significant enough to constitute undue delays and I note that there may have been activity (for example in the form of telephone conversations) that was not recorded. The fact that records of telephone calls were not kept, however, is a matter of concern and I welcome the Council's apology in that regard. I am suggesting that the Council reinforce to staff the importance of keeping records of significant telephone calls.

48. I am aware that, for Ms C and Mr and Mrs A, the matter was pressing and they would have wished for immediate action to be taken. They may have felt that the Council were overly lenient in the approach taken and that enforcement action should have been taken sooner rather than trying to reach a solution through the consideration of retrospective planning applications. However, I conclude, as already mentioned above, that the Council, as planning authority,

have sole discretion in determining whether enforcement action should be taken and that, in requesting the submission of a planning application and in subsequently taking steps to find solutions in terms of the application's visual and noise impact, the Council acted appropriately and in line with the relevant guidance.

49. In light of my comments above, and in all the circumstances, I do not uphold these complaints.

50. While I do not uphold the complaints, I do recognise that members of the public, complaining about unauthorised developments that may have a significant impact on their lives, may feel that the enforcement and planning system is stacked in favour of developers and may have trouble in understanding why a Council should choose not to immediately take formal enforcement action against unauthorised developments. In order to manage the expectations of complainants, and in order to make sure that they have a realistic understanding of what the enforcement process might achieve, I consider that it would be helpful for the Council to provide more extensive explanations to complainants regarding the system and its possible outcomes. I also consider that it might be helpful for complainants to be given some idea of the likely timescales involved, or if that is not possible in the circumstances, to be kept regularly up to date regarding any progress.

*(a) and (b) Recommendations*

51. I recommend that the Council:

- (i) put measures in place to ensure that, when complaints are received about alleged unauthorised developments or when requests for enforcement action are received, complainants are provided with an explanation of the Council's duties in relation to enforcement and of the options generally available to deal with unauthorised development; and
- (ii) should ensure that, where possible and appropriate, complainants' expectations are managed with regard to likely outcomes and timescales and are kept up to date with significant developments.

52. The Council, following receipt of a draft of this report, provided me with a copy of their new Planning Enforcement Charter, which provides guidance to members of the public on enforcing planning controls. I am satisfied that this document adequately addresses the issues raised in my recommendation, by

explaining how enforcement works and by committing the Council to update complainants on progress every six weeks.

**(c) The Council failed to inform the complainant and the aggrieved that the original retrospective planning application had been withdrawn**

53. The Council received an email from the Developers at 16:14 on Friday 26 August 2005 stating that they wished to withdraw their planning application, which had been due to be considered at the Development Committee's meeting on Tuesday 30 August 2005. The Council wrote to Mr and Mrs A, via their solicitors, on Wednesday 31 August 2005 to advise them that the planning application had been withdrawn. The Council told me that this was standard procedure and that they had informed the aggrieved five days after the application was withdrawn.

*(c) Conclusion*

54. It is unfortunate that the Council were not able to notify Mr and Mrs A that the application had been withdrawn prior to the Development Committee's meeting on 30 August 2005, particularly since Ms C and Mrs A attended the meeting and had not been made aware, at that time, that the application had been withdrawn. I can understand the frustration that will have caused Ms C and Mrs A and I note Ms C's point that Mr and Mrs A's expectations had been raised only to be dashed when the application and recommendation for enforcement action were not considered by the Development Committee.

55. However, although it would have been technically possible to notify objectors of the withdrawal of the application prior to the Development Committee's hearing (a first class letter could conceivably have been sent on Monday 29 August 2005), in my view, the very late withdrawal of the application by the Developers meant that it would have been difficult to do so. While it would undoubtedly have been better if Mr and Mrs A had been informed of the application's withdrawal prior to the meeting, I do not consider, given the very short timescale between the withdrawal of the application and the Development Committee's meeting, that the Council's actions amount to maladministration. In the circumstances, I do not uphold the complaint.

**(d) The Council failed to serve an enforcement notice in a timely fashion after the Development Committee decided to take enforcement action in June 2006**

56. The Council said that the Development Committee granted enforcement powers on 27 June 2006 and that the Council's Law and Administration Service (the Law Service) sent a letter to the Developers on 31 July 2007 advising them of the Development Committee's decision and giving them 31 days within which to appeal the decision to Scottish Ministers.

57. The Council acknowledged that there was a delay in the Law Service processing the PEN. The Council explained that the delay was due to staff in the Law Service being on annual leave.

58. Ms C submitted a copy of a letter dated 28 September 2006 from the Council's Chief Executive to a local Councillor. The letter referred to the delay in the Law Service and stated that:

'[A Law Service Officer] accepts that Law and Administration could have been more 'aware' of this case given its history, however, no one asked them to progress the notice quickly. On the information available to and in the judgement of the Solicitor, there was other work which needed to be progressed more quickly.

However, I regret the inconvenience that this delay has caused [Mr A and Mrs A] ...'

Ms C stated that she had told the Law Service about the urgency of the matter and it was, therefore, not correct to state that 'no one asked them to progress the notice quickly'.

*(d) Conclusion*

59. That there was a delay in the Law Service processing the PEN is not in dispute. The Council have acknowledged the delay, explained its cause and expressed regret. The actions taken by the Council, in my view, adequately remedy the complaint.

60. I note that Ms C disagrees with the Council over whether the Law Service was aware of a request for the application to be processed quickly. The Chief Executive's letter does state that 'no one' asked for the PEN to be progressed quickly, however, in my view, this should be interpreted as meaning that the



Law Service was not told that the PEN should be processed quickly by Development Services or by any officers of the Council. The letter does not explicitly state that no third party, such as Ms C, had asked for the PEN to be progressed quickly. In any event, as stated above, the Council have explained the cause of the delay and expressed regret.

61. In the circumstances, I do not uphold the complaint.

**(e) The Council failed to carry out the decision of the Development Committee that the Developers should have only 28 days to appeal as they gave the Developers three additional days**

62. The Council pointed out that Section 127 of the Town and Country Planning (Scotland) Act 1997 (the Planning Act) requires Local Authorities to provide the recipient of a PEN not less than 28 days to submit an appeal. The Council said that the Developers in this case were given 31 days to make an appeal. The Council explained that the timescale of 31 days was specified on all PENs served by the Council. They explained that this timescale allowed for any minor delay with the postal service without affecting the 28 days minimum allowed for the recipient to submit and appeal.

63. Ms C, in commenting on the Council's response to my enquiries, stated that the Development Committee directed that a period of 28 days should be given to the Developers and that whoever had decided on the 28 day period must have considered it to be adequate including time for posting. Ms C stated that the Council had not confirmed whether they had discretion to extend the 28 day period.

*(e) Conclusion*

64. Section 127 of the Planning Act states that a minimum of 28 days must be given to recipients of a PEN to appeal. By requiring a minimum period, the legislation clearly gives discretion to the planning authority to extend the period for submission of an appeal. In giving the Developers 31 days to make an appeal, the Council were following their normal practice, which was in line with the relevant legislation and designed to take account of possible delays in the postal service. If the minimum period of 28 days included postage, it is clear that recipients would not be given the statutory 28 day notice period. The Council's policy of giving developers 31 days to make an appeal is entirely reasonable. I do not uphold this complaint.

19 September 2007

**Explanation of abbreviations used**

Ms C	The complainant
Mr and Mrs A	The aggrieved
The Council	Fife Council
The Development Committee	The Council's East Area Development Committee
Development Services	The Council's Development Services Department
The Developers	The owners of the site
The Units	Unauthorised air conditioning units that had been erected on the roof of an extension to commercial premises
Officer 1	An Enforcement Officer
Officer 2	A Development Control Technician
Officer 3	A Planning Officer
Environmental Services	The Council's Environmental Services Department
Officer 4	An Environmental Health Officer
Officer 5	An Environmental Services Lead Officer
PEN	A Planning Enforcement Notice

Officer 6	Another Planning Officer
Officer 7	A Development Manager
The Circular	Scottish Executive Circular 4/1999
PAN 54	Planning Advice Note 54
The Law Service	The Council's Law and Administration Service
The Planning Act	The Town and Country Planning (Scotland) Act 1997

**List of legislation and policies considered**

The Town and Country Planning (Scotland) Act 1997

Scottish Executive Circular 4/1999

Planning Advice Note 54